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A Comparative Analysis of the Regulatory Framework for Crypto Assets as Commodities versus Securities and Its Implications for Investor Protection in Indonesia

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Abstract: Crypto assets have become a global phenomenon that is also growing rapidly in Indonesia, but their status remains subject to legal uncertainty. The debate over whether crypto assets should be categorized as commodities or securities has significant implications for regulatory direction, investor protection, and the stability of the national financial system. Regulation as a commodity emphasizes trade and market mechanisms, while regulation as a security focuses more on investor protection and transparency. This situation creates an urgent need for regulatory harmonization, given the potential risks arising from the lack of legal clarity, including potential investor losses, market manipulation, and weak oversight. This study seeks to examine the position of crypto assets within the Indonesian legal framework by comparing international regulatory practices, such as the stance of the Securities and Exchange Commission (SEC) in the United States and the Markets in Crypto-Assets (MiCA) regulations in the European Union. Economic Law Theory is used to understand the interaction of law with market dynamics, while Philipus M. Hadjon's Legal Protection Theory provides an analytical basis for preventive and repressive protection for investors. Furthermore, the principle of financial prudence is used as a basis for assessing the need for stronger oversight. The study's findings indicate that optimal investor protection can be achieved through clear regulations that firmly place crypto assets within the appropriate legal framework, with synergistic institutional coordination between Bappebti (Commodity Futures Trading Regulatory Agency), the Financial Services Authority (OJK), and Bank Indonesia. Going forward, comprehensive, specific regulations are essential to ensure the development of crypto assets is aligned with legal certainty, public protection, and strengthened national economic stability.

Keyword: Crypto Assets, Regulation, Commodities, Securities, Investor Protection.

INTRODUCTION

The development of crypto assets in Indonesia has shown a significant trend in recent years (Sahamad, 2023). Increasing numbers of people are using crypto assets not only as an investment vehicle but also as an alternative trading instrument (Nugrahaningsih, 2024). The value of crypto asset transactions in Indonesia has even reached hundreds of trillions of rupiah annually, attracting the attention of regulators (Tambun, 2022). This situation demonstrates that crypto assets are no longer a foreign concept but have entered the real economy with a broad impact (Mariana, 2022). This high public interest demands regulatory certainty to create a healthy and safe market.

The uncertainty surrounding the position of crypto assets between commodities and securities remains a matter of debate in Indonesia (Wijaya, 2025). Bappebti (Commodity Futures Trading Regulatory Agency) defines them as commodities that can be traded on physical markets, while the Financial Services Authority (OJK) asserts that digital financial instruments that resemble securities could potentially fall into the securities category (Wati, 2025). This difference in classification creates confusion among both investors and business actors. Some view crypto assets as having commodity characteristics because they are traded like gold or oil, while others consider them similar to securities because they are often marketed with promises of profits (Khunainah, 2024). This debate highlights the need for regulatory harmonization to prevent dual authority.

The importance of investor protection is a crucial issue in crypto asset transactions. Numerous cases have seen investors suffer losses due to fraud, market manipulation, or the bankruptcy of crypto exchanges (Gozales, 2025). This situation demonstrates the weakness of legal protection mechanisms available to the public. Investor protection should not only be preventive through trading transparency, but also repressive through the provision of compensation mechanisms (Wimar, 2023). Clear regulations will provide legal certainty and increase public confidence in participating in the crypto market.

The relevance to global dynamics is evident in how major countries respond to the presence of crypto assets. In the United States, the Securities and Exchange Commission (SEC) is aggressively cracking down on crypto assets deemed securities (Sulaiman, 2024). The European Union has already made progress by ratifying the Markets in Crypto-Assets (MiCA) legal framework, which provides certainty about the legal status of crypto assets (Mahendra, 2025). Indonesia cannot ignore these developments, given the cross-border nature of the crypto market. If regulations are not clarified promptly, domestic investors will face higher risks than in countries with established legal frameworks. Global experience can serve as a reference for improving crypto asset governance in Indonesia.

