



# Legal Problems of Digital Assets Through a Legislative Approach

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**Abstract.** New financial tools, like as cryptocurrencies, NFTs (Non-Fungible Tokens), and metaverse, have emerged in the 5.0 era of investing. Investors from around the world, including those from Indonesia, have started to show interest in this new investment product. There are legal issues that surface behind the hope for investment success in the 5.0 age. NFTs and the metaverse are not covered by Indonesian laws and regulations, which solely govern bitcoin market activities as commodity assets. One of the problems that occurs is the existence of different thoughts or concepts between the government and the public in interpreting the essence of the three digital assets. In order to give actors engaged in investing in digital assets legal certainty, this study aims to examine and evaluate the effectiveness of the application of laws and regulations. It also aims to serve as a guide for legislators as to the substance of laws and regulations pertaining to investing in digital assets. In order to support this research, this study employs a qualitative research design with a juridical-normative approach. Finding a concept for legislation that can control digital asset investment activities in line with the stated goals of developing the law is the outcome of this research. Find the issue with the efficiency of current regulations next.

**Keywords:** Investment in digital assets; cryptocurrencies; and NFTs (Non-Fungible Tokens).

## 1 Introduction

In the 5.0 era, technology has a significant impact on almost every facet of daily life, including the creation of several investment options available to investors. Previously, we only knew about equity investments, stocks, bonds, stocks, real estate, etc, but in

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the present 5.0 age, technology destruction has compelled human intelligence to keep up with technical advancement. A new means has emerged with several users of digital assets, include cryptocurrencies, NFTs (Non-Fungible Tokens) and the Metaverse are based on this. These three electronic resources are used by individuals as investments due to their high volatility and can generate higher returns compared to common investments. Therefore, this could result in legal concerns for investors who have chosen digital assets as their principal investment vehicle.

Recently, themes like cryptocurrencies, NFTs, and the Metaverse have gained popularity across the globe, including Indonesia. A cryptocurrency is a virtual system that can be used as a currency based on cryptography as protection against hacking threats, intended to be used as a means of payment that can transfer money to different countries without borders or conditions. Cryptocurrencies are used by the community as an investment in Indonesia as they can generate maximum returns. This can be seen from the fact that the investment characteristics of high volatility arouse interest in investing in crypto assets, which can become a social and legal issue. An NFT is only a set of information kept on a blockchain, a type of online ledger. NFTs have the potential to be copyrights or collecting objects with a distinct identity, as the system formed is in the spirit of having as little similarity as possible with the NFT subject work. The layer separating you from reality is what Alan refers to as the metaverse. The term "metaverse" refers to a shared 3D virtual environment where all tasks can be carried out using services for augmented reality and virtual reality. (Muhammet Damar, 2021). By transferring an individual's daily activities into his 3D virtual world, the Metaverse offers convenience.

Text, photographs, multimedia information, and other types of data are referred to as "digital assets" and are considered to be personal property regardless of who owns the actual hardware. The digital products are kept. All words, characters, and codes used to access digital assets are considered digital assets, although they are not the only ones. Options abound, and different features and account kinds emerge frequently. (Who could have predicted that Facebook would become so popular ten years ago? Digital assets can be accumulated by people in various categories. private, social media, monetary, and commercial. Furthermore, people could possess licenses or ownership rights to assets. There is overlap, of course, but every consumer may require a distinct plan. By definition, digital assets include all information that is recorded in digital form, including text, photos, and multimedia, whether it is kept on a server, computer, or other electronic device that already exists, will exist in the future, or can be assumed to be personal property. Regardless of who owns the physical equipment that house digital assets, technology can evolve. Words, letters, codes, and the requirement for contractual rights to access such digital assets are all examples of digital assets, but they are not the only ones.

