PRIMA LAW JOURNAL
Vol. 1, No. 2, 30 September 2026, pp. 132 - 138

LEGAL ANALYSIS OF LEGAL CERTAINTY IN CRYPTO ASSET INVESTMENTS IN INDONESIA

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Abstract

The development of information technology has brought significant changes in the world of investment, including the emergence of crypto assets as new investment instruments. In Indonesia, crypto assets are recognized as commodities that can be traded on futures exchanges based on Minister of Trade Regulation Number 99 of 2018, but their legal certainty still faces various challenges. This study aims to analyze the legal framework governing crypto asset investment in Indonesia and examine the level of legal certainty for investors. The research method used is normative juridical through library research on legislation, legal doctrines, and relevant scientific literature. The results show that the regulatory framework for crypto assets in Indonesia has evolved through various Bappebti regulations and POJK Number 27 of 2024, yet legal gaps remain regarding the status of crypto assets as payment instruments, protection of investor personal data, and dispute resolution mechanisms. This study concludes that legal certainty of crypto asset investment in Indonesia requires comprehensive regulatory strengthening, as well as collaboration between supervisory authorities, business actors, and increased legal literacy of investors.

Keywords: *Crypto assets, legal certainty, investment, regulation, investor protection*

Subbmited: Juni 4, 2026
Reviewed: Agustus 20, 2026
Accepted: September 30, 2026

A. Introduction

The progress of information and communication technology has significantly transformed many areas of human existence, particularly in the investment sector. A notable outcome of this technological evolution is crypto assets or cryptocurrencies, a form of digital money that relies on blockchain technology and employs cryptographic methods to guarantee transaction security. Crypto assets gained widespread recognition initially with Bitcoin, which was introduced in 2009 by a figure referred to as Satoshi Nakamoto, although the idea of virtual currency was actually initiated in the 1990s by David Chaum with his creation known as Digicash..

In Indonesia, there has been a swift increase in the public's interest in crypto asset investments. According to information from the Commodity Futures Trading Supervisory Agency (Bappebti), by November 2023, the total number of registered crypto asset users had surged to 18.25 million, enjoying an average monthly increase of 437,900 customers since February 2021. Furthermore, Indonesia holds the sixth position worldwide for the highest number of cryptocurrency holders, accounting for 20.1% of the total global user base as of January 2023. This trend demonstrates the

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DOI: https://doi.org/10.35730/wrra5y07

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significant enthusiasm of the Indonesian population towards crypto assets for both investment and digital transactional purposes.[1]

However, the considerable public enthusiasm for investing in crypto assets is not paralleled by sufficient legal knowledge. Information from Bappebti shows that in 2023, there was a notable rise in incidents of crypto asset investment fraud, surpassing 5,000 cases, with total losses for investors anticipated to go beyond IDR 2 trillion. Additionally, the downfall of various crypto asset trading platforms like Zipmex in Indonesia and FTX worldwide resulted in substantial financial damage for investors, with over 10,000 investors in Indonesia experiencing losses amounting to hundreds of billions of rupiah.[2]

From a legal standpoint, the classification of cryptocurrency in Indonesia is unclear. On one side, the usage of cryptocurrency as a payment method is banned according to Law Number 7 from 2011 concerning Currency and the regulations set by Bank Indonesia. Conversely, the government, through Minister of Trade Regulation Number 99 issued in 2018, has recognized cryptocurrency as commodities eligible for trading on futures markets. This conflicting regulatory framework generates a legal ambiguity that may negatively impact investors, especially regarding the protection of their rights during conflicts or financial setbacks.[3]

Considering these concerns, this research seeks to investigate the legal structure surrounding cryptocurrency investment in Indonesia and assess the degree of legal clarity for investors. It is anticipated that this study will provide benefits both in theory and practice, aiding in the advancement of a more thorough and flexible regulatory system for crypto assets in relation to digital finance technology.[4]

B. Research Methodology

This research utilizes a normative legal research methodology, which concentrates on examining relevant legal standards. This method involves reviewing different laws and regulations, legal principles, pertinent judicial rulings, and scholarly writings to evaluate the legal certainty surrounding crypto asset investment within Indonesia.[5]

Three different kinds of legal papers make up the data used in this investigation. The Indonesian Civil Code (KUHPerdata), Law Number 7 of 2011 on Currency, Law Number 10 of 2011 on Commodity Futures Trading, Minister of Trade Regulation Number 99 of 2018, Bappebti Regulation Number 5 of 2019, and POJK Number 27 of 2024 on the Implementation of Digital

[1] Nugrahaningsih, W., & Nugroho, N. T. (2024). Analisis Yuridis Pemanfaatan Aset Kripto untuk Kepentingan Investasi dan Transaksi di Indonesia. Sosial Simbiosis: Jurnal Integrasi Ilmu Sosial dan Politik, 1(2), 104-115.

