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ANALYSIS OF THE USE OF CRYPTO CURRENCY AS A FUTURES TRADING COMMODITY ACCORDING TO POSITIVE LAW IN INDONESIA

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Abstract

The use of virtual currency generated from cryptographic systems. This system guarantees the currency's security so that the currency cannot be counterfeited. Virtual money is dominating Indonesia, namely Bitcoin. Problem formulations for this journal are: What is the position of crypto (cryptocurrency) as a currency in business transactions based on law in Indonesia? How is using crypto (cryptocurrency) as a futures trading commodity regulated according to positive law in Indonesia? Futures according to positive law in Indonesia? This research is normative legal research accompanied by supporting data. The research data was collected through a literature study. The analysis was carried out using qualitative methods. Based on the research results, it is concluded that First, the position of crypto (cryptocurrency) in business transactions based on Law Number 7 of 2011 concerning Currency is not recognized as a legal means of payment, (cryptocurrency) is legally recognized as a commodity that can be traded via futures trading. Second, Supervise the use of crypto (cryptocurrency) as a futures trading commodity based on Article 1 number 3 of Law Number 10 of 2011. Third, legal protection for customers/investors using crypto as a futures trading commodity in terms of Regulations and Commodity Futures Trading Supervisory Regulation Number 5 of the Year 2019 Concerning Technical Provisions for Organizing the Physical Market for Crypto Assets on the Futures Exchange.

Keywords: *Cryptocurrency, Bitcoin, Commodity Futures Trading, Legal Protection*

INTRODUCTION

Money is one of the greatest innovations discovered throughout economic civilization (Sularno & Budiasih, 2022). The era of continuous development has resulted in continued modernization in the field of technology as one of the inevitable consequences of globalization itself (Azima dkk., 2021). So, as technology progresses

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rapidly, everything is required to produce effectiveness and performance that is considered faster, more practical, and guaranteed security (Atzori dkk., 2017). The development of the times and the demands of global modernization cause continuous changes in economic activities from time to time, one of which is the tools used as payment or transaction media (Mikalef dkk., 2019).

Since the discovery of money as a means of payment in economic transaction activities, the form of money has continued to change (Tarantang dkk., 2019). This is due to the growing desire to obtain convenience and a more practical form of money (Aritonang & Arisman, 2017).

At one time, precious metals such as gold were used as the main means of payment (Sahrani dkk., 2021). Furthermore, paper assets such as checks and banknotes began to be used for payment and were considered money (Hamin, 2020).

History proves that the development of payment instruments has now undergone an evolution in the form of data that can be placed in a container or is called an electronic payment instrument (Abidin, 2015). When using electronic systems, two basic things need to be considered. First, technology is a human invention with weaknesses in its technical system (Yuliana, 2000). Second, besides having weaknesses in its technical system, technology also needs more certainty regarding legal guarantees (Anwar, 2016).

The development of currency, originally metal, and paper currency, has now developed into a paperless system or no longer uses paper as the basis (Alam dkk., 2021). One of them is virtual currency produced from a cryptographic system. This system guarantees the currency's security so that the currency cannot be counterfeited (Smith & Kumar, 2019). The virtual money currently dominating various countries, one of which is Indonesia, is bitcoin (Putri dkk., 2023).

Various problems arise due to the existence of this virtual currency related to legality to the statement that bitcoin is not official Indonesian money (Ilyasa, 2019; Julianti & Apriani, 2021). This is because there is an opinion that Bitcoin differs from the concept of money as explained in the Law on Finance or payment instruments that apply in Indonesia (Ilham dkk., 2019; Sukarno, 2020). However, some state that it is legal as long as it is not detrimental and does not leave or replace the value or currency it should be. Bitcoin can be used as a payment or as a substitute currency for the rupiah due to developments over time (Dwicaksana, 2020). Of course, those

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with second-hand thinking think that Bitcoin is also a form of transition or change in the form of money from time to time. As explained at the beginning, money continues to change in form, and its value also changes along with the times. However, even so, as a nation and society that obeys the Law, do Indonesian people continue to defend and fight for the legality of Bitcoin as a legal means of payment and can be used as currency like in several countries, or does it remain in polemics and legal paradigms? Which has no firmness in it while taking advantage of bitcoin itself (Sularno & Budiasih, 2022).

The type of digital currency that is growing rapidly in the use of e-money for current transactions in society is cryptocurrency (Kusuma & Asmoro, 2020). This currency is already known to most people and has become a global phenomenon. Cryptography has a function that binds a virtual program with its security standards (Saputra, 2018). The level of development of this digital currency every year has increased significantly, one of which recently has had the greatest value is Bitcoin. More than 700 (seven hundred) types of cryptocurrency in the last five years have existed on the market (Arifin & Oktavilia, 2020).

