



Analysis Juridical to Legality Cryptocurrency as Investment Instruments in Indonesia: Positive Law and Islamic Law Perspectives

Faris Ali Sidqi

Law Studies Program, Islamic University of Kalimantan MAB, Banjarmasin, Indonesia.

Email: farisalisidqi.fhuniska@gmail.com

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ABSTRACT

This study presents a normative-comparative legal analysis of the legality of cryptocurrency as an investment instrument in Indonesia from both the perspectives of positive law and Islamic law. While Indonesian regulations, particularly Bappebti Regulation No. 5 of 2019, classify cryptocurrency as a tradable commodity under strict supervision, its use as a legal means of payment remains prohibited. From the Islamic legal perspective, cryptocurrency is viewed with caution due to elements of gharar (uncertainty) and maisir (speculation), although limited permissibility is recognized when Sharia principles are upheld. This study employs a statutory and conceptual approach, utilizing content analysis of legal norms and fatwas. The novelty of this research lies in its comprehensive synthesis of legal and religious frameworks, proposing a harmonized legal model that integrates ethical, spiritual, and regulatory principles. It contributes theoretically to the development of Sharia-compliant legal standards and practically to policy recommendations – such as the establishment of a Sharia screening board within licensed exchanges. By bridging the regulatory gap between secular and religious legal systems, this study provides a foundation for safer and more inclusive crypto investment policies in Indonesia's dual legal context.

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Corresponding Author:

Faris Ali Sidqi,
Law Study Program, Faculty of Law
Islamic University of Kalimantan MAB Banjarmasin
Adhyaksa Street No. 2, Sungai Miai, North Banjarmasin District,
Banjarmasin City, South Kalimantan 70123, Indonesia
Email: farisalisidqi.fhuniska@gmail.com

1. Introduction

Cryptocurrency as a digital investment instrument has experienced rapid growth in Indonesia in recent years. This phenomenon has attracted the attention of many groups, from individual investors to regulators, seeking to understand the legal aspects and applicable legal protections. As a developing country, Indonesia faces challenges in adapting regulations to financial technology innovations such as cryptocurrency, which are not yet fully regulated by national law (Azmi & Lestari, 2023; Jatiswara, 2022).

The current digital era has brought about significant changes in various aspects of human life, particularly in the economic and financial sectors. Advances in information technology have given rise to increasingly fast, efficient, and limitless transaction systems. One of the most prominent innovations in this era is the emergence of cryptocurrency assets as investment instruments that have attracted global attention. Cryptocurrencies, such as Bitcoin, Ethereum, and similar ones, are forms of digital currency that utilize blockchain technology and are decentralized, meaning they are not regulated or controlled by a single authority such as a central bank (Riswanto et al., 2024).

In Indonesia, the cryptocurrency asset phenomenon is growing rapidly and attracting widespread public interest, especially among the younger generation familiar with digital technology. According to data from the Commodity Futures Trading Regulatory Agency (Bappebti) in 2022, the number of cryptocurrency investors in Indonesia has reached more than 16 million, with total transaction values reaching trillions of rupiah. The government, through the Commodity Futures Trading Regulatory Agency (Bappebti), has taken a progressive step by regulating cryptocurrency assets as legal commodities for trading on futures exchanges. This is stipulated in Bappebti Regulation Number 5 of 2019 concerning Technical Provisions for the Implementation of Physical Cryptocurrency Asset Markets on Futures Exchanges (Badan Pengawas Perdagangan Berjangka Komoditi (BAPPEBTI), 2022). However, it is important to note that Bank Indonesia continues to prohibit the use of cryptocurrency assets as a means of payment in Indonesia, in accordance with Law Number 7 of 2011 concerning Currency, which stipulates that the Rupiah is the only legal means of payment in Indonesia.

From a positive legal perspective in Indonesia, this investment instrument falls into a gray area requiring legal clarity to prevent crypto asset trading and investment activities from posing legal risks to those involved. Several studies highlight the need for regulations governing cryptocurrencies as assets or means of payment to ensure legal certainty and investor protection (Andrianto, 2022; Yuspin & Wicaksono, 2023).