Asset presence and use evolve over time, shifting from traditional to digital forms, when physical assets are no longer present. The term "digital asset" is frequently used to describe this asset. Digital assets lack a shape that can be perceived by people. Human senses are not physically capable of seeing or touching digital assets. Although they don't exist physically, digital assets are frequently used in daily life and could be worth money. This digital item can only be used in cyberspace, sometimes

known as the digital world. Even if digital assets are only usable and exist in the digital world, they have a significant impact on a variety of aspects of people's lives. (Asmara, et al).

According to information from the Commodity Futures Trading Regulatory Agency (BAPPEBTI), at the beginning of 2022, both the quantity of investors and the amount of crypto asset transactions in Indonesia dramatically grew. However, the price and value of crypto transactions will start to fall in the second semester of 2022 until the end of 2022, even only reaching the level of IDR 12-13 trillion in one month. This figure is down from the beginning of 2022, where transactions per month reached above IDR 25 trillion. BAPPEBTI noted that the value of crypto transactions in January 2023 was IDR 12 trillion. The value of cryptocurrency transactions in 2022 was estimated to be IDR 306.4 trillion. When compared to the previous year, when the value was IDR 858.76 trillion, it fell by 64.3%. Enthusiasts for crypto assets continue to increase in Indonesia. According to BAPPEBTI data, as of November 2022, crypto assets in Indonesia were recorded as having 16.55 million investors with a total transaction value at the end of 2022 of IDR 296.66 trillion. In 2023, Crypto Asset Investment is predicted to continue to experience an upward trend. Likewise with the increasing trend of other digital assets such as NFT and the metaverse. The non-fungible token (NFT) trend in 2023 is still moving small and mass adoption. In terms of price, it might not be fantastic, but the trading volume is still quite large. This reflects the increasing number of Indonesians making crypto transactions. Because of a shift in the mindset of the Indonesian people from previously investing in stocks, gold or mutual funds.

According to Mokhtar Kusmartmaja, laws are the general rules and principles that govern people's lives. Laws are necessary to support the equitable distribution of rights and obligations to communities. Without laws, people easily abuse their rights and duties to oppress others. This concept should also be applied when drafting laws regulating investment activities in cryptocurrencies, NFTs and metaverse assets. Indonesian law is currently limited to cryptocurrency regulation only, which is included in BAPPEBTI Regulation No. 2 of 2020. NFT and Metaverse are not included. This means there are loopholes in the law that can be exploited by irresponsible individuals. After carefully observing existing legal issues, the researchers conclude that Indonesian law is not yet ready for development in the era of Disruption 5.0. The variety of investment avenues in digital assets gives the impression that Indonesia is 'struggling' to accept this fact. Still, researchers are optimistic about the long-term prospects for investing in digital assets in Indonesia. But this must be facilitated by introducing laws that can provide values such as order, justice and legal certainty. Legal regulation of blockchain in different countries is developing in completely different ways. Immediate state-level large-scale regulation of decentralized finance markets, which are still at an early stage of maturity, may lead to regulation errors and frequent changes in legislation, currently observed in a number of states (Muradyan, Svetlana V, 2022)

The informative legislative approach of this study is intended to provide a scientific reference so that legislators can begin to consider the issues raised by researchers. Providing legal certainty and peace of mind in implementing the digital asset

investment market in Indonesia. Therefore, based on this background formulation, researchers formulate the problem to be discussed as follows : Do current formal regulatory materials cover current digital investment legal subjects?

## 2 Methods

This study used a descriptive-analytic research design. The approach to data analysis was applied in a legal and qualitative manner, namely analysis with descriptive-analytical and prescriptive analysis (how it should be). The research approach method is normative legal research method (normative juridical). In carrying out this qualitative analysis which is descriptive and prescriptive in nature, the analysis starts from a systematic juridical analysis. Furthermore, elaborating with the theory used in this research, then conclusions and suggestions can be drawn that can be implemented by the legislative.

## 3 Result and Discussion

Digital assets function as a part of a complex and interdependent digital ecosystem. The ecosystem is based on a blockchain – a type of a distributed ledger where transaction are registered, participants making deals with each other and decentralized applications. A revolutionary invention, blockchain technology has the potential to disrupt or perhaps replace current business structures that rely on reliable third parties. (Beck & Müller-Bloch, 2017).