Since 2018, Indonesia still needs to be able to provide a detailed, explicit, and specific explanation regarding the regulation and legality of cryptocurrency. Prohibition that contains new assertions that lead to a statement containing assertions in a Press Release (Frebowitz, 2018). Ministry of Finance Regulation no. 3/KLI/2018, which still adheres to Law No. 7 of 2011 concerning "the absence of an authority that regulates and supervises, the use of virtual currency is prone to be used for illegal transactions which can open up opportunities for fraud and crime in a form that can be detrimental society, as well as risks that have the potential to disrupt the stability of the financial system (Dierksmeier & Seele, 2018)."

When carrying out transactions with cryptocurrency, there are conditions as a means of exchange or payment which have been explained in Article 46 Paragraph (2) and Article 47 Paragraph (1) and Paragraph (2) in Government Regulation No. 82 of 2012, namely as explaining the implementation of electronic systems and transactions, these transactions have legal consequences if they are said to be valid and can also be canceled by the parties. With this transaction, contracts and contractual forms addressed to Indonesian residents must be made in Indonesian in Article 48 (1) Government Regulation No. 82 of 2012.

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In the past few years until now, Indonesia's central bank, namely Bank Indonesia, has not been the monetary authority in Indonesia and tends to remain silent and only return risks to its users.

By Bank Indonesia Regulation Number 19/10/PBI/2017, we explain the implementation of anti-money laundering and terrorism prevention for financial service providers other than banks and non-bank foreign exchange businesses.

This explains that there is no obligation for digital currency implementers to be registered or to have approval from a financial authority in Indonesia. In line with the pace of digital development, the Ministry of Trade (Ministry of Trade), through the Commodity Futures Trading Supervisory Agency, is said to provide legal certainty regarding the fate and sustainability of Cryptocurrency to form a system on the futures exchange called a physical market system for crypto assets which is pursued with various regulations. Through the financial authority overseeing it, Indonesia is trying to regulate Cryptocurrency.

To sell or buy crypto assets as a commodity, the Financial Services Authority in Indonesia, as the government representative that oversees this issue, has prepared regulations to accommodate the interests, clarity, and guidelines for the public in trading crypto assets regarding the Indonesian government's recognition of the presence of virtual currency and Cryptocurrency through policy. Republic of Indonesia Ministry of Trade No. 99 of 2018 concerning General Policy for the Implementation of Crypto Asset Futures Trading, which emphasizes the general policy for the implementation of Crypto Asset Futures Trading which essentially regulates that "crypto assets are designated as Commodities that can be used as Subjects of Futures Contracts traded on the Exchange Futures", which is contained in accordance with Article 1 as regulated in the Commodity Futures Trading Supervisory Agency regulation No. 3 of 2019 and Commodity Futures Trading Supervisory Agency regulation no. 5 of 2019 as further regulation of the Commodity Futures Trading Supervisory Agency regulation No. 5 of 2019, namely regarding Technical Provisions for the Implementation of the Physical Market for Crypto Assets on the Futures Exchange, which is intended as a guarantee of certainty and legal protection for cryptocurrency investors both in a cryptocurrency marketplace which must complete the requirements stipulated in the regulations made by the Commodity Futures Trading Supervisory Agency.

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Technological disruption is a phenomenon that inevitably occurs in the modern era like today. Rapid and significant technological developments also influence life and social conditions in society. According to Mathias Klang, technological disruption is something that continues to happen. The current phase of technological disruption is the Industrial Revolution.

The Industrial Revolution significantly changed the industrial world or the world of work. In the Industrial Revolution, computers and robots were used as the basis that is now connected to the internet in a shared network. The impact of this Industrial Revolution will give rise to an era where technology brings us to a world that some people call tangible virtuality, which will fundamentally change the way of life and work at national and international levels.

RESEARCH METHOD

This type of research uses a normative juridical type of research with the consideration that the presence of this cryptocurrency has only recently been legalized; its use is limited only as a commodity that can be traded in futures trading as regulated by Commodity Futures Trading Supervisory Agency Regulation Number 7 of 2020 concerning Determination of the List of Crypto Assets that Can Be Traded in the Physical Crypto Asset Market. Departing from this legality and developing the use of cryptocurrency as a legal means of payment is an interesting issue to be researched normatively, as stated by Soerjono Soekanto and Sri Mamudji, namely library legal research. In line with this, normative legal research, in the view of Jonaedi Efendi and Johnny Ibrahim, can also be called doctrinal legal research. This normative juridical research leads to research on legal principles, where legal research aims to discover applicable legal principles or positive legal doctrines. This type of research is commonly called dogmatic studies or doctrinal research, as well as research on legal systematics, which can be carried out on certain laws or registered laws. The main objective is to identify the main or basic meanings in law: legal society, legal subjects, legal rights and obligations, legal events, legal relations, and legal objects.

