K-CASE | Lawyer & Business Attorney

ADVISORY | Analyzing OJK's Draft Crypto Trading Regulation

1. Introduction

The Indonesian financial regulatory landscape is undergoing a significant transformation with the introduction of Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ("**Law 4/2023**"). This legislation mandates a pivotal shift in the oversight of digital financial assets, transferring regulatory and supervisory responsibilities from the Commodity Futures Trading Regulatory Agency ("**Bappebti**") to the Financial Services Authority ("**OJK**") within a 24-month timeframe. In response, the OJK has developed a Draft Regulation on the Administration of Digital Financial Asset Trading Including Crypto Assets, demonstrating a comprehensive approach to addressing the multifaceted nature of digital asset trading. The OJK's Draft Regulation is comprehensive in its scope, addressing a wide array of issues critical to the functioning of a robust and secure crypto asset market. This section provides a brief overview of the key areas covered by the regulation:

1. **Tradable Crypto Assets**: The regulation delineates the characteristics and requirements for crypto assets that may be traded in the Indonesian market, establishing a framework for asset selection and approval.
2. **Institutional Structures of Organizers**: It outlines the organizational requirements for various market participants, ensuring appropriate corporate governance and operational structures.
3. **Licensing of Organizers**: A crucial aspect of the regulation, this sets forth the process and requirements for obtaining operational licenses, a key mechanism for market entry control.
4. **Fit-and-Proper Assessments**: The regulation mandates evaluations of key personnel and shareholders, aiming to ensure the integrity and competence of those managing crypto asset trading platforms.
5. **Governance**: It establishes governance standards for organizers, likely including board structures, risk management protocols, and internal control systems.
6. **Administration of Assets**: This section likely covers the operational aspects of managing crypto assets, including custody, transfer, and record-keeping procedures.
7. **Supporting Activities**: The regulation addresses ancillary services and activities that support the core function of crypto asset trading.
8. **Reporting**: It sets forth the reporting obligations of market participants, crucial for maintaining transparency and enabling effective oversight.
9. **Supervision**: The regulation outlines the OJK's supervisory powers and procedures, essential for ongoing monitoring of market activities and enforcement of rules.
10. **Personal Data Protection**: In line with growing global concerns about data privacy, the regulation includes provisions for protecting user data in the crypto asset ecosystem.
11. **Consumer Protection**: This aspect of the regulation aims to safeguard the interests of retail investors and users of crypto asset trading platforms.
12. **Coordination**: The regulation likely addresses how the OJK will coordinate with other relevant government agencies and international bodies in overseeing the crypto asset market.
13. **Dispute Resolution**: It establishes mechanisms for resolving conflicts between market participants or between platforms and their users.
14. **Other Compliance Aspects**: This catch-all category likely includes various other regulatory requirements and compliance obligations not covered in the above categories.

It is noteworthy that the OJK's approach allows for regulatory continuity by maintaining the validity of existing Bappebti regulations until they are explicitly superseded. This strategy mitigates potential regulatory gaps during the transition period, ensuring continued market stability.

2. Upcoming Crypto Trading Regulations

POINT 1

Official List of Crypto Assets

The Draft Regulation introduces the concept of an official list of tradable crypto assets ("List"). This List serves as the definitive catalog of crypto assets that may be legally traded in the Indonesian market. The regulation stipulates that only crypto assets designated by authorized Exchanges and included in this List can be traded. Notably, the Draft Regulation allows for a transitional period where the existing list of tradable crypto assets established by Bappebti will remain valid until Exchanges determine a new list under the new regulatory regime. The establishment of an official list of tradable crypto assets represents a curated approach to market development. This method allows for regulatory oversight while still providing a mechanism for market-driven expansion through trader-proposed additions and removals. The retention of Bappebti's existing list during the transition period further demonstrates a commitment to regulatory continuity and market stability.

