

The Paradigm of Law as A Social Engineering in the Existence of Crypto Asset Monitoring: What and How?

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Article Info

Received: 2023 – 09 - 20

Revised: 2023 – 12 - 02

Accepted: 2023 – 12 - 30

Keywords:

Family Card, Marriage,
Recorded, Not Recorded,
Family Law.

Abstract

The development of transactions through crypto assets is one of the practices carried out in the digital business world. The existence of transactions through crypto assets makes the state regulate and supervise crypto assets. One of the legal policies carried out by the state is to supervise crypto asset transactions by the OJK institution. This study aims to answer two legal issues, namely the implications of regulating crypto asset supervision after the passing of the Law No. 4 of 2023 on Financial Sector Development and Strengthening (PPSK Law) and the orientation of crypto asset supervision after the passing of the PPSK Law from a law perspective as a tool of social engineering. This research is normative legal research by prioritizing conceptual and statutory approaches. The results of the study confirm that the implications of supervising crypto assets after that is to make the existence and position of CoFTRA as a supervisor of transactions using crypto assets increasingly lead to ambiguity because the authority regarding the supervision of crypto assets becomes the authority of the OJK. The orientation of oversight of crypto assets in the perspective of law as a social engineering can be seen that the substance of oversight of crypto assets by the OJK aims to carry out community engineering, namely in the form of future efforts so that the community can optimize crypto asset transactions to increase the strengthening of national finance and to give the public a sense of security for transactions crypto assets carried out, the state took the initiative to formulate oversight of crypto assets by OJK because OJK is considered the right and appropriate institution in efforts to regulate and supervise crypto asset transactions.

1. Introduction

The Crypto assets are one of the developments in the business world based on digitalization. Digitalization in the business world makes the massive development of crypto assets in which the development of crypto assets has become a new trend in the business world.(W. Wardoyo et al., 2020) The massive

development of crypto assets in the business world makes the country need to provide specific regulations regarding crypto assets in the business world. The importance of regulation regarding crypto assets in the business world made the government together with the House of Representatives inaugurate the promulgation of the Law No. 4 of 2023 on Financial Sector Development and Strengthening (hereinafter referred to as PPSK Law) on January 12, 2023.(DPR RI, 2022)

The formulation of the PPSK Law actually has two orientations, namely to deal with massive global financial developments so that the establishment of the PPSK Law can facilitate various aspects of global financial development. The next orientation related to the formulation of the PPSK Law is an effort to solve various problems in the form of overlapping regulations in various laws governing the financial sector.(ICEL, 2023) The overlapping regulations in various laws governing the financial sector make the PPSK Law formulated using the omnibus law method. The formulation of the PPSK Law with the omnibus law method is expected to be a solution to regulatory problems in the form of overlapping regulations in various laws governing the financial sector. Apart from the two orientations related to the formulation of the PPSK Law above, one of the important substances in the PPSK Law is related to the supervision of crypto assets. Article 8 of the PPSK Law one of the substances is in the form of amendments to the substance of Article 6 of Law No. 21 of 2011 concerning Financial Services Authority -In Indonesian: *Otoritas Jasa Keuangan* or OJK- (hereinafter referred to as OJK Law).

Changes in the substance of Article 6 of the OJK Law are additional OJK authorities related to supervision of crypto assets. In fact, with reference to the provisions of Minister of Trade Regulation No. 99 of 2018 concerning General Policy for the Implementation of Crypto Asset Futures Trading (hereinafter referred to as *Permendag Crypto*), it is affirmed that the authority regarding regulation and supervision related to crypto assets is the authority of the

Commodity Futures Trading Supervisory Agency or *Badan Pengawas Perdagangan Berjangka Komoditi* (hereinafter referred to as Bappebti). This confirms that in the PPSK Law there are substantive changes related to the authority to supervise crypto assets which initially existed in the realm of Bappebti which was later constructed by the PPSK Law as the authority of the OJK.