In addition to its positive legal aspects, cryptocurrency has also sparked debate from an Islamic legal perspective, a reference for some Indonesians. This perspective is crucial because, in the context of Islamic finance, it must ensure that investments do not contain elements of usury (*riba*), *gharar* (*gharar*), and fraud, which are prohibited in Islam. The Indonesian Ulema Council (MUI), through Fatwa Number 17 of 2021, declared that cryptocurrency assets are *haram* (forbidden) to be used as a medium of exchange due to the elements of *gharar* (uncertainty), *maisir* (gambling), and *dharar* (danger or potential for significant loss). However, some contemporary scholars, such as Sheikh Shawki Allam of Dar al-Ifta al-Misriyyah, have opened up the possibility of *ijtihad* (consensus) that cryptocurrency assets may be permissible as a form of investment, subject to strict conditions such as transparency, clarity of object, and freedom from fraud and market manipulation (Fatarib & Sali, 2021; Lekpek, 2021).

These differing views pose a dilemma for Muslims, particularly in Indonesia, who wish to participate in cryptocurrency investment while remaining bound by Sharia principles. While positive law provides legal space for cryptocurrency investment, Sharia prohibits practices that involve uncertainty and excessive speculation. Therefore, this research is significant in comprehensively analyzing the legality of cryptocurrency assets under Indonesian positive law and Islamic law, as well as how to establish common ground that can provide legal certainty and a sense of security for Muslim investors in conducting economic activities in accordance with Sharia and applicable regulations.

As public interest in cryptocurrency grows, various cases involving investors and consumers of digital assets have emerged. This demonstrates the urgency of strong and effective legal protection, both through legislation and religious edicts, to ensure safe and equitable crypto investment activities (Atikah, 2023; Jubaedah et al., 2022).

Although there are several fatwas from the National Sharia Council-MUI that provide guidelines for crypto asset transactions, there are differences in interpretation and implementation in the

field that require further in-depth study so that legal policies can be socialized and implemented optimally (Mufatzizah, 2023b, 2023a).

The macroeconomic context and investment market dynamics are also important considerations in analyzing the legality of cryptocurrencies. Volatile and high-risk markets require legal certainty so investors can make rational investment decisions based on clear legal protections, without falling into detrimental speculative practices (Harahap et al., 2022; Prayoga & Nanang, 2022).

To build a comprehensive legal framework, understanding the risk and return models for cryptocurrency investments has also become a focus of academic research. This can help policymakers establish regulations that not only protect investors but also encourage healthy financial technology innovation (Ilham et al., 2022; Masithoh & Hambali, 2022).

Research into the legality and legal protection for investors in crypto asset transactions shows that legal loopholes remain that can be exploited by unscrupulous parties. Therefore, there is a need to strengthen regulations and oversight mechanisms to ensure transparent and fair digital asset market operations (Bakri & Rais, 2022; Simbolon & Sinaga, 2022).

Furthermore, the development of non-fungible token (NFT) digital financial instruments has added a new dimension to the legality of digital investment in Indonesia. Appropriate regulations are needed to prevent these instruments from creating new legal issues, both in contract law and investment law (Putri, 2023).

Based on the complementary principles of positive law and Islamic law, this article aims to conduct an in-depth legal analysis of the legality of cryptocurrencies as an investment instrument in Indonesia. This approach is expected to contribute to the development of harmonious legal policies and practices that can address the challenges of the digital economy.

Although numerous studies have discussed the legal aspects of cryptocurrency in a partial manner, there remains a legal void and research gap in comprehensively integrating both positive law and Islamic law perspectives regarding the legality of cryptocurrency as an investment instrument in Indonesia. The lack of normative synthesis between statutory regulations and Sharia fatwas has resulted in suboptimal legal protection for Muslim investors in the digital economy context. Therefore, this article formulates two main research questions: (1) What is the legal status of cryptocurrency as an investment instrument from the perspective of Indonesian positive law and Islamic law? and (2) How can normative convergence between these two legal systems be formulated to ensure legal certainty and security for Muslim investors? The objective of this study is to conduct an in-depth juridical analysis of the legality of cryptocurrency from both legal perspectives and to propose a harmonized legal approach that is responsive to financial technology developments and grounded in Sharia values.

2. Method

This research is a normative legal study aimed at examining the legality of cryptocurrency investments from the perspective of Indonesian positive law and Islamic law. The normative legal research was conducted using a statutory and conceptual approach.

The type of research used is doctrinal or normative legal research, namely research that focuses on the study of written legal norms, both in legislation and in religious fatwas (Ariawan, 2013). This research also uses:

1. Statutory Approach: Reviewing the laws and regulations related to cryptocurrency assets in Indonesia, such as Law Number 7 of 2011 concerning Currency and the Bappebti Regulation regarding crypto asset trading.
2. Conceptual Approach: Examines the concept of investment law and sharia principles in Islamic law relevant to cryptocurrency transactions (Wahdini & MH, 2022).