RESULTS, DISCUSSION AND ANALYSIS

The Position of Crypto (Cryptocurrency) as Currency in Business Transactions Based on Law in Indonesia

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According to Rosic, crypto (cryptocurrency) is: "An internet-based exchange medium that uses cryptographic functions to carry out financial transactions. Crypto (cryptocurrency) utilizes blockchain technology to achieve decentralization, transparency and immutability. The most important feature of cryptocurrency is that any central authority does not control it; the decentralized nature of blockchain makes cryptocurrency theoretically immune to government control and interference."

Meanwhile, according to Hashemi Joo, crypto (cryptocurrency) is "a worldwide digital payment system that carries out its functions online." The focus in understanding crypto is on the transaction system; crypto (cryptocurrency) carries out digital payments that can be made safely within an hour or even a few seconds. It can be used only for business transactions but also for sending money and micropayments.

Based on Appendix II to the Regulation of the Commodity Futures Trading Supervisory Agency Number 7 of 2020 concerning Determining the List of Crypto Assets That Can Be Traded on the Physical Crypto Asset Market, it is determined that 229 types of crypto assets can be traded on the physical market.

Usually done conventionally, business is now starting to be done less frequently due to developments in science and technology. Today's business relationships are built in electronic transactions of various types. Business relationships carried out via the Internet include bidding and purchasing activities. These relationships can be categorized into several types as follows:

- a. *Business-to-business, business-to-business transactions called B2B are transactions carried out between companies.*
- b. *Business-to-customer transactions, called B2C, are transactions between companies and consumers/individuals.*
- c. *Customer to Customer, transactions carried out between individuals as sellers or buyers who sell goods or products to each other.*
- d. *Government to the public, transactions carried out by an individual with the Government.*

Seeing the trend or shifting style of transactions in business towards digital,

this can be a promising business opportunity for anyone. The world is now shifting in a new direction, namely, no longer using physical money but using digital currency or virtual currency, which is protected by cryptography (cryptocurrency). The currency formed using complex cryptography is not easily duplicated or transferred by parties who do not have access to it. Currently, there are a number of cryptocurrencies that are starting to grow and can be used in various transactions. Cryptocurrency is a digital currency that uses encryption techniques to regulate each new currency unit and verify each transfer of funds. The digital currency operates independently without government or central bank interference.

The use of crypto (cryptocurrency) such as bitcoin creates a decentralized authority transaction system, namely without going through a third party who verifies using the concept of digital signatures on each transaction. However, all transactions that take place are still recorded in the system on the cryptocurrency network.

Crypto (cryptocurrency) usually uses a blockchain platform so that digital currency can be used for transaction activities. As an example, blockchain is likened to a large document containing a database where anyone can access this platform even if they do not make transactions using virtual money. This virtual coin is a nominal value that can later be transacted through a connected series of digital or cryptographic signatures (crypto: secret; graphic: writing). Each bitcoin has its unique code, which contains around 33 alphabetic and digital symbols. This code allows users to make transactions using cryptocurrency. The maximum number of codes registered as of January 2, 2018 is 1,072,861.

According to Nailul, the problem that might occur if you use cryptocurrencies is that the government cannot regulate the price that applies to a crypto asset. This price is purely determined from sales and offers between sellers and buyers of crypto assets. Even though it is claimed to be superior to conventional currencies, crypto prices change very quickly, so the impact of the investment is very risky.

The possibility of major risks that will occur in the use of crypto (crypto currency) can be classified into two, namely criminal due to cybercrime and civil

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losses due to unlawful acts.

Based on Law Number 11 of 2008 concerning Electronic Information and Transactions, it regulates types of crimes that can harm customers in trading crypto assets (crypto assets) and the physical market for crypto assets, as well as sanctions that can be applied, including hacking (Article 30 paragraph (1) to Article 46 and online fraud (Article 28 paragraph (1) jo Article 45A of the Electronic Information and Transactions Law. Apart from that, it can also enable fraud or fraudulent acts (bedrog) to occur, which are regulated in Article 378 of the Criminal Code.