The existence of substantial changes in the PPSK Law related to crypto asset supervision regulations is actually one of the legal functions, in this case the laws and regulations to carry out a social engineering for the community. (Riswandi, n.d.) Social engineering, which literally means as a social engineering of the community, places the law to make a breakthrough and update to implement a legal policy that is needed and expected by the community. (Syafri Hariansah, 2022) Therefore, the main orientation of this study is on the analysis of substance changes in the PPSK Law related to crypto asset supervision regulations in the perspective of law as a tool of social engineering. This study aims to answer two legal issues, namely the implications of crypto asset supervision regulations after the passing of the PPSK Law and the orientation of crypto asset supervision after the passing of the PPSK Law in the perspective of law as a tool of social engineering. Research on crypto asset regulation has been conducted by three researchers before.

First, research conducted by Haji (2022) which focuses on analyzing efforts to form comprehensive and responsive crypto asset arrangements. (Haji, 2022) The results of the study confirm that efforts to form a comprehensive and responsive crypto asset regulation can be done with synergy and coordination between Bappebti and OJK. The difference between the research conducted by Haji and this research is that if the research conducted by Haji is an effort to offer solutions related to the formation of comprehensive and responsive crypto asset regulatory regulations, while this research focuses on analyzing crypto asset supervision regulations after the passing of the PPSK Law. *Second*, research

conducted by Santika, et al. (2022) which discusses aspects of legal effectiveness of regulation regarding crypto assets.(Alhidami Wildan, Muhammad Saeful Milah, Muhammad Taufik, 2022) The results of the study confirmed that the ineffectiveness of regulation regarding crypto assets is caused by two factors, namely the disparity between crypto asset regulation and the need to include the latest and latest developments related to crypto assets in National Legislation Program (Prolegnas).

The difference between the research conducted by Santika, et al. and this study is that if the research conducted by Santika, et al. focuses on the effectiveness of regulatory laws regarding crypto assets while this study focuses on analyzing crypto asset supervision regulations after the passing of the PPSK Law. *Third*, research conducted by Hapsari, et al. (2023) which discusses the legal position of crypto assets as movable objects in civil law construction based on BW.(Y. P. Wardoyo et al., 2023) The results of the study confirmed that crypto assets have met the qualifications of intangible movable objects as in Article 503 BW. This makes crypto assets can be used as objects of fiduciary guarantee. The difference between the research conducted by Hapsari, et al. and this study is if the research conducted by Hapsari, et al. focuses on the legal position of crypto assets as movable objects in civil law construction based on BW, while this study focuses on analyzing crypto asset supervision arrangements after the passing of the PPSK Law. From the three previous studies, research on the analysis of crypto asset supervision arrangements after the passing of the PPSK Law in the perspective of law as a tool of social engineering. has never been done by the three researchers before so this study is an original study.

Research that discusses the analysis of crypto asset supervision arrangements after the passing of the PPSK Law in the perspective of law as a tool of social engineering is a normative legal research. The use of normative legal research methods is because this research focuses on the analysis of the PPSK Law and relates to legal theory, namely the theory of law as a tool of social

engineering proposed by Roscoe Pound. Analysis with a legal theory analysis knife is one of the characteristics of normative legal research.(Diantha, 2017) The primary legal materials in this study are: the 1945 NRI Constitution, the PPSK Law, and the Crypto Trade Regulation. Secondary legal materials are: journal articles, study results, and books that discuss crypto assets and the PPSK Law. Non-legal material is a dictionary of languages.

2. Discussion

The Implications of Crypto Asset Supervision After the Law on the Financial Sector Development and Strengthening

The development of transactions using crypto assets makes it necessary to regulate the supervision of crypto assets. The development of transactions using crypto assets is actually something that is commonly associated with legal developments that experience updates and novelty as a result of technological developments.(Muhammad Haikal Kautsar, Ivan Yulivan, 2021) In relation between legal and technological developments, Satjipto Rahardjo,(Rahardjo, 2010) formulate three relations between law and technology. *First*, the relation between law and technology is implicative, meaning that what is part of technological development directly affects the existence of a law. This can be seen from the development of technology and electronic transactions which then require facilities and facilities in Indonesia through the ITE Law.(Lubis et al., 2022) *Second*, the relationship between law and technology is regulative, which means that because every technological development has the potential to cause new legal actions, every technological development requires legal responsiveness through regulation in regulatory aspects.(Bernadette et al., 2019)