The data used in this study is secondary data consisting of:

1. Primary legal materials: Laws and regulations in force in Indonesia, fatwas of the Indonesian Ulema Council (MUI), and official documents related to cryptocurrency assets.
2. Secondary legal materials: Literature, books, journal articles, expert opinions, and previous research results relevant to the topic.
3. Tertiary legal materials: Legal dictionaries, encyclopedias, and other supporting materials.

Data collection techniques are carried out through library research by tracing relevant legal sources, both printed and digital.

The selection of legal sources in this study was based on relevance, authority, and normative significance. Primary sources such as Indonesian laws (e.g., Law No. 7/2011 and Bappebti regulations) and authoritative Sharia fatwas (particularly Fatwa MUI No. 17/2021) were prioritized due to their legal binding nature and influence in practice. Fatwas and scholarly opinions were selected based on their issuance by recognized institutions or figures and their relevance to investment ethics and digital assets. The data analysis was conducted using qualitative content analysis, involving the identification, categorization, and interpretation of legal norms and fatwa principles. Thematic coding was applied to group data into core themes such as legality, risk, ethical constraints, and investor protection. The normative-conceptual approach was chosen because it allows for critical analysis of written legal norms and conceptual doctrines in both positive and Islamic legal systems. This approach is particularly appropriate in addressing legal pluralism and constructing a harmonized legal framework for cryptocurrency investment that accommodates Indonesia's dual legal context.

The obtained data was analyzed qualitatively, focusing on content analysis of applicable legal provisions and interpretations of Islamic law based on fatwas and religious scholars' opinions. The results of the analysis were then presented descriptively and analytically to explain the legality of cryptocurrency investment under both positive and Islamic law, and to identify common ground that could harmonize the two (McConville, 2017).

3. Analysis and Results

The Legality of Cryptocurrency Investment from an Indonesian Positive Law Perspective

Under Indonesia's positive legal system, the status of cryptocurrency assets as a means of payment has been affirmed through Law Number 7 of 2011 concerning Currency, which states that the Rupiah is the sole legal tender within the territory of the Unitary State of the Republic of Indonesia. Therefore, the use of cryptocurrency assets such as Bitcoin, Ethereum, and others as a means of transaction for the direct purchase of goods and services is legally prohibited.

Despite this, the Indonesian government recognizes cryptocurrency assets as a legitimate commodity for trading on futures exchanges. This is specifically stipulated in Bappebti Regulation Number 5 of 2019 concerning Technical Provisions for Organizing Physical Cryptocurrency Asset Markets on Futures Exchanges, and is reinforced by Bappebti Regulation Number 8 of 2021 concerning Guidelines for Organizing Physical Cryptocurrency Asset Market Trading on Futures Exchanges. These regulations stipulate that cryptocurrency assets can be subject to strictly regulated trading within the futures market, under direct supervision from Bappebti.

The legality of cryptocurrency investment under Indonesian positive law prioritizes legal protection for market participants. Several key principles are upheld, including:

1. Legal certainty and regulatory clarity for organizers and investors.
2. Consumer protection through mandatory registration of Cryptocurrency asset traders and minimum capital requirements.
3. The security of information technology systems in Cryptocurrency trading requires exchanges to implement data and transaction protection systems.

4. Prevention of money laundering and terrorism financing through mandatory reporting of suspicious transactions.

However, the government and regulatory agencies such as Bank Indonesia and the Financial Services Authority (OJK) continue to issue strong warnings to the public regarding the high risks of cryptocurrency investment, given the extreme price volatility, lack of stable economic fundamentals, and vulnerability to speculation and fraud. Therefore, although cryptocurrency investment is legally permitted, the government

encourages the public to be careful and understand the risks inherent in trading these digital assets (Jannah, 2022).

A Review of Cryptocurrency Investments from an Islamic Law Perspective

From an Islamic legal perspective, economic transactions must adhere to sharia principles, which prohibit gharar (excessive uncertainty), maisir (gambling/speculation), and riba (unlawful gain). Investing in cryptocurrency assets has sparked controversy among Islamic scholars regarding the legitimacy of cryptocurrency as assets that can be owned and traded (Arzam et al., 2023).