Based on Article 1365 of the Civil Code, if someone commits an unlawful act, then he is obliged to pay compensation for his actions. As a result of losses in unlawful acts in the Civil Code, the plaintiff can ask the defendant to compensate for actual losses he has suffered (material) as well as profits that will be obtained in the future (immaterial).

Losses in civil crypto asset transactions are caused by Unlawful Acts, namely fraud or bedrog, which is contrary to Article 1321 of the Civil Code, which states "no agreement is valid if the agreement was given by mistake, or was obtained by force or fraud", where bedrog or fraud is someone deliberately with will and knowledge causes error in others.

According to Subekti, fraud occurs when one party deliberately provides false or incorrect information accompanied by deception to persuade the opposing party to give permission, and the deceptive party acts actively to mislead the opposing party. Therefore, if there is a party in a crypto transaction on a futures exchange that is found to have an element of fraud in the agreement, then the party who feels aggrieved can make an effort to cancel it (voidable), and it will not be cancelled by itself (null and void) so that the legal consequences of this the defect of will in crypto asset transactions is that the agreement can be cancelled (vernietigbaar).

The legal position of using Cryptocurrency as an investment tool is not prohibited. This is found in the provisions of the Commodity Futures Trading Supervisory Agency, which regulates whether or not investment can be implemented as long as it does not conflict with state regulations, in essence.

Supervision of the Use of Cryptocurrency as a Futures Trading Commodity According to Positive Law in Indonesia

In facing the era of free trade and in line with Indonesia's agreements in the WTO, APEC and AFTA, as well as the Reform Package of 15 January 1998, the Indonesian government has reduced interference in the commodity trade system and submitted it to market mechanisms. The presence of the Futures Exchange in Indonesia as a place for trading Commodity Futures Contracts is very relevant because Futures Contracts are market instruments that are widely known in developed and developing countries and are most widely used for price risk management required by the business world.

Commodity futures trading is usually called futures trading, which means everything related to the buying and selling of commodities (in the form of all goods, services, rights and other interests and any derivatives of commodities that can be traded) with margin withdrawals and with settlement based on futures contracts, sharia derivative contracts, and other derivative contracts, this is clearly outlined in Article 1 number 1 and number 2 of Law Number 10 of 2011 concerning Amendments to Law Number 32 of 1997 concerning Commodity Futures Trading. According to Law Number 10 of 2011 concerning Amendments to Law Number 32 of 1997 concerning Commodity Futures Trading, futures trading only takes place in organized markets known as futures exchanges, which trade futures contracts for various commodities in the form of agricultural and plantation products. mining, or financial products, such as currency, even stock indices.

There are 2 main benefits of commodity futures trading, namely as a means of risk management through hedging activities and a means of price discovery. Basically, prices of primary commodities often fluctuate due to their dependence on factors that are difficult to control, such as seasonal differences, natural disasters, etc. By hedging activities using Futures Contracts, they can reduce as little as possible the impact (risk) caused by price fluctuations. By utilizing Futures Contracts, commodity producers can sell commodities that they will only harvest several months later at prices that have been confirmed or "locked in" now (before harvest). In this way, they can obtain a guaranteed price so that they are not affected by increases/decreases in selling prices on

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the cash market. The same benefits can also be obtained by other parties, such as exporters who have to purchase commodities in the future, when they have to fulfil their contracts with overseas buyers or processors who have to purchase commodities on an ongoing basis.

Along the way, this margin may require additional (margin call) because it is reduced from the initial margin due to price movements that are opposite to what was originally expected. If the margin balance reaches a certain limit, each customer who has an "open" position, either buying or selling, must increase their margin to the original amount (initial margin). The predetermined margin is valid for a certain period and can be changed according to existing situations and conditions. Apart from that, there is a commission fee charged by futures brokers, the minimum amount of which is determined by the exchange with the approval of the Commodity Futures Trading Supervisory Agency.

To guarantee the performance or fulfilment of Futures Contracts traded on the Exchange, there is a guarantee institution called the Futures Clearing House. This institution can be part of the Exchange or separate from the Exchange as a separate organization. The Futures Clearing House will guarantee all Futures Contract transactions that occur on the stock exchange, which, after going through the clearing process, are registered by Exchange members with Clearing Member status with the Clearing House.

The determination of crypto assets is a form of legality for trading cryptocurrencies as crypto assets, which has been carried out by people in Indonesia and has an influence on the development of the crypto market, especially in Indonesia. This is proven by the increasing number of investors investing in crypto assets; even now, the number is far greater than stock investors (Zhu & Zhou, 2016).