Various countries around the world are launching new digital investment tools, both in terms of introducing and classifying digital investments made in cryptocurrencies, and in regulating new legal rules for use by those who use cryptocurrencies. We are facing technological advances related to investment. This is evident in every US state, which initially only defined cryptocurrencies as having a value as a commodity and as land but later altered their regulations to include them as legal cash. Then, a former Spanish colony, namely El Salvador, has legalized Bitcoin as a means of payment and is the first country in the world to have implemented this rule. The country has purchased Bitcoin with 550 BTC, with the intention of being able to use Bitcoin currency and also US Dollars as legal tender in the country, but the decision made by the President of El Salvador, Nayib Bukele, received an unfavorable response to the residents regarding the addition of the type of Bitcoin currency as a means of payment (Nuryanto & Pramudianto, 2021).

By contrast, the Indonesian government has reacted to the existence of cryptocurrencies, but by enacting a regulation supervised by BAPPEBTI, it will treat cryptocurrencies as a commodity only for trading on futures exchanges (Teguh et al., 2019). The physical market for crypto assets is where cryptocurrencies can be traded on futures markets. If cryptocurrency complies with the rules of the Commodity Futures Trading Regulatory Agency, it can be traded as a commodity on the Futures Trading Exchange (Bintaro, 2022). At BAPPEBTI, there are some differences between crypto assets and other commodity assets such as agriculture/plantation, mining, industry and

fisheries. Initial crypto asset data collection follows investor location. This is because crypto assets are recorded on the blockchain system. Meanwhile, other raw material factories are managed by BAPPEBTI's product registration system. Cryptocurrency trading is expected to take place through two different types of markets: the spot market and the futures market. This could impact cryptocurrencies in terms of assets that can be used when trading physically. Crypto assets can be said to have technology-based assets that can affect crypto assets, while assets traded on futures exchanges cannot. (Krisnawangsa et al., 2021).

This is in line with the conceptual basis of commodity futures trading regulated by Article 1, Paragraph 1 of the Commodity Futures Trading Act, which is stipulated as follows. "Futures Contracts, Based on Shariah Derivatives". "Contracts and/or Agreements Containing Other Derivatives." Trading in the physical market includes only the commodity itself (such as palm oil) and does not include trading futures contracts or other derivatives. Therefore, trading on physical markets should be regulated with more specific regulations. As a result, from a conceptual standpoint, it is inappropriate to think of the regulation of crypto-assets only through the Commodity Futures Trading Act because the Act is conceptually based on numerous markets and transactions. Regarding the existence of virtual currency as an investment vehicle that is abused from the perspective of profit, Indonesia is strongly against the classification of virtual currency as a digital currency by Bank Indonesia (BI), which is discussing the regulation of virtual currency as a virtual currency currency. There is opposition. BI said it does not recognize Bitcoin as legal tender. This is according to Press Release No. 20/4/Dkom dated January 13, 2018 "Bank Indonesia Warns All Parties Against Selling, Buying And Trading Cryptocurrencies".

In order to create laws and regulations, Indonesia follows Law Number 12 of 2011 Concerning Formation of Legislation. Law No. 12 of 2011 applies two different sorts of concepts, namely the material contained in Article 6 paragraph (1) and the formal contained in Article 5. Then these principles must coexist in every process of legislating a statutory regulation. One cannot only fulfill one of them, but complement one another in the spirit of building good laws. The formation of laws must lead to a system of modifications or changes in people's lives. Modifying laws is a common practice nowadays by legislators. The implication for the development of law in a country that uses a modified system in the formation of its laws is that it can adapt to the times, rather than retaining the codification system that is characteristic of countries with Continental European legal systems such as Indonesia. In the formation of a law that regulates cryptocurrency, NFT, and metaverse investment traffic in Indonesia, which will hereinafter be named as a digital asset investment law. Where not placing this law in the form of codification, but changing it in the form of sectoral laws, in order to meet more pragmatic needs in order to support national development based on global balance.