The positive implication is that every technological development gets guaranteed legal certainty while the negative implication is the potential for hyperregulation so as to make more laws and regulations and potentially cause disharmony and incoherence between one rule and another.(Thakur et al., 2022)

Third, legal and technological relations are mutualistic, which means that each legal and technological development has a relationship and linkage so that it has an impact on each aspect.(Zengin & Kocoglu, 2022) This mutualistic relationship between law and technology emphasizes the importance of understanding and analyzing the impact of each development between law and technology so as not to cause a destructive impact on society. From the three relationships between law and technology above, it can be concluded that the three relationships above have relevance to the development of digital transactions using crypto assets. The development of digital transactions using crypto assets is actually part of technological developments that make the law must have a responsive orientation to the development of digital transactions using crypto assets.

There are three orientations related to the role of law related to the development of digital transactions, especially the development of crypto assets. *First*, the development of crypto assets, especially related to digital transactions, makes legal protection necessary in the realm of digital transactions using crypto assets. Legal protection is needed because digital transactions like transactions in general rely on the orientation of the parties to gain profit.(Francisco et al., 2022) Therefore, in the context of digital transactions, the law must play a role in providing a safety net so that potential losses and crimes committed by one party to another party can be avoided.(van der Linden & Shirazi, 2023) *Second*, the development of crypto assets, especially related to digital transactions, makes the state have to make certain legal policies to establish appropriate legal policy arrangements and determinations that are beneficial to the community.(Susilowardhani et al., 2022) Referring to the Crypto Trade Regulation, it was emphasized that the development of crypto assets in digital transactions made the government then establish special arrangements and supervision regarding the development of digital transactions under Bappebti. Bappebti in this case is considered authorized to

regulate and supervise the development of crypto assets, especially related to digital transactions.(Puspasari, 2020)

Third, the development of crypto assets in digital transactions is actually a new and global phenomenon. This means that the development of crypto assets is a legal development that has been worldwide and occurs in various countries. The problem is that digital transactions using crypto assets are still in doubt about their security, especially related to the fluctuating value of crypto assets.(Shellma Riyaadhotunnisa, Muhamad Amirulloh, 2022) This shows the importance of the state's role in regulating the supervision of the development of crypto assets, especially in digital transactions. The importance of supervision and regulation of crypto assets in digital transactions is also the focus of the formulation of the PPSK Law. Philosophically, the establishment of the PPSK Law is intended to fulfill the development of a resilient, prosperous, prosperous, and just national economy while remaining in line with the 1945 NRI Constitution and Pancasila.

Philosophically, the establishment of the PPSK Law is also expected as an implementation of the realization of state goals, namely as stated in the fourth paragraph of the Preamble to the 1945 NRI Constitution, namely in the form of efforts to realize general welfare in the community through the formulation of integrated economic and financial policies. Sociologically, the establishment of the PPSK Law to facilitate the relatively fast, dynamic, integrated, and competitive development of the world economy makes Indonesia have to prepare itself to be able to compete in global economic developments.(Hanim, 2023) The PPSK Law in an effort to facilitate economic development is also oriented towards strengthening regulation and supervision related to the national economy and finance. The aim to strengthen regulation and supervision in aspects of the national economy and finance is specifically related to regulations regarding crypto asset supervision.

Juridically, efforts to build a comprehensive system of financial and national economic regulation can be carried out using the omnibus law method. The use of the omnibus law method in an effort to build a comprehensive system of financial and national economic regulation is based on two orientations, namely the phenomenon of hyperregulation which makes overlapping arrangements related to finance and the national economy.(Imam Asmarudin, 2022) Overlapping and disharmonizing arrangements related to finance and the national economy are one of the obstacles in the implementation of an integrated, systemized, and national-oriented financial and economic regulatory system.(Johan & Ariawan, 2022) The orientation of the use of the omnibus law method in building a financial and national economic regulatory system through the PPSK Law is also intended to revise several weaknesses in sectoral laws governing national finance and economy.