The increasing interest in investing in crypto assets has encouraged the existence of a crypto asset exchange in Indonesia. The existence of a crypto asset exchange in Indonesia is one step away. The crypto asset trading ecosystem via the exchange is just waiting for approval from the Commodity Futures Trading Supervisory Agency. In order to realize the presence of a crypto asset exchange in Indonesia, preparations have been made starting from

the exchange, namely the Digital Future Exchange, crypto asset traders, as well as PT Kliring Berjangka Indonesia as a Clearing Institution.

Futures trading is also an investment alternative. The group that uses the stock exchange for investment purposes is a group known as investors or speculators. They take advantage of price changes to make a profit, namely buying futures contracts when prices are low and selling them when prices are high. If he believes that the price will fall, at that time, he will buy the contract, and vice versa.

Crypto Asset Physical Institutional Approval Requirements

Physical Institutions of Crypto Assets

Institution	Duties	Requirements And Agreements
Commodity Futures Trading Supervisory Agency	Arrangement, Coaching, Development & Supervision, (Realtime Single Monitoring)	Arrangement, Coaching, Development & Supervision, (Realtime Single Monitoring)
Futures Exchange (Approval has been obtained given)	Receive reports, facilitate transactions, market monitoring (realtime), development products (crypto futures), system recommendations and membership	Paid-in Capital of 500 Billion and Equity 400 Billion Physical Market regulations and rules Physical Markets Committee Trading facilities for maintenance Monitoring and reporting system Minimum 3 certified employees Certified

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		Information Systems Security Professional (CISSP) Approval from the Head of the Commodity Futures Trading Supervisory Agency
Futures Clearing House (Approval has been obtained given)	financial settlement, DvP function, and integrity monitoring finance, Function Suspend, recommended system & members	<ul style="list-style-type: none"> • Paid-in Capital 500 Billion and Equity 400 Billion • Physical Market Rules and Regulations • Transaction settlement facilities and • finance • Approval from the Head of the Commodity Futures Trading Supervisory Agency
Physical Crypto Asset Traders	Conduct Crypto Asset transactions either on behalf of yourself, and/or facilitate transactions for Crypto Asset Customers	<ul style="list-style-type: none"> • Paid-up Capital 50 Billion and Equity 40 Billion • In the Form of a Legal Entity (PT) • Members of the Futures Exchange and Futures Clearing House • Have Segregated Accounts • Minimum organizational structure (IT, Audit, Legal, Customer Complaints, Client Support, Accounting; • Have on-line trading systems and facilities • Have SOPs that have been set by the Commodity Futures Trading Regulatory Agency

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		<p>Minimum 1 employee certified Certified Information Systems Security Professional (CISSP)• Systems connected to Futures Exchanges and Futures Clearing Institutions• Approval from the Head Commodity Futures Trading Regulatory Agency</p>
Depository	<p>Manage <i>cold storage</i> (storage, supervision, submission)</p>	<ul style="list-style-type: none"> • Paid-up Capital 50 Billion and Equity 40 Billion• In the Form of a Legal Entity (PT)• Have facilities and infrastructure (safe, reliable and accountable)• Recommendations from the Futures Clearing House• Standardized system• Approval from the Head Commodity Futures Trading Regulatory Agency • Have a cooperation agreement with an insurance company and get approval from Commodity Futures Trading Regulatory Agency
Crypto Asset Customers	<p>Parties using the services of Crypto Asset Traders buy or sell Crypto Assets</p>	<ul style="list-style-type: none"> • Legal Proficiency• Pass KYC and Customer DueDiligence (CDD)• Open an Account with a Physical TraderCrypto Asset• Agree to agreements and risks (riskdisclosure)• Deposit

		some funds for transactions• Have a Bank account
Crypto Assets Committee	Provide consideration or advice to Commodity Futures Trading Regulatory Agency regarding the activities and development of Crypto Asset trading	Consists of K/L, academics, associations, practitioners, and related communities

Source: Ministry of Trade Republic of Indonesia

In Indonesia, the Tax Supervisory Committee is an institution appointed by the Minister of Finance of the Republic of Indonesia to assist the Minister of Finance in supervising regulations and implementing tax administration at the DGT, the Directorate General of Customs and Excise, and the Fiscal Policy Agency based on Article 35 letter C of the Law on General Provisions and Tax Procedures and Minister of Finance Regulation Number 54/PMK.09/2008, has conducted an in-depth study of Crypto Assets with the following results:

1. The positive impact related to business transactions on Crypto Assets for Indonesia includes increasing alternative investments, taxes, and information technology.
2. Indicators of the rapid development of investment business transactions on Crypto Assets in Indonesia are:
 1. The capitalization value of Crypto Assets in the world at the beginning of 2021, the *market cap* of all Crypto Assets touched USD \$1,490,929,608,255.
 2. The emergence of several *Crypto Asset market places* include: Indodax, Luno, Rekeningku, Ayoungchanger, XP Sindonesia, Triv, TokoCrypto, Idcoinexchange, Nusantara Crypto Exc. (Nucex), Artabit, Bitdoku, Besbit, and Quoine. The role of *the exchange* as a secondary market and can provide credible Crypto Asset recommendations.