Previous studies have shown that Indonesia is still in a transitional stage in regulating crypto assets. Some studies have revealed that the commodity futures trading regime tends to focus solely on the trading aspect. Other studies emphasize that crypto assets should be treated as capital market instruments due to their nature resembling digital securities. These studies reveal regulatory gaps that need to be filled to optimize investor protection. Foreign literature also highlights the importance of integrated oversight between financial and commodity regulators to avoid regulatory overlap.

Academic analysis of the status of crypto assets often highlights their functional aspects and economic characteristics. Some academics consider crypto assets valuable as a long-term investment medium, while others view them as speculative instruments with high risks (Rolando, 2024). Others emphasize that the characteristics of crypto assets differ significantly from conventional commodities due to their blockchain technology-based nature and extreme volatility (Wicaksono, 2023). This perspective reinforces the view that simply categorizing crypto assets as commodities is insufficient to address their complexity.

Financial law academics recommend a more flexible approach to accommodate the dual nature of crypto assets.

Economic legal theory serves as a foundation for understanding how law interacts with the dynamics of the crypto asset market (Siregar, 2024). This theory emphasizes that law does not stand alone but must be responsive to economic developments (Makruf, 2025). The rapid growth of crypto assets demonstrates the need for adaptive regulations to avoid stifling innovation while maintaining legal certainty (Harmen, 2024). Rigid regulations pose a risk of being left behind, while lax regulations potentially open up opportunities for abuse. This interaction poses a significant challenge for financial regulators in Indonesia.

Philipus M. Hadjon's theory of legal protection provides a framework for understanding the importance of preventive and repressive protection (Bediona, 2024). Preventive protection is realized through clear regulations, information transparency, and effective oversight. Repressive protection comes in the form of dispute resolution mechanisms, compensation, or sanctions against violators (Yamani, 2025). Crypto assets require both forms of protection given their high risks. Investors will feel more secure if guaranteed legal protection is provided both before and after a loss occurs.

The prudential principle in finance is highly relevant as a reference. This principle requires every financial institution or business actor to prioritize consumer protection through adequate risk management (Ardelia, 2025). In the crypto market, the implementation of this principle can take the form of obligations to maintain the security of digital assets, price transparency, and the separation of customer funds from company operational funds. Regulations that integrate the prudential principle will help prevent a recurrence of investor fund losses. Investors will also gain greater confidence if these protection mechanisms are consistently enforced.

The definition of crypto assets needs to be clarified to avoid differing interpretations. Currently, Bappebti (Commodity Futures Trading Regulatory Agency) defines crypto assets as blockchain-based intangible commodities traded on physical markets. The Financial Services Authority (OJK) could potentially define them as digital financial instruments that could be categorized as securities (Rohman, 2021). This difference in definition has direct implications for oversight mechanisms, legal obligations, and investor protection. Definitional certainty will be a key foundation for building an integrated regulatory framework. Without clarity, jurisdictional disputes between institutions will continue to arise.

The distinction between commodities and securities under Indonesian law is regulated by different laws. Commodities are regulated by the Commodity Futures Trading Law, while securities are regulated by the Capital Markets Law and the P2SK Law. Commodities tend to be oriented towards physical trading and price speculation, while securities emphasize the rights and obligations inherent in financial instruments. Crypto assets have a dual nature, allowing them to be categorized as both depending on how they are used. This distinction explains why the legal classification of crypto assets has been a long-running debate.

The concept of investor protection in digital financial transactions encompasses transparency, information disclosure, and fairness. Investors need access to adequate information to make rational investment decisions. Protection should also include oversight mechanisms against market manipulation, insider trading, and fraud (Andrias, 2025). Regulations that favor investors will provide a sense of security while encouraging the healthy growth of the crypto industry. Investor protection not only reduces risk but also strengthens public trust in the applicable legal system.