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Financial Asset Trading Including Crypto Assets are among the primary legal materials. Second, scientific papers pertinent to the research issue, legal periodicals, and textbooks are examples of secondary legal materials. Third, encyclopedias and legal dictionaries that aid in conceptual analysis are examples of tertiary legal resources.[6]

Data gathering took place via research in libraries by reviewing multiple legal resources. The examination of the data was carried out qualitatively using the technique of legal interpretation, specifically by analyzing relevant legal stipulations and relating them to the legal certainty of crypto asset investments. Additionally, this research utilizes both a statutory method and a conceptual method to deliver an extensive analysis.

C. Discussion and Analysis

1. Legal Status of Crypto Assets in Indonesia

Crypto assets occupy a distinct legal status in the framework of Indonesia's legal system. Viewed through the lens of civil law, crypto assets are classified as intangible assets according to Articles 503 and 504 of the Indonesian Civil Code (KUHPerdata). These articles cover items that lack physical existence yet have economic significance and rights that can be exchanged. This aligns with Article 499 of KUHPerdata, which outlines objects as entities that can be possessed and governed, such as intangible rights including intellectual property rights.[7]

From a regulatory standpoint, the Indonesian administration has classified cryptocurrency assets as commodities eligible for trading under the Minister of Trade Regulation Number 99 of 2018, which outlines the general policy for crypto asset futures trading. This classification was further bolstered by Bappebti Regulation Number 5 of 2019, which provides technical guidelines for the operation of the physical market for crypto assets on futures trading platforms. As a result, trading in crypto assets within Indonesia is permitted solely on futures exchanges that have received authorization from the Head of Bappebti, and the use of crypto assets as a payment method in traditional transactions is prohibited.

However, there is legal confusion due to the regulatory duality between the acceptance of cryptocurrency assets as investment commodities and the ban on using them as payment methods. Cryptocurrency cannot be regarded as a valid form of payment since Law Number 7 of 2011 on Currency clearly specifies that the Rupiah is the currency that is used in Indonesia. Investors may suffer from this regulatory ambiguity, especially when it comes to the enforcement of their rights in disputes.[8]

2. Regulatory Framework for Crypto Asset Investment

[6] Syafdinan, D. A., Suryana, N., & Wulan, L. (2020). Perlindungan Hukum Terhadap Korban Crypto Dihubungkan Dengan Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen. Jurnal Penelitian Hukum, 8(2).

[7] Yuspin, W., & Wicaksono, A. (2023). Telaah Yuridis Perlindungan Konsumen dalam Kegiatan Investasi Aset Kripto di Indonesia. DiH: Jurnal Ilmu Hukum, 85-98.

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The legal structure governing cryptocurrency investments in Indonesia has experienced notable evolution. The main legal basis is Law Number 32 of 1997 combined with Law Number 10 of 2011 regarding Commodity Futures Trading, which acts as the legal framework for trading crypto assets on future exchanges. According to this legislation, Bappebti is empowered to oversee and regulate commodity futures trading, which encompasses crypto assets.

The execution of crypto asset trading is officially governed by Bappebti Regulation Number 2 of 2019 regarding the Execution of the Commodity Physical Market on Futures Exchanges, and Bappebti Regulation Number 5 of 2019 which covers Technical Guidelines for the Execution of the Crypto Asset Physical Market.[9] These guidelines oversee the entities participating in crypto trading, which consist of the Futures Exchange, Physical Crypto Asset Traders, Crypto Asset Traders, Futures Clearing Institutions, and Crypto Asset Custodian Entities. Furthermore, Bappebti Regulation Number 3 of 2019 oversees the commodities that can be included as subjects of futures contracts, incorporating crypto assets identified by the Head of Bappebti.