3. Based on Bappebti data, as of December 2021, there were transactions of IDR 859 trillion. The daily transactions reached Rp2.7 trillion. The number of Crypto Asset investors reached 11.2 million customers. Crypto Asset Investment continues to experience an upward trend. The majority of investors in Crypto Assets or 40% are dominated by 25-34 years old.
1. The parties involved in crypto asset transactions are *exchanges*, *miners*, and investors. *The exchange* functions as a secondary market and can accept deposits from members, *miners* verify transactions in the *blockchain* network, and investors as sellers/buyers of crypto assets. In the buying and selling process, *exchanges* earn income from seller-buyer services and income from exchanging Crypto Assets into rupiah currencies, *miners* receive rewards for Crypto Asset transfer verification services (e.g. buying and selling) in the form of small verified shares of Crypto Assets, and investors earn profits due to price appreciation.
3. There are several problems and weaknesses related to the Crypto Asset business, among others, Crypto Assets do not have *underlying assets*, very high price volatility and uncertainty in future *supply*, vulnerable to misuse and utilization for *illegal* transactions (including *tax avoidance / tax evasion*), there is no official state administrator, high consumer protection risk, managers *exchanges* are not yet official, most business operators do not have physical offices in the form of *websites* with unclear jurisdiction, and transactions on Crypto Assets are decentralized. This makes it difficult for DGT to track and identify tax subjects and the amount of tax objects (*Knowing Your Taxpayers / KYT*) on Crypto Asset transactions.
4. Based on the results of identification, inventory and analysis of data, information and information from all *stake holders*, the following results were obtained:
 1. Bank Indonesia (BI) and the Financial Services Authority (OJK) have strictly banned Crypto Assets as a medium of exchange/payment (currency) and as securities/securities. Investment transactions on Crypto Assets are not part of the financial instrument ecosystem in Indonesia.

- a. The results of the study of Bappebti of the Ministry of Trade, determined *cryptocurrency* as a Crypto Asset and as a commodity subject of futures contracts based on Law Number 32 of 1997 s.t.t.d. Law Number 10 of 2011 concerning Commodity Futures Trading (PBK), so that it is suitable for trading on the Commodity Exchange. Consideration of Crypto Asset regulation is the benefits that can be achieved from the potential development of Crypto Asset.

Legal Protection for Customers Using *Crypto (Cryptocurrency)* as a Commodity

The basic purpose of the rule of law is to provide legal protection for its people, this legal protection is very important because it concerns many parties. Legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and / or victims, legal protection of health victims as part of community protection, can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance.

Legal protection is an effort to provide protection for human rights that are violated by others so as to harm themselves and the protection given to the community is intended so that the community can enjoy the rights that the law has given. Legal protection is protection given to the dignity and dignity of a person, and the provision of recognition of human rights based on legal provisions in the form of applicable regulations and / or rules in order to protect one thing over another.

1. Internal Legal Protection

The nature of internal legal protection, basically the legal protection in question is packaged by the parties themselves when making an agreement, where when packaging the clauses of the contract, both parties want their interests to be accommodated on the basis of the word agreement. Likewise, all types of risks sought can be prevented through filing through clauses packaged on the basis of agreement as well, so that with that clause the parties will get balanced legal protection by their mutual consent. Article 1320 of the Civil Code: "The legal condition of a treaty is their agreement which binds both parties, capable of making an agreement, concerning a

particular matter and a lawful cause."

Objective legal requirements based on article 1320 of the Civil Code:

1. Specific objects/Subjects,
2. Allowed/legalized/legalized causa.

Subjective legal requirements based on article 1320 of the Civil Code:

1. The existence of agreement and will,
2. Authority to do.

General legal requirements outside article 1320 of the Civil Code:

1. The contract must be performed in good faith,
2. The contract should not contradict the prevailing habit,
3. The contract must be performed on the basis of propriety,
4. The contract must not violate the public interest.