Indonesia has only recently regulated cryptocurrency through BAPPEBTI which defines it as a commodity asset. In contrast to BAPPEBTI's view, Bank Indonesia does not see crypto assets as a commodity. Rather, it has become a financial asset that is considered to have influenced and contributed to the global financial model. Bank Indonesia considers that crypto assets should not be supervised by Bappebti consider-

ing that crypto assets have the risk of having an impact on the financial system in the country. Bank Indonesia considers that it is necessary to review the position of CoFTRA as the supervisor of crypto assets in Indonesia. Where the PPSK, or the bill for the development and improvement of the financial sector, should govern cryptocurrencies.

The oversight of crypto assets under the authority of CoFTRA has shifted to the Financial Services Authority. The Government and the DPR agreed to regulate digital financial assets, such as cryptocurrencies, in the Draft Law on the Development and Strengthening of the Financial Sector (P2SK), which was signed in November 2022. The government and the DPR explained the P2SK Bill by stating that the financial sector in Indonesia faces challenges due to the emergence of complex and high-risk financial instruments, such as cryptocurrencies, and that recent assessments have given a poor overall rating to financial sector governance and law enforcement. The president has approved the draft Law on the Development and Strengthening of the Financial Sector (RUU P2SK) to become Law (UU) Number 4 of 2023 (UU Number 4/2023). By signing the P2SK Bill on January 12, 2023, President Joko Widodo completed the ratification of this law. The Financial Sector Technology Innovation (ITSK) Chapter XVI or Chapter 16 contains provisions governing cryptocurrency transaction regulations. According to Article 213, the ITSK's purview includes payment systems, settlement of securities transactions, capital raising, risk management, investment management, raising and/or channeling of funds, market support, activities relating to digital financial assets, including crypto assets, as well as service activities. additional digital finance. Financial Services Authority (OJK) will oversee and directly regulate cryptocurrency transactions. The Chief Executive of Supervision of Financial Sector Technology Innovation, Digital Financial Assets, and Crypto Assets, who concurrently serves as a member, will be appointed by OJK in accordance with this new authority. The P2SK Law's article 10 paragraph 4 g has these requirements. The Financial Sector Technology Innovation (ITSK) is defined in Article 213 to cover operations relating to digital financial assets, including cryptocurrency assets. Payment systems, the resolution of securities transactions, capital raising, investment management, and other areas are additional ITSK domains.

Inconsistency is also present in the metaverse regulatory scheme. The author has doubts that there will be obstacles in structuring national law and making technological developments develop freely without a clear legal basis. The Digital Asset investment law can be a solution to the dilemma of the perception and use of objects regulated by the Digital Asset investment law. Through studying and interpreting the law while observing developments in the global community, the definition of digital asset investment objects can be carried out carefully by prioritizing legal certainty and protecting market consumers.

In terms of usage, there are differences between virtual currencies and fiat currencies from country to country. The existence of cryptocurrencies is due to problems related to the 2008 global financial crisis. As a result of the crisis that occurred, a person calling himself "Satoshi Nakamoto" created and issued Bitcoin as a cryptocurrency using a peer-to-peer electronic system. Bitcoin, the first cryptocurrency, was produced by Satoshi Nakamoto (Inci & Lagasse, 2019). The technology used in cryp-

tocurrency systems shares similarities with other digital assets such as NFTs and the Metaverse. That is, the use of blockchain technology. Then came various new digital assets aimed at overcoming various problems in various fields, and various other cryptocurrencies called altcoins that expected similar benefits to other cryptocurrency assets. In order to complete the numerous transactions that take place, digital assets like cryptocurrencies, NFTs, and the Metaverse must be connected, just as NFTs require a location to store the works that have significance and value to collectors and buyers. mutually necessary. Multiple places you can use to get NFTs like Opensea, Nifty, Gateway, Mintable, Rarible. Other cryptocurrencies such as Bitcoin and Ethereum can be used to acquire works and can be bought and sold with this technology (Dina Purnama Sari, 2022).