In Fatwa Number 17 of 2021, the Indonesian Ulema Council (MUI) stated that the use of cryptocurrency as a currency is haram due to its high risk of gharar (unclear) and dharar (unlawful) and its failure to meet the requirements for a medium of exchange under Sharia law. Cryptocurrency is considered to have no clear intrinsic value, is extremely volatile, and is often used as an instrument of speculation. However, the MUI allows for some tolerance to allow cryptocurrency as a commodity or investment asset as long as it meets certain requirements, namely:

1. Have real underlying assets.
2. Not used as a tool for excessive speculation.
3. Traded on legitimate exchanges and supervised by official authorities.

Some contemporary scholars such as Sheikh Shawki Allam, the Grand Mufti of Egypt, and international sharia experts view that Cryptocurrency can be categorized as *mal muta'awwam* (assets recognized by sharia) as long as:

1. Has clear benefits for society.
2. Can be legally owned and transferred.
3. Doesn't bring greater harm (Akbar & Huda, 2022).

In this view, Islamic law places the intention and method of transaction as key factors. If cryptocurrency transactions are conducted professionally, based on rational analysis, and without wild speculation, they are permissible as a legitimate form of modern investment. Conversely, if transactions are conducted solely for the pursuit of instant profits without adequate analysis, they may fall into the category of gambling (*maisir*), which is strictly prohibited in Islam. (Abdillah, 2023) Therefore, from an Islamic legal perspective, cryptocurrency investments can be categorized as legitimate if they meet the following requirements:

1. Clarity of the object of the contract and its benefits.
2. Price transparency and non-manipulative.
3. Avoiding the elements of gharar and maisir.
4. Conducted on a supervised platform and in accordance with positive legal regulations.

By fulfilling these conditions, Cryptocurrency can be accepted as an investment asset that is in accordance with the *maqashid sharia*, namely protecting assets (*hifzh al-mal*) and preventing losses for the community.

A deeper comparative analysis reveals that while Indonesian positive law emphasizes formal legality and regulatory compliance in cryptocurrency investment – especially through Bappebti's framework – Islamic law highlights the moral-ethical dimensions, prioritizing transparency, fairness, and the absence of gharar and maisir. In practice, these two perspectives can converge through sharia-compliant regulatory models that balance state authority and religious guidance. For instance, licensed exchanges in Indonesia such as Tokocrypto and Indodax, as of 2022, reported a user base exceeding 16 million with transaction volumes reaching over IDR 300 trillion

(Badan Pengawas Perdagangan Berjangka Komoditi (BAPPEBTI), 2022). However, these platforms have yet to implement explicit sharia-based screening mechanisms. This gap underscores the urgent need for regulatory innovation that not only aligns with national financial law but also incorporates sharia risk filters and halal investment standards. Such integration would not only protect Muslim investors from legal and ethical uncertainty but also enhance the legitimacy and sustainability of the digital asset market in Indonesia.

4. Conclusion

This study concludes that the legality of cryptocurrency as an investment instrument in Indonesia is recognized under positive law, particularly as a commodity permitted for trading on futures exchanges. This is regulated through Bappebti provisions, although its function as legal tender remains prohibited under Law No. 7 of 2011 concerning Currency. The positive legal framework emphasizes investor protection, consumer rights, and market supervision, yet requires further development to address the complex and evolving nature of digital assets. From the perspective of Islamic law, the status of cryptocurrency is still subject to scholarly debate. The Indonesian Ulema Council (MUI) prohibits its use as a medium of exchange due to elements of *gharar* and *dharar*, yet opens limited space for cryptocurrency to be considered a lawful investment commodity under strict Sharia conditions – such as transparency, clarity of object, and oversight through legitimate platforms. This study contributes theoretically by offering a normative-comparative legal framework that bridges Indonesian positive law and Islamic law in regulating cryptocurrency investments. Practically, the findings provide a conceptual foundation for regulatory reform, particularly by encouraging the integration of Sharia-compliant principles into national legal instruments governing digital assets. Policymakers are encouraged to develop clearer regulations that incorporate ethical filters rooted in *maqashid al-shariah*, ensuring both legal certainty and investor protection for the Muslim population. In addition, this study recommends the formation of a Sharia screening board within licensed crypto exchanges to provide religious guidance aligned with national law. Future research should further explore unresolved areas in Islamic jurisprudence related to digital currencies, including the legitimacy of smart contracts, decentralized finance (DeFi), and non-fungible tokens (NFTs), which continue to present conceptual and legal challenges in Sharia discourse. This opens up interdisciplinary opportunities between law, economics, and Islamic finance to shape a responsive and equitable digital financial ecosystem.

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