Another aspect related to investor protection in this provision is regarding the necessity of physical traders of crypto assets to provide a dispute resolution mechanism regulated in Article 8 Paragraph (1) letter e jo Article 22 of Bappebti Regulation Number 5 of 2019, namely being able to conduct consensus deliberation or arbitration that has been provided by the futures exchange.

Based on this regulation, Bappebti also regulates the agreement made by the buyer to the seller in order to reach an agreement that does not burden either party, and if the agreement turns out to be burdensome to one of the parties, Bappebti also regulates the dispute in order to reach consensus.

1. External Legal Protection

External legal protection made by the ruler through regulations for the interests of weak parties, in accordance with the nature of laws and regulations that cannot be biased and impartial, must also be proportionately given balanced legal protection as early as possible to other parties. Because it is possible that when an agreement is made, the originally strong party actually becomes the persecuted party. For example, when a seller violates a buyer's rights, the buyer needs legal protection as well. The packaging of laws and regulations provides legal protection

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to the parties proportionately.

Commodity Futures Trading Regulatory Agency is very serious in carrying out legal protection for crypto digital asset investors, Article 16 paragraph (1) of Commodity Futures Trading Regulatory Agency Regulation Number 5 of 2019 states that: "Crypto Asset Customers can make transactions if the person concerned has sufficient funds and/or Crypto Asset balances.". That means the regulation has also covered various types of risks that will arise in these trading activities. To prevent settlement failures, the regulation requires physical traders of crypto assets to ensure the availability of customer balances before the process takes place.

Based on the description that has been submitted above about Legal protection for crypto digital asset investors in terms of Commodity Futures Trading Regulatory Agency Regulation Number 5 of 2019 concerning Technical Provisions for the Implementation of the Physical Market of Crypto Assets on Futures Exchanges. Namely the protection of public interests regulated in: Law No. 10 of 2011, Regulation of the Minister of Trade No. 99 of 2018 concerning General Policy for the Implementation of *Crypto Asset Futures Trading (Crypto Asset)*, Commodity Futures Trading Regulatory Agency Regulation Number 5 of 2019 concerning Technical Provisions for the Implementation of the Physical Market of Crypto Assets on Futures Exchanges. These provisions provide aspects of institutional protection, implementation, administrative sanctions, up to criminal sanctions. The form of responsibility for investor losses in crypto digital asset transactions on futures exchanges is responsibility in the field of civil law, which pays attention to aspects of unlawful acts, mistakes, and losses to others.

In the legal protection of crypto asset trading, there are at least three institutions that carry out these functions and authorities, namely the Commodity Futures Trading Supervisory Agency which will oversee all aspects of cryptocurrency for assets or investments, Oauthority Jasa Keuangan which supervises *cryptocurrency* institutions The Ministry of Information and Information Technology will oversee the protection of investors' personal data. The authority of Bappeti contained in Article 5 of the Commodity Futures Trading Law-Amendment stipulates that the regulation, development, guidance, and supervision by Commodity Futures Trading Regulatory Agency is carried out with the aim of one of them in letter b. protecting the interests of all Parties in Futures Trading,

related to the Physical Market of Crypto Assets, then the protection that needs to be done is for Physical Commodity Traders, crypto asset customers and Crypto Asset Storage Managers.

The forms of legal protection regulated include the obligations of the Futures Exchange which aims to provide openness and security in its management. Article 7 paragraph (2) In the framework of conducting trading in the Physical Market, the Futures Exchange must:

1. provide and/or develop a reliable, open, easy, fast, and reliable *on-line* trading system and/or facility and is connected to a Futures Clearing House that has been inspected by a certified and competent institution, in terms of the mechanism of Physical Market transactions with matching transactions on the Futures Exchange,
2. provide access rights to all systems used by Bappebti in the context of supervision,
3. provide a reporting system to accommodate trade transactions that occur at Commodity Physical Traders, in terms of Physical Market transaction mechanisms with matching transactions at Commodity Physical Traders,
4. providing a means of resolving disputes,
 - a) publish the price of Commodities that occur in the Physical Market.

Arrangements regarding these obligations have not been supported by sanctions that will be given if these obligations are not fulfilled. In addition to the obligations of the futures exchange, it has also been regulated regarding the settlement of disputes Regulation of the Commodity Futures Trading Supervisory Agency Number 2 of 2019 concerning the Implementation of the Physical Market of Commodities on the Futures Exchange regulates the implementation of the physical market whose scope includes one of them regarding dispute resolution which includes the settlement of disputes between parties in the implementation of the physical market. Dispute Resolution as stipulated in Article 20 of the Regulation of the Commodity Futures Trading Supervisory Agency Number 2 of 2019 concerning the Implementation of the Commodity Physical Market on the Futures Exchange.