The BAPPEBTI Regulations on Technical Regulation of Physical Markets for Crypto-Assets state that among other conditions, cryptocurrencies that can be traded in Indonesia must comply with the following: It uses distributed ledger technology first. The second category is useful crypto assets. The market capitalization of digital assets comes in third place (in terms of coin market capitalization) out of 500. Fourth, it offers financial advantages like: B. Taxes, the expansion of the IT sector, and the skill of IT specialists (digital talent). Fifth, a risk analysis was done, taking into account dangers like financing terrorism and money laundering (Soehartono & Pati, 2019). However, there is still no legal regulation for NFTs and metaversums, such as cryptocurrencies that are only classified as commodity value by the Indonesian government. Only commodity investments are subject to cryptocurrency regulations in Indonesia. These cryptocurrency rules include:

- Law No. 10 of 2011, Amendment 32 of 1997 on Trading Commodity Futures Contracts.
- General Policy for Organizing Cryptocurrency Asset Futures Trading Regulation of the Minister of Trade Number 99 of 2018 (Crypto Asset).
- The third BAPPEBTI Regulation of 2020.

These legal issues show that regulating digital investments is not a panacea. This can be seen from the fact that there are only regulations for cryptocurrencies, which do not offer any protection in the event of disputes with investors. Apart from, of course, creating a legal vacuum in relation to NFT regulation and the Metaverse, this legal vacuum directly or indirectly affects investor ignorance and provides reassurance that fear will not persist. Concerns about giving way also arise. It is hoped that this legal vacuum will create a legal system in the form of laws governing investments in digital assets, covering the whole so that the legal vacuum that previously existed can be filled. To minimize crime that occurs, make sure that:

- There must be clear and binding rules and regulations to protect investor wealth. If the existence of these two regulations is not a problem, regulation of appropriately qualified start-ups will, of course, make them more attractive to the public for investment.
- These technological advances are expected to not only enable us to do anything, but also to pay close attention to technology crimes. For example, one form of

crime for a digital investment player is hacking his account. Hackers move cryptocurrency into the owner's virtual wallet and convert it into real currency or other cryptocurrencies.

- Users will be tax exempt as cryptocurrencies do not yet have jurisdiction of operation and anonymity. This is because cryptocurrencies maintain user confidentiality. However, some countries do include virtual currencies in the “Real Estate Assets” section of their regulations. This means that the taxes that apply to real estate assets also apply to virtual currencies.

This is of course sought to be able to obtain better law enforcement compared to before, in 2022 it is currently being shocked by the destruction of one of the crypto assets namely Terra (Luna) by 95% which has experienced a very deep correction resulting in losses for investors in the world even in Indonesia it doesn't happen anymore. Therefore it is very necessary to enact a law that can accommodate this for Indonesian investors. The sociological view of law comes to the conclusion that (human) society exists whenever there is law. All legal norms that apply to society must be able to grow and develop with society. To meet the interests and legal needs of society and to create order, justice and legal certainty, as set out in the objectives of legal education. According to Professor Mochtar Kusumaatmadja's definition of law, these are the general principles and rules that govern human relationships in society (Mochtar Kusumaatmadja and B. Arief Sidharta, 2016).

One embodiment of the law is the law. According to Prof. L. J. Van Apeldoorn is divided into two meanings, namely material and formal understanding (L. J. Van Apeldoorn, 2015). The definition of law in the material sense is all forms of government decisions in the form of regulations that have binding power in terms of the contents of the decision. In the meantime, formal law examines the law from the perspective of its creation. Law should be able to meet society's legal needs as a source of law. In order to create a decent piece of legislation, extensive research and thought must be put into the process. This is a guideline or a sign in the creation of good laws and regulations, and it is incorporated in the principles for developing laws and regulations.

