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(English Version)

The Legal Development of Crypto Asset in Indonesia

Overview

The Government of Indonesia (“**GoI**”) has supported the development of crypto assets since 2018 by the enactment of Ministry of Trade (“**MoT**”) Regulation No. 99 of 2018 on General Policy for Future Trading of Crypto Asset (“**MoT Reg 99/2018**”), follows by the technical regulation by Badan Pengawas Perdagangan Berjangka Komoditi (“**BAPPEBTI**”) Regulation No. 5 of 2019 on Technical Provisions on Implementation of Physical Market of Crypto Asset in Futures Exchange as lastly amended by BAPPEBTI Regulation No. 2 of 2020 (“**BAPPEBTI Reg 5/2019**”).

In this ARMA Update, we elaborated further on one of the key points on the development of crypto assets in Indonesia from a legal perspective, including but not limited to the provisions under MoT Reg 99/2018 and BAPPEBTI Reg 5/2019.

How is the legality of crypto assets in Indonesia?

Crypto asset is an intangible commodity in form of a digital asset, using cryptography, peer-to-peer network, and distributed ledger (*buku besar yang terdistribusi*), to control the creation of new unit, verify the transactions, and protect the transaction without third-party intervention.¹ Currently, the GoI only recognizes the legality of crypto assets, but not yet with the crypto as currency or payment instrument (cryptocurrency). It can be found in Article 1 of MoT Reg 99/2018, which provided that:

“crypto asset is constituted as a commodity which may be used as Subject of Futures Contract (Subjek Kontrak Berjangka) which traded in Futures Exchange”.

Not to confused between cryptocurrency and crypto asset, cryptocurrency can be categorized as a sub-class of crypto asset, but not all crypto assets are cryptocurrencies. In short, a cryptocurrency is a store of value and a way to transfer that value among users of the currency. However, from Indonesia’s legal standpoint, crypto assets are not legal thus far as currencies in Indonesia.

Based on Article 1 (2) of Law No. 7 of 2011 on Currency (“**Currency Law**”), money is a legal means of payment. Meanwhile Article 1 (1) of the Currency Law defines “currency” as money issued by the Republic of Indonesia. Whereas the payment instrument that can be used in Indonesia is the currency officially issued by the GoI, namely Rupiah. Article 21 paragraph (1) of the Currency Law stipulates the usage of Rupiah as follows:

“Every transaction that has a payment purpose; The settlement of other obligations must be fulfilled with money; and / or other financial transactions conducted within the territory of the Republic of Indonesia.”

¹ Article 1 (7) of BAPPEBTI Reg 5/2019.



Thus, the crypto asset cannot be used as a payment instrument in Indonesia since it is not an official currency. It is also emphasized by Bank of Indonesia (“**BI**”) through BI Regulation No. 18 of 2016 regarding concerning Implementation of Payment Transaction Processing, Article 34 provided that “*Payment System Service Providers are prohibited from processing transactions using digital currency*”.

Therefore, any payment application cannot process crypto asset as the payment instrument in Indonesia.

What are the requirements of crypto asset for trade?

Unlike BI, the MoT has acknowledged the use of crypto assets for investment commodity as it is shown by are the requirements that need to be fulfilled for trade of crypto asset:²

- a. distributed ledger technology basis;
- b. in form of utility crypto or crypto backed asset;
- c. market cap is within big 500 (five hundred) list in the coin market cap for utility asset;
- d. part of asset transaction of crypto asset in the world;
- e. has economic valued, such as tax, development of informatic industry and digital talent; and
- f. has performed the risk assessment, including money theft and terrorism sponsor as well the proliferation of mass destruction weaponry.

Further, the crypto assets that may be traded are those who have already been designated by Head of BAPPEBTI in the list of crypto assets.³ To date, there are 229 of crypto assets that are approved by BAPPEBTI since 16 December 2020.

The trade of crypto assets in Indonesia is conducted through Future Exchange, Future Clearing House, and Physical Crypto-Asset Broker (“**Crypto-Asset Broker**”). Below are the detail regulations for each body:

Futures Exchange (*Bursa Berjangka*)

Trade of crypto asset may only be facilitated by Future Exchange (*Bursa Berjangka*)⁴ which has been approved by the Head of BAPPEBTI. Below are the requirements to obtain such approval:⁵

- a. has paid up capital amounting to minimum of Rp200,000,000,000 (two hundred billion Rupiah);
- b. maintain the balance of latest capital amounting to Rp150,000,000,000 (one hundred and fifty billion Rupiah);
- c. has at least 3 (three) employees who have certified based on Certified Information Systems Security Professional (CISSP); and
- d. has report system for collecting the trade transactions which occur in the Crypto-Asset Broker.

² Article 3 (2) of BAPPEBTI Reg 5/2019.

³ Article 3 (3) of BAPPEBTI Reg 5/2019.

⁴ Article 5 (1) of BAPPEBTI Reg 5/2019.