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Preventive legal protection or known as *ex-ante* legal protection is legal protection provided before a violation occurs with the aim of preventing it from happening. This legal protection can be found in laws and regulations with the intention to prevent a violation and provide limitations in performing an obligation (Muchsin, 2003).

Preventive legal protection in cryptocurrency transactions can be found in Article 2 and Article 3 of Commodity Futures Trading Regulatory Agency Regulation No. 5 of 2019 concerning Technical Provisions for the Implementation of Crypto Assets on futures exchanges.

In addition, in order to prevent the entry of money from crime or *money laundering* into the commodity futures trading industry, Commodity Futures Trading Regulatory Agency, the Ministry of Trade issued Beleid Regulation of the Head of Commodity Futures Trading Regulatory Agency Number 2 Thaun 2016 concerning the Principle of Know Your Customer by Futures Brokers known as the principle of *Know Your Customer* (KYC). Therefore, in this regulation, commodity futures trading industry players are expected to apply the principle of *prudence* (*prudent*) to customers (investors) in accordance with the principle of *Customer Due Dilligence* (CDD).

Repressive legal protection is legal protection provided after a dispute has occurred. The goal is to resolve a legal dispute that occurs. This protection is also referred to as *ex-post* legal protection which is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given if there has been a dispute or a violation has been committed.

Legal remedies through court channels related to fraud that occurred in crypto asset transactions, disputes can be processed criminally or civilly. Criminal sanctions against criminals in *Cyber Crime* that result in losses to crypto asset customers or investors in the crypto asset market such as theft of a number of crypto assets from someone's wallet to fraud that traps investors into making transfers to the wallet address of fraudsters. These criminal acts are subject to sanctions based on Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the Electronic Transaction Information Law), namely Article 45 which regulates criminal provisions and imposes imprisonment and fines.

Civil dispute resolution through the courts is regulated in articles 38 and 39 of the Electronic Transaction Information Law and article 23 of Law Number 8 of 1999 concerning Consumer Protection, where the aggrieved party can file a civil lawsuit caused by Unlawful Acts, namely fraud or bedrog carried out in accordance with the provisions of laws and regulations (Ranto, 2019; Setyawati dkk., 2017). Based on the provisions of Article 1328 BW, fraud must not be merely suspected, but must be proven. For the postulate to succeed the deception requires that the false picture be generated by a series of deceptions (*kunstgrepen*). Proof of a series of lies or deceptions will certainly be more optimal if processed in criminal court, rather than through civil court. This is in line with one of the principles of proof which reads "He who postulates something must prove it" (*Armanti Incumbit Probate*).

Through the development of blockchain technology that has been used by almost all people in the world and has also developed in Indonesia, it is necessary to legitimize its use as a preventive and repressive measure so that there is no reason for the case to be closed because there is not enough sufficient digital evidence (Wisadnya, 2022). To obtain legal protection that is able to achieve legal objectives, the juridical basis used must also be appropriate. The hope is through the development of blockchain technology that has been used by almost all people in the world and has also developed in Indonesia (Andriyani dkk., 2023).

CONCLUSION

The position of crypto (cryptocurrency) in business transactions based on Law Number 7 of 2011 concerning Currency is not recognized as a legal means of payment. However, crypto (cryptocurrency) is legally recognized as a commodity that can be traded through commodity futures trading based on Article 3 Paragraph (2) Perba No. 5 of 2019 concerning Technical Provisions for the Implementation of the Physical Market for Crypto Assets on the Futures Exchange. Supervision of the use of crypto (cryptocurrency) as a futures trading commodity based on Article 1 number 3 of Law Number 10 of 2011 concerning Amendments to Law Number 32 of 1997 concerning Commodity Futures Trading is the main task of the government agency Commodity Futures Trading Supervisory Agency led by the Head Body.

Legal protection for customers/investors using crypto as a futures trading

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commodity is reviewed from the Regulation of the Commodity Futures Trading Supervisory Agency Number 5 of 2019 concerning Technical Provisions for Organizing the Physical Market for Crypto Assets on the Futures Exchange, which can take the form of internal and external legal protection. The protection of community interests is regulated in Law No. 10 of 2011, Minister of Trade Regulation No. 99 of 2018 concerning General Policy for the Implementation of Crypto Asset Futures Trading, Regulation of the Commodity Futures Trading Supervisory Agency Number 5 of 2019 concerning Technical Provisions for the Implementation of the Physical Market for Crypto Assets on the Futures Exchange.

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