METHOD

The research method used in this study is normative legal research, focusing on the analysis of positive legal norms applicable in Indonesia and their relationship to relevant legal theories. This research relies on a statutory and conceptual approach. The statutory approach is carried out by examining various legal instruments that form the basis for regulating crypto assets in Indonesia, such as Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (UU P2SK), Law Number 8 of 1995 concerning Capital Markets, and derivative regulations issued by the Commodity Futures Trading Regulatory Agency (Bappebti) and the Financial Services Authority (OJK). Meanwhile, the conceptual approach is used to examine the thoughts of legal experts and relevant theories, including Philipus M. Hadjon's Legal Protection Theory and the Economic Law Theory, which explains the interaction between regulation and market dynamics. Through the combination of these two approaches, this research not only identifies and outlines the existing legal basis but also analyzes the concept and its implications for legal certainty and investor protection. Thus, this research method is expected to provide a comprehensive overview of the problematic placement of crypto assets within the Indonesian legal framework and offer regulatory recommendations that are more synchronous and adaptive to developments in financial technology.

RESULTS AND DISCUSSION

Analysis of Regulation as a Commodity and Security from a Positive Law Perspective

Law No. 32 of 1997 concerning Commodity Futures Trading, as amended by Law No. 10 of 2011, serves as the primary legal basis for classifying crypto assets as commodities. Article 1, Section 2 of the law, states that commodities encompass all goods, services, and rights that are subject to futures contracts. This definition allows blockchain-based digital assets to be treated as commodities as long as they can be traded on the futures market. The position of crypto assets is further emphasized by derivative regulations from Bappebti, which specifically regulate trading procedures and supervision. This demonstrates the regulatory effort to accommodate crypto assets within the existing legal framework.

Bappebti's authority to regulate crypto asset trading is affirmed through Bappebti Regulation No. 8 of 2021 concerning Guidelines for Organizing Physical Crypto Asset Market Trading on Futures Exchanges. Article 2 of this regulation states that physical crypto asset market trading may only take place on futures exchanges approved by the Head of Bappebti. Crypto asset exchanges, traders, and custodians are required to obtain permits to operate, ensuring that every market participant is under official state supervision. Bappebti also establishes a list of crypto assets that may be traded based on the results of a risk analysis. This regulation emphasizes orderly trading to prevent the crypto market from developing aimlessly.

The licensing and trading mechanisms for crypto assets under Bappebti (Commodity Futures Trading Regulatory Agency) are multi-layered. Crypto asset traders are required to have minimum capital, a cybersecurity system, and strict risk management standards, as stipulated in Articles 11 to 16 of Bappebti Regulation No. 8 of 2021. Crypto asset exchanges must also provide a transparent and secure trading system. Custodians are responsible for storing digital assets separately from the company's operating funds, thereby reducing the risk of misuse. This regulatory structure provides a clear framework for crypto asset trading. Detailed provisions are expected to maintain market stability and prevent illegal practices.

The weakness of crypto asset regulation as a commodity lies in its limited focus on physical trading. Law No. 32 of 1997 and the CoFTRA Regulation do not explicitly regulate investor protection in the form of information disclosure or compensation mechanisms. Crypto investors still face significant risks in the event of market manipulation or trader

bankruptcy. Comprehensive legal protection is lacking, leaving investors to bear the brunt of losses. This situation renders commodity-based regulation inadequate to address the complexities of digital assets.

Law No. 8 of 1995 concerning Capital Markets provides the basis for the possibility of categorizing crypto assets as securities. Article 1, number 5 of this law defines securities such as securities such as shares, bonds, debt certificates, collective investment contracts, and derivative instruments. Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector (P2SK) expands the definition of securities to include digital financial instruments. Article 1, number 88 of the P2SK Law emphasizes that securities include digital instruments with security characteristics. This expansion opens the opportunity for crypto assets, which function as investment instruments, to be included in the capital market regime.