The latest advancement in the regulation of cryptocurrency assets in Indonesia involves the reassignment of oversight from Bappebti to the Financial Services Authority (OJK) as outlined in Financial Services Authority Regulation (POJK) Number 27 of 2024 concerning the Execution of Digital Financial Asset Trading, which includes crypto assets. This regulation thoroughly addresses multiple facets of investor safeguarding, such as the requirement to keep investor assets distinct from those of the company (Article 16), the security of information systems (Article 3 paragraph (2) point d), and the safeguard of personal data of investors (Article 3 paragraph (2) point g and Article 8 paragraph (2) point k). The implementation of POJK Number 27 of 2024 marks an important milestone in enhancing legal assurance for investors in crypto assets within Indonesia.[10]

3. Legal Certainty for Investors from a Civil Law Perspective

In civil law, the connection between investors and operators of crypto asset trading is essentially based on a civil law contract. By signing up and utilizing a crypto platform, investors have accepted the service terms and conditions that form an electronic agreement between them and the operators. The legitimacy of these electronic agreements is evaluated according to Article 1320 of KUHPerdata, which stipulates four necessary components for a binding agreement: mutual agreement, competency to act, a defined subject, and a legitimate reason.[11]

In situations where investors experience losses in their assets, potentially due to system malfunctions, theft of assets, or the wrongful handling of funds, they can pursue multiple legal options to hold the operator responsible. To start, if the operator does not meet the commitments outlined in the contract, investors may initiate a claim for breach of contract. Additionally, if there is no direct violation of a contract, investors can file a claim related to an illegal action (Perbuatan Melawan Hukum/PMH) in accordance with Article 1365 of KUHPerdata. In this situation, civil law safeguards involve compensation according to Article 1243 of KUHPerdata if the damages stem from a breach of

[9] Puspasari, S. (2020). Perlindungan Hukum Bagi Investor Pada Transaksi Aset Kripto dalam Bursa Berjangka Komoditi. Jurnal-Direktion, 3(1), 309.

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contract and also the obligation of operators who are found negligent in the execution of their responsibilities.[12]

According to Law Number 25 of 2007 regarding Investment, Article 3 paragraph (1) items a and b states that investments must be conducted following the principles of legal certainty, transparency, accountability, and equitable treatment. Consequently, investors in crypto assets are granted legal safeguards for their rightful investment actions according to existing laws.[13] The principle of good faith outlined in KUHPerdata also serves as the foundation for traders' responsibilities to ensure the protection and confidentiality of the assets and personal information of investors in all contractual agreements.

4. Challenges to Legal Certainty and Efforts to Strengthen It

Despite the ongoing advancements in the regulatory framework for crypto assets in Indonesia, numerous obstacles persist in providing legal assurance for investors. Firstly, the limited understanding of electronic contracts among investors leaves them susceptible to dishonest activities by operators. Secondly, the decentralized structure of crypto assets and the anonymous characteristics of transactions hinder the process of gathering evidence and enforcing the law during conflicts. Lastly, the lack of a distinct guarantee institution for crypto assets contrasts with traditional financial products that have more defined assurance systems.[14]

As a means of enhancement, POJK Number 27 of 2024 has established more detailed regulations concerning the responsibilities of cryptocurrency trading operators in safeguarding the interests of investors. The rules regarding the segregation of investor funds, the security of information systems, and the safeguarding of personal data as outlined in the POJK illustrate the government's dedication to enhancing legal certainty for investors. In addition, the shift of oversight responsibility from Bappebti to OJK is anticipated to bolster oversight and enforcement within the cryptocurrency trading industry.[15]

To obtain thorough legal clarity, it is essential to take calculated actions involving multiple participants. In terms of regulation, the legal structure that defines the status of cryptocurrencies must be clarified more explicitly, incorporating efficient mechanisms for resolving disputes. In the realm of education, a greater understanding of legal rights and responsibilities for investors in cryptocurrency is crucial. Regarding law enforcement, enhanced collaboration among OJK, Bappebti, and law enforcement bodies is required to address infractions within the cryptocurrency sector.[16]

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D. Conclusion

The legal certainty of investing in cryptocurrency assets in Indonesia is still developing, according to the study and analysis done. According to KUHPerdata, cryptocurrency assets can be classified as intangible goods under civil law, and Minister of Trade Regulation Number 99 of 2018 recognizes them as commodities that can be exchanged on futures exchanges. Article 1320 of KUHPerdata can be used to analyze the legality of agreements between investors and cryptocurrency asset trading operators, and Article 1365 of KUHPerdata can be used to pursue claims of breach of contract or unlawful act for investors who experience losses.

The adoption of POJK Number 27 of 2024 is a significant step toward improving legal certainty for Indonesian investors in cryptocurrency assets, especially with regard to investor asset separation, information system security, and personal data protection. Nonetheless, a number of issues still need to be resolved, such as the lack of a clear and thorough dispute resolution procedure, low investor legal literacy, and uncertainty over the legality of cryptocurrency assets as payment instruments. Therefore, to establish a secure, equitable, and legally certain crypto asset investment ecosystem in Indonesia, regulators, corporate actors, and investors must actively collaborate.

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