POINT 2

Criteria for Tradable Crypto Assets

The Draft Regulation outlines specific criteria that crypto assets must meet to be eligible for trading. These criteria include:

1. Representing a primary digital value (digital native).
2. Utilizing distributed ledger technology or a blockchain accessible to the public.
3. Having utility or being backed by assets.
4. Being traceable (not having features that obscure or hide ownership and transaction data).
5. Having been assessed using the methodology established in the rules and regulations of Exchanges

By requiring assets to represent primary digital value, utilize public distributed ledger technology, and demonstrate utility or asset backing, the regulation aims to filter out speculative or potentially fraudulent tokens. The emphasis on traceability also aligns with global efforts to combat financial crimes in the crypto space.

POINT 3

Assessment Methodology

The Draft Regulation mandates that Exchanges must conduct thorough analyses of each crypto asset before adding it to the official List. This assessment methodology must encompass at least 13 aspects, including:

1. Market capitalization of assets.
2. Security and reliability of the distributed ledger technology or similar technology.
3. Consumer protection and personal data protection aspects.
4. Potential economic benefits (e.g., taxation, growth of the digital economy, development of digital talent).
5. Risk assessments (e.g., risks related to AML-CFT and CPF)

This multi-faceted analysis, considering factors from market capitalization to potential economic benefits and risk assessments, demonstrates a sophisticated understanding of the complexities inherent in crypto assets. It also suggests a regulatory intent to foster a mature, stable crypto market that can contribute positively to the broader economy.

POINT 4

Regulatory Requirements for Organizers

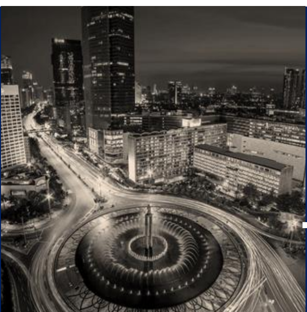
The stringent regulatory requirements for organizers underscore the OJK's commitment to maintaining market integrity and protecting consumer interests. The licensing process, with its varied documentation requirements based on organizer type, reflects an understanding that different market participants carry different risks and responsibilities.

The inclusion of specific technical certifications (CISSP, CISA) and standards (ISO 27001) in the requirements demonstrates a recognition of the critical role of cybersecurity and information system integrity in the digital asset space. This approach aligns with global best practices in financial technology regulation.

The OJK's 45-day review period for license applications, coupled with comprehensive evaluation procedures, suggests a thorough vetting process. This rigorous approach may present initial challenges for market entrants but is likely to contribute to a more robust and trustworthy crypto trading ecosystem in the long term.

CONCLUSION

Indonesia's new regulatory framework for crypto trading, as embodied in Law 4/2023 and the subsequent OJK Draft Regulation, represents a significant evolution in the country's approach to digital financial assets. The transition of regulatory authority to the OJK, coupled with the comprehensive nature of the proposed regulations, suggests a move towards integrating crypto assets more fully into the mainstream financial system. This approach has the potential to enhance the legitimacy of the crypto market in Indonesia, potentially attracting more institutional investors and fostering greater public trust. However, the success of this regulatory framework will depend on its implementation and the ability of market participants to adapt to these new requirements. Future research should focus on the impact of these regulations on market dynamics, investor behaviour, and the overall growth of the digital asset ecosystem in Indonesia. Should you be interested in developments in the crypto market, we at K-CASE Lawyer understand these regulations and are ready to assist you. Please reach out to us to explore the possibilities in the rapidly-expanding Indonesian Crypto Trading Market.



Main Office
One Pacific Place - Level 11
Jl. Jend. Sudirman Kav. 52-53
SCBD, Jakarta, 12930
Phone : (6221) 2985 9606
Fax : (6221) 2985 9889

Surabaya Office
Manyar Tirtomoyo II / 35 C
Kel. Manyar Sabrangan
Kec. Mulyorejo
Surabaya – 60116

WhatsApp : +62 878.8787.3366
Email : info@kcaselawyer.com

IG: @kcaselawyer
www.kcaselawyer.com