The role of the Financial Services Authority (OJK) as a capital market regulator is affirmed in Article 6, letter b, of Law No. 21 of 2011 concerning the OJK, which stipulates the OJK's authority to regulate and supervise activities in the capital market sector. The OJK's mandate is to protect investor interests, maintain market stability, and uphold the principles of transparency and fairness. If crypto assets are categorized as securities, the OJK will apply the same standards as stocks or bonds. Investors will be protected through mandatory information disclosure, a clear prospectus, and a more structured dispute resolution mechanism. This demonstrates that securities regulation places greater emphasis on the public interest.

The potential for crypto assets to be categorized as digital securities depends on their characteristics. Crypto assets used as fundraising instruments, asset tokenization, or collective investment products more closely align with the definition of securities as stipulated in Article 1(5) of the Capital Markets Law and Article 1(88) of the P2SK Law. Such tokens can be treated equivalently to shares or bonds because they convey rights and obligations between the issuer and the holder. The Financial Services Authority (OJK) has the opportunity to use its authority to substantively assess whether certain crypto assets qualify as securities. This step could strengthen investor protection while enhancing the legitimacy of the crypto market.

The weakness of the securities approach is the overlapping jurisdiction with Bappebti. As long as Bappebti still defines crypto assets as commodities, the Financial Services Authority (OJK) cannot fully take over supervision. Article 4 of Law No. 32 of 1997 still grants Bappebti broad authority to regulate commodity futures trading, including crypto assets. Unclear boundaries of authority create the risk of regulatory arbitrage, where market participants choose the loosest rules to suit their own interests. This uncertainty has the potential to weaken the effectiveness of supervision and reduce legal protection for investors.

The differences in regulatory authority between Bappebti (Commodity Futures Trading Regulatory Agency) and the Financial Services Authority (OJK) reflect the dual nature of crypto asset regulation in Indonesia. Bappebti focuses on commodity trading in physical markets, while the OJK focuses on investor protection in capital markets. These differing regulatory objectives create differing standards of protection for crypto asset investors. The crypto market, regulated by Bappebti, emphasizes the technical aspects of trading, while the capital market, under the OJK, emphasizes the principles of transparency and information disclosure. This duality means that Indonesia lacks a single, comprehensive framework for regulating crypto assets.

The implications of regulatory dualism for legal certainty are significant. Investors face uncertainty about whether their crypto assets are treated as commodities or securities. Businesses also face uncertainty regarding which institutions are authorized to issue permits and oversee their activities. This situation can hamper the sustainability of the crypto asset industry in Indonesia by creating regulatory uncertainty. Legal certainty is essential for the

industry's healthy development and investor confidence. Regulatory harmonization between Bappebti (Commodity Futures Trading Regulatory Agency) and the Financial Services Authority (OJK) is an urgent step to ensure the Indonesian crypto market remains abreast of global developments.

Comparative Analysis and Legal Implications of Placing Crypto Assets as Commodities versus Securities for Investor Protection in Indonesia

Investor protection in the commodity regime emphasizes transparency in crypto asset trading. Crypto asset exchanges are required to provide real-time price information so investors can make informed decisions. This transparency is supported by the obligation of business actors to maintain transaction system security and prevent price manipulation. The goal is to create an orderly market and prevent detrimental speculative practices. Investors are expected to feel secure because every transaction is recorded and monitored.

Market risk mitigation in the commodity regime is achieved by compiling a list of crypto assets deemed suitable for trading. This selection process involves assessing capitalization, liquidity, and blockchain network security. Investors are only permitted to transact with officially listed assets, thus minimizing the risk of high-risk assets. A price monitoring system is also intended to mitigate extreme volatility. This type of regulation focuses more on trade stability than on substantive investor protection.

The main weakness of the commodity regime is the lack of investor protection mechanisms equivalent to capital market standards. Investors are not entitled to transparent information regarding the issuer or the intended use of the crypto assets being traded. The absence of an obligation for issuers to disclose prospectuses leaves investors in a vulnerable position. This situation has the potential to create unfairness, especially when investors lack access to adequate information. Technical protection alone is insufficient to meet the needs of those investing large sums of money.

