

Legal Guidance on Crypto Asset Trading in Indonesia

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Bitcoin recently hit an all-time high of more than \$89,000 (around IDR 1.4 billion) on 12 November 2024, largely fueled by market optimism following Donald Trump's victory in the U.S. presidential election. In his speech, Trump's assurance that his administration would retain federal bitcoin holdings has amplified the cryptocurrency's appeal, driving demand worldwide.

This surge comes at a time when Indonesia is advancing its own structured approach to crypto regulation. As digital commodities, they are considered intangible movable assets, trade in which is guided by innovative policies that reflect the country's forward-looking approach to regulation. Managed by the Commodity Futures Trading Regulatory Agency (*Badan Pengawas Perdagangan Berjangka Komoditi* – “**Bappebti**”) and later the Financial Services Authority (*Otoritas Jasa Keuangan* – “**OJK**”), crypto assets are governed by an evolving set of laws designed to encourage innovation while maintaining security and regulatory compliance. Although they can be owned, transferred, and encumbered, their usage is restricted, particularly with the prohibition on their use as payment instruments.

Crypto Assets as Property

In Article 1 point 7 of Bappebti Regulation No. 8 of 2021 on Guidelines for the Organization of Physical Market Trading of Crypto Assets Through the Futures Exchange as amended by Bappebti Regulation No. 8 of 2024 (“**Bappebti Reg. No. 8/2021**”), crypto assets are defined as an intangible commodity in digital form, using cryptography, information technology networks, and distributed ledgers to regulate the creation of new units, verify transactions, and secure transactions without the intervention of other parties. Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector (“**PPSK Law**”) goes further,

classifying crypto assets as digital financial assets and placing them within the framework of Financial Technology Innovations (*Inovasi Teknologi Sektor Keuangan* – “**ITSK**”). While their ownership and transfer resemble that of traditional property, crypto assets have special characteristics that necessitate regulatory oversight, particularly regarding their use as financial instruments.

The intangible nature of crypto assets sets them apart from physical property. Instead of tangible handover, ownership of crypto assets is transferred digitally through blockchain or similar ledger systems. These systems act as custodians, recording the ownership and movement of assets in real-time.

Notwithstanding, while Indonesia recognizes ownership rights over crypto assets and trading them, using them as payment instruments is strictly forbidden by the Central Bank of the Republic of Indonesia (Bank Indonesia).

As crypto assets are considered property under Indonesian law, there are two familiar forms of security interest — pledge (*gada*) and fiducia security — which may apply to crypto assets under Indonesian law. In a pledge, the asset's possession is transferred to the creditor, while fiducia involves the transfer of ownership, with the debtor retaining possession. While theoretically applicable, these methods present practical challenges, particularly when dealing with the digital nature of crypto assets. Enforcing a pledge or fiducia security might involve accessing digital wallets, a process that remains an open question in Indonesia's legal landscape.

Crypto Exchange and Physical Crypto Asset Trader

To set up a crypto exchange, a potential futures exchange must meet stringent criteria. For example, according to Bappebti Reg. No. 8/2021, futures exchanges must have a minimum paid-up capital of at least IDR 500 billion initially, increasing to IDR 1 trillion or 2% of facilitated transaction values within three months. They must maintain at least 80% of this capital as equity, employ certified experts (CISA and CISSP), establish a monitoring system, implement trading regulations, and have a dedicated trading committee. Additionally, once approved, they cannot conduct transactions for other commodities.

The first and so far the only authorized crypto exchange in Indonesia, PT Bursa Komoditi Nusantara, was approved by Bappebti under Decree No. 01/BAPPEBTI/SP-BBAK/07/2023.

On the other hand, a physical crypto asset trader in Indonesia is regulated under Bappebti Reg. No. 8/2021. To operate as a physical crypto asset trader in Indonesia, several key requirements must be met. Traders must have a minimum paid-up capital of IDR 80 billion and maintain at least 80% of this capital as equity. They must establish an organizational structure that includes IT, Audit, Legal, Customer Complaint, Client Support, and Accounting divisions. A secure and real-time online trading system connected to the Futures Exchange is also required. Traders need to have detailed trading rules covering customer registration, transaction processes, security, and complaint mechanisms. Standard Operating Procedures (SOPs) must govern marketing, transactions, internal controls, and anti-money laundering efforts. At least one employee must hold a Certified Information Systems Security Professional (CISSP) certification, and all key personnel must pass a fit and proper test by Bappebti. The online trading system must be audited by an independent entity, with necessary changes to be made within three months if issues arise. Additionally, traders must keep transaction and financial data for five years and ensure strong data security. Any changes to the trading system require approval from Bappebti.