The global system of legal regulation of the circulation of digital assets is likely to produce, at a minimum, common terminology and basis for common classifications arising from the range of rights and obligations provided by specific digital assets. Following this concept therefore makes it possible to create a common mechanism for legally protecting participants in legal relationships in the field of digital asset circulation. Certainly states can construct their own legal mechanisms to regulate aspects of the circulation of specific digital assets, but given their cross-border nature, a unified basis is needed anyway. Non-fungible tokens (hereafter: NFTs) need to be considered separately. NFTs are a new kind of unique and atomic token based on blockchain. Originally created as an artistic/playful experiment, NFTs have spawned a new form of entrepreneurship that offers great benefits and opportunities in virtual worlds. They differ from other digital assets such as tokens and coins in that they are closely related to the underlying asset. Each NFT is unique. It cannot be divided or merged<sup>4</sup>. NFTs are primarily used to verify ownership of physical assets (luxury goods, cars) or digi-



tal goods (virtual game assets, digital artwork, or software licenses). Such tokens are regularly exchanged by users to ensure that assets whose uniqueness is difficult to prove (such as digital images) are owned exclusively.

Inconsistencies exist in the metaverse regulatory scheme. Legal experts view the concept of the digital world with hesitation to apply legal regulations properly in the real world. The author views that these doubts will hinder the arrangement of national laws and allow technological developments to develop freely without a clear legal basis. Not to mention that the Indonesian government plans to make the National Capital of the Archipelago a metaverse. Therefore, the author proposes that this Digital Asset Investment Act mediates the dilemma of perception and use of objects regulated by the Digital Asset Investment Law. Through studying and interpreting the law as well as observing developments in the global community, the definition of digital asset investment objects can be done carefully by prioritizing legal certainty and protecting market consumers.

NFT and the metaverse do not have a clear legal basis. This means that improvements in terms of market governance and legal governance need to be intensified. Particularly for crypto assets, CoFTRA Regulations have not been allegedly strong in providing legal protection. Forms of violations in various laws and regulations serve as the foundation for the emerging crypto asset market, such as the Criminal Code, the Civil Code, the ITE Law, and others. Meanwhile, the development of crime in the crypto asset market is quite diverse and continues to grow, as previously explained. If the CoFTRA Regulation continues to delegate relevant laws to sanction perpetrators of crimes in the crypto asset market, it is almost certain that they will not last long, because it is feared that the development of the *modus operandi* carried out by each perpetrator of crimes cannot be fully regulated in related laws.

## 4 Conclusion

The regulation of digital asset investment in Indonesia has not been able to provide legal certainty for these investment actors, this can be seen by only regulating crypto assets in Bappepti regulations. So other investment arrangements such as NFT and metaverse are not yet available. Specifically for crypto assets, the implementation of existing regulations does not fully cover legal requirements. To be able to create a deterrent for criminals related to security for crypto asset investors, if there is a crime related to personal data or in terms of account security that can be carried out by irresponsible people or groups. Then, the next problem is regarding problems in terms of losses that will be experienced by investors due to the high volatility of crypto assets where there is no clarity that can provide a sense of security in investing in these digital assets. Because the Indonesian government has just categorized crypto assets as commodities, this makes all forms of losses experienced by investors a personal responsibility.

Law always lives in society, one embodiment of law is law. In its formation, the law has norms that must be obeyed so that the product of the law produced can be said to be good and has the spirit of law enforcement. The Digital Asset Investment

Law is similar. Unrest in Indonesia's society about the lack of regulation governing the market for digital assets, including cryptocurrencies, served as the inspiration for the creation of the Digital Asset Law. NFT, and the metaverse. The Digital Asset Law proposed by the Researcher can be expected to be a problem solver for the inconsistency and legal uncertainty of the digital asset investment market as well as a refinement of previously issued regulations.

### Recommendation

Indonesia needs new legal regulations that can cover all legal rules regarding digital asset investment in Indonesia as a whole in cryptocurrency, NFT and metaverse regulations. In addition, to fill the legal void for the sake of creating legal certainty. So the government needs to form a law that can be used as a national legislation program so that it can clearly meet developments in digital asset investment which are getting faster in terms of meeting the needs of the Indonesian people.

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