⁵ Article 5 (2) of BAPPEBTI Reg 5/2019.



The requirements for capitalization as mentioned in point a and b above are regulated in phases in order to fulfil the required capitals by 2025, below is the detail fulfil:⁶

- a. has paid-up capital at minimum of:
 - 1) Rp275,000,000,000 at the latest on 31 March 2022;
 - 2) Rp350,000,000,000 at the latest on 31 March 2023;
 - 3) Rp425,000,000,000 at the latest on 31 March 2024; and
 - 4) Rp500,000,000,000 at the latest on 31 March 2025.
- b. maintain the balance of capital of:
 - 1) Rp225,000,000,000 at the latest on 31 March 2022;
 - 2) Rp300,000,000,000 at the latest on 31 March 2023;
 - 3) Rp375,000,000,000 at the latest on 31 March 2024; and
 - 4) Rp450,000,000,000 at the latest on 31 March 2025.

Futures Clearing House (*Lembaga Kliring Berjangka*)

The clearing process and completion of transaction in crypto asset trading can only be conducted by Futures Clearing House which already approved by Head of BAPPEBTI⁷, below are the requirements to obtain such approval:⁸

- a. paid-up capital at the minimum amounting to Rp250,000,000,000 (two hundred and fifty billion Rupiah);
- b. maintain the balance of capital at the latest minimum of Rp200,000,000,000 (two hundred billion Rupiah); and
- c. has credible guarantee and clearing electronic system and connected to the Futures Exchange (*Bursa Berjangka*), Crypto-Asset Broker and Storage Management of Crypto Asset.

The requirements for capitalization as mentioned in point a and b above are regulated in phases in order to fulfil the required capitals by 2025, below is the detail fulfil:⁹

- a. has paid-up capital at minimum of:
 - 1) Rp300,000,000,000 at the latest on 31 March 2022;
 - 2) Rp350,000,000,000 at the latest on 31 March 2023;
 - 3) Rp425,000,000,000 at the latest on 31 March 2024; and
 - 4) Rp500,000,000,000 at the latest on 31 March 2025.
- b. maintain the balance of capital of:
 - 1) Rp250,000,000,000 at the latest on 31 March 2022;
 - 2) Rp300,000,000,000 at the latest on 31 March 2023;
 - 3) Rp375,000,000,000 at the latest on 31 March 2024; and
 - 4) Rp450,000,000,000 at the latest on 31 March 2025.

⁶ Article 5 (4) of BAPPEBTI Reg 5/2019.

⁷ Article 6 (1) of BAPPEBTI Reg 5/2019.

⁸ Article 6 (2) of BAPPEBTI Reg 5/2019.

⁹ Article 6 (4) of BAPPEBTI Reg 5/2019.



Crypto-Asset Broker

Futures Exchange (*Bursa Berjangka*) may appoint Crypto-Asset Broker(s) to facilitate the transaction of crypto assets. Further it must be approved by the Head of BAPPEBTI and comply with the trading mechanism (trading rules) which designed by the trader and subject for approval from Head of BAPPEBTI as well.¹⁰

There are 2 (two) steps to become a Crypto-Asset Broker, *first*, it shall be registered as Crypto-Asset Broker candidate to the BAPPEBTI, *second*, it shall obtain the approval from BAPPEBTI. To be registered to BAPPEBTI, below are the requirements:¹¹

- a. copy of deed of establishment of the company (candidate of Crypto-Asset Broker) and the identities of the management;
- b. description of the products, business process, and the code of conduct;
- c. proof of registration the electronic system at Ministry of Communication and Informatics which will be used;
- d. company business plan and funding projection for the next 24 (twenty-four) months; and
- e. other data as mentioned in the Annex of BAPPEBTI Reg 5/2019.

Whereas, in order to obtain the said approval, the applicant shall fulfil the following criteria:¹²

- a. having a paid-up capital amounting to at least Rp50,000,000,000 (fifty billion Rupiah);
- b. maintain the equity at least Rp40,000,000,000 (forty billion Rupiah);
- c. having organizational structure;
- d. having a system and/or online facility to facilitate the crypto asset market which connected to the Future Exchange and Future Clearing Institution,
- e. having standard operational procedures;
- f. having at least 1 (one) employee who is certified for Certified Information System Security Professional (CISSP); and
- g. having candidate for member of directors, commissioners, shareholders, controller, and beneficiary owner who are mandatory to pass the fit and proper test by BAPPEBTI.

Currently there are 13 (thirteen) companies in Indonesia which are registered as candidate of Crypto-Asset Broker.

How is the latest development of crypto asset in Indonesia?

As of today, there is not yet a Future Exchange for trading of crypto asset. Nevertheless, there is plan from the GoI to launch a Future Exchange in the near future.

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¹⁰ Article 7 of BAPPEBTI Reg 5/2019.

¹¹ Article 24 (4) of BAPPEBTI Reg 5/2019.

¹² Article 8 of BAPPEBTI Reg 5/2019.

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