Crypto Asset Trading in Indonesia

The core guidelines for crypto asset trading come from Bappebti Reg. No. 8/2021. Futures exchanges remain the primary platforms for crypto asset transactions, with Ministry of Trade Regulation No. 99 of 2018 on General Policy on the Organization of Crypto Asset Futures Trading affirming crypto assets' status as a commodity that can be used as a futures contract subject to be traded on the futures exchange. The list of tradable crypto assets

is regularly updated, with 545 assets approved for trading according to Bappebti Regulation No. 11 of 2022 on the Determination of the List of Tradable Crypto Assets Within the Physical Market for Crypto Assets as amended by Bappebti Regulation No. 2 of 2024 ("**Bappebti Reg. No. 11/2022**").

Before being approved, each crypto asset must first be evaluated to meet the requirements for trading, as regulated under the guidelines set forth in Bappebti Reg. No. 8/2021, specifically Article 3 paragraph (2). This regulation ensures that the crypto assets are based on distributed ledger technology, classified as either utility crypto or crypto-backed assets, and must undergo evaluation using the Analytical Hierarchy Process (AHP) method determined by Bappebti. Additionally, the asset must meet the requirements in Appendix I of Bappebti Reg. No. 11/2022, which includes both general and technical guidelines. These guidelines focus on customer protection, monitoring, and fair market behavior.

Once these conditions are met, traders can propose the asset for inclusion in the trading list. The proposal is reviewed by the Crypto Asset Exchange and the Crypto Asset Committee before being recommended to Bappebti for approval. After approval, traders must notify Bappebti at least 7 days before they start trading the asset. Ongoing evaluations of listed assets are required at least once a year, and the results must be reported to Bappebti.

However, Article 2 of the Bappebti Reg. No. 8/2021 states that it does not regulate Initial Coin Offerings (ICO). Aside from Bappebti Reg. No. 8/2021, no other regulations specifically forbids or imposes limitations on the implementation of ICO in Indonesia. Nevertheless, several ICOs have still been conducted in Indonesia, such as: BBX Coin that used an ICO scheme made by Rekeningku.com on 2 July 2018 and Ana Coin that also used the same platform for an ICO on 1 July 2018.

If a crypto asset that has conducted an ICO abroad wishes to be traded in Indonesia, the crypto asset trader must comply with the requirements outlined in Bappebti Reg. No. 8/2021 and submit a proposal to include the asset in the list of crypto assets that can be traded on the physical market. For example, Ethereum (ETH), which conducted its ICO in the United States on 22 July 2014, is now able to be traded on the physical crypto asset market in Indonesia.

On the other hand, crypto asset transactions are also subject to taxation. Minister of Finance Regulation No. 68/PMK.03/2022 on Value-Added Tax and Income Tax on Crypto- Asset Trading Transactions outlines the application of Value-Added Tax (VAT) and Income Tax (*Pajak Penghasilan* - PPh) on these transactions, signaling the government's intent to treat crypto like any other economic asset.

In keeping with global trends, Indonesia's legal framework not only mandates stringent consumer protection measures for crypto asset transactions but also, through Bappebti Reg. No. 8/2021, includes Know Your Customer (KYC) protocols, Customer Due Diligence (CDD) and Anti-Money Laundering (AML) obligations.

What's Next? The Future of Crypto in Indonesia Shift of Authority

The government considers that Indonesia's financial sector also faces challenges from the emergence of complex and high-risk financial instruments such as crypto. To meet these challenges a major shift has been put in place with the enactment of the PPSK Law, which transferred regulatory authority over crypto assets from Bappebti to OJK.

Under Article 6 of the PPSK Law, regulatory oversight will shift from Bappebti to the Financial Services Authority (OJK) within 24 months of enactment of the PPSK Law. The OJK is expected to finalize a draft regulation (RPOJK) outlining various aspects, such as crypto assets eligible for trading, operator licensing, governance, and consumer protection. Crypto asset trading operators must comply with governance and data protection within six months of the regulation's enactment, while crypto asset traders have one

year to implement anti-money laundering (AML) and prevention of terrorism financing and proliferation of weapons of mass destruction programs. Crypto assets must meet criteria like using distributed ledger technology and being traceable. Exchanges are required to thoroughly analyze each type of crypto asset before it can be added to the official list, assessing them based on methodologies outlined in the regulations and official exchange provisions.

One of the key aspects of the RPOJK is the licensing requirement for operators of crypto trading. Operators of crypto trading can only engage in business activities after securing a business license from the OJK, which requires their board of directors to submit an application. The necessary documents for application can vary significantly based on the type of entity, such as Asset exchanges, Clearing and Guarantee Corporations, Sellers, and Custodians. Additionally, the RPOJK stipulates that OJK must approve the business license application within 45 days, provided that the submitted documents are accurate and complete.

Nevertheless, existing regulations will remain in place unless they conflict with this new law, ensuring a smooth transition as OJK takes over. Once the RPOJK comes into effect, relevant stakeholders should be aware that Bappebti may repeal any regulations under its jurisdiction that conflict with the provisions of the RPOJK.

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The article above was prepared by Dentons HPRP's lawyers

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