The securities regime places investor protection as a primary focus of oversight. Authorities emphasize the importance of the principle of information transparency to prevent investors from being disadvantaged due to information asymmetry. Every traded financial instrument must be accompanied by a prospectus document that clearly outlines rights and obligations. The principle of fairness is also enforced so that retail investors have equal access to information with institutional investors. This protective orientation provides a stronger sense of security for investors.

The principles of openness, fairness, and transparency within the securities regime ensure the market operates with integrity. Investors can assess risks and potential returns more accurately because each issuer is required to report on its financial condition. Information regarding ownership structure, planned use of funds, and business risks must be publicly disclosed. This transparency is a key tool to protect investors from misinformation. Transparency also helps regulators detect potential legal violations early.

The compensation mechanism in the securities regime offers an advantage not found in the commodities regime. Investors harmed by fraud, insider trading, or market manipulation have a clear legal path to pursue their rights. Authorities can impose administrative and criminal sanctions on violators. This legal protection adds a layer of security for investors who invest their capital. The existence of this mechanism makes the market more credible and fosters public trust.

Regulatory disharmony between trading authorities and capital market authorities has created confusion among investors. Differences in protection standards create a gap between investors entering through commodity trading and those investing in digital securities. Investors find it difficult to determine which authority to rely on in the event of a dispute.

Disharmony also hinders the development of uniform protection standards. This lack of clarity weakens investors' position in the digital asset ecosystem.

Regulatory arbitrage becomes a real risk when two legal regimes coexist. Businesses may choose to comply with the loose regulations to reduce their obligations. This situation is detrimental to investors because the protection standards applied are inconsistent. When market players exploit regulatory loopholes, the potential for losses to investors increases. This phenomenon demonstrates the importance of unifying regulatory standards to prevent unilateral exploitation.

The risks to investors from the uncertainty of the legal status of crypto assets are quite serious. The lack of clarity about whether an instrument is a commodity or a security makes it difficult for investors to understand their rights and obligations. This situation increases the potential for market manipulation, which cannot be promptly addressed. Investors are ultimately left vulnerable due to the lack of certainty about applicable protection mechanisms. This situation highlights the need for a legal framework that provides certainty about the legal status of crypto assets.

The recommended ideal regulatory model is the integration of supervision under a single authority with an investor protection mandate. P2SK Law provides an opportunity for the Financial Services Authority (OJK) to take a greater role in overseeing digital assets. Harmonization of regulations between commodities and capital markets is necessary to avoid overlapping authority. The establishment of a specific digital asset protection framework is also necessary to address the unique characteristics of crypto. Integrated regulation will create a healthier and more trustworthy investment ecosystem.

CONCLUSION

Crypto assets are in a position of legal uncertainty due to their differential treatment by two regulatory regimes: as commodities under the supervision of Bappebti (Commodity Futures Trading Regulatory Agency) and as securities potentially falling under the jurisdiction of the Financial Services Authority (OJK). This misalignment creates differing regulatory orientations, with the commodity regime emphasizing trading and market risk mitigation, while the securities regime emphasizes investor protection through the principles of transparency, fairness, and compensation mechanisms. These differing approaches create gaps in legal protection that can ultimately harm investors, as they face uncertainty about their legal status and the potential for losses due to the lack of a specific, binding protection framework. Regulatory harmonization is crucial to ensure that investor protection is not merely partial but comprehensively integrated within a national legal system that adapts to the development of digital assets.

Clearer legal certainty needs to be achieved through legislative revisions or the creation of specific regulations regarding digital assets, eliminating the dualism of oversight that confuses investors and business actors. Coordination between institutions such as Bappebti (Commodity Futures Trading Regulatory Agency), the Financial Services Authority (OJK), and Bank Indonesia (BI) must be strengthened to ensure integrated oversight without overlapping authority. Investor protection should be prioritized as the primary objective of crypto asset regulation by establishing transparent oversight mechanisms, a fair compensation system, and instruments to prevent market manipulation. The regulatory integration will not only increase public trust in the crypto asset market but also strengthen Indonesia's global legitimacy as a country with progressive and equitable digital financial governance.

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