There are several weaknesses in sectoral laws that regulate finance and the national economy, if carried out using a conventional system of changing laws requires greater time and cost, causing inefficiencies in the legislative process.(Sulistina et al., 2022) Therefore, the use of the omnibus law method in building a financial and national economic regulatory system through the PPSK Law is intended to revise and improve various weaknesses in sectoral laws governing national finance and economy. So as to realize an integrated, systemized, and oriented system of financial and national economic regulation to realize justice. One of the important substances in the PPSK Law is the affirmation that the PPSK Law makes changes related to the supervision of crypto assets which was originally the authority of Bappebti which later became the authority of the OJK. This is as stated in Article 8 of the PPSK Law, one of the substances is in the form of increasing OJK authority related to supervision of crypto assets. Changes in substance related to crypto asset supervision in the PPSK Law actually have implications for the authority of Bappebti which previously carried out supervision and regulation related to crypto assets which

was later transferred to the authority of the OJK. (Tambun & Putuhena, 2022) Another important implication is the potential for overlapping supervision and regulation regarding crypto assets carried out by Bappebti and OJK after the passing of the PPSK Law.

In Bappebti itself, regulations regarding the supervision of trading using crypto assets have been regulated in Bappebti Regulation No. 8 of 2021 which if then the authority to supervise trading using crypto assets is transferred to the OJK, then based on the principle of *lex superior derogate legi inferiori*, the Bappebti Regulation can be said to be invalid. This is reinforced by the substance of Article 216 of the PPSK Law which expressively emphasizes that supervision of ITSK is in the form of technological innovation in the financial sector, one of which is the use of crypto assets under the authority of OJK and *Bank Indonesia* (BI). (Irfani, 2020) Even so, Article 217 paragraph (3) of the PPSK Law confirms that OJK and BI can coordinate with other institutions in terms of supervision of ITSK, namely in the form of technological innovations in the financial sector, one of which is the use of crypto assets. The provisions of Article 217 paragraph (3) of the PPSK Law cause legal vagueness because the meaning of "other party" is not specifically explained in the PPSK Law. This means that there is no guarantee of legal certainty regarding the existence of Bappebti, which initially became a supervisor and regulator of the use of crypto assets in Indonesia.

Moreover, Article 217 paragraph (3) of the PPSK Law uses the term "may" which means OJK and BI are not required to coordinate with Bappebti regarding the use of crypto assets. Based on the results of the analysis above, the implications of crypto asset supervision after the passing of the PPSK Law are to make the existence and position of Bappebti as a supervisor of transactions using crypto assets increasingly unclear because with reference to the PPSK Law, the authority regarding crypto asset supervision becomes the authority of OJK. The existence and position of Bappebti as a supervisor of transactions using crypto assets is increasingly unclear because there is no

regulation that requires OJK to coordinate with Bappebti which has implications for the invalidity of Bappebti regulations governing crypto asset supervision.

The Paradigm of Law As A Social Engineering in the Existence of Crypto Asset Monitoring

The regulation regarding the supervision of crypto asset transactions as stipulated in the PPSK Law substantively confirms changes regarding the crypto asset transaction supervisory institution which before the ratification of the PPSK Law was Bappebti while after the passing of the PPSK Law was OJK. Regarding the change in crypto asset transaction supervisory agency from Bappebti to OJK, it is based on at least three arguments. *First*, factually and empirically, the fluctuating and comprehensive development of crypto assets makes it difficult for Bappebti to conduct optimal supervision. It is also based on the development of crypto assets which under certain conditions can have an impact on national financial stabilization.(Afani & Tambunan, 2022) Therefore, the massive development of crypto assets has made changes in crypto asset transaction supervisory institutions from Bappebti to OJK as stipulated in the PPSK Law. *Second*, institutionally OJK in Article 1 point 1 of the OJK Law, OJK is constructed as an independent institution whose functions are related to aspects of examination, regulation, supervision, and investigation related to finance.

OJK as an independent institution must certainly be understood that OJK has a position as state auxiliary bodies or supporting institutions of the functions of the three state powers.(Anwary, 2018) When viewed in Article 1 point 1 of the OJK Law, OJK is a supporting institution of executive functions, especially related to regulatory and supervisory functions in the financial sector. OJK's position as an independent institution shows that OJK has a strong and strategic legal position in an effort to conduct examinations, regulations,

supervision, and investigations related to finance.(Putri, 2020) The regulation regarding the supervision of crypto assets delegated to OJK, which was originally the domain of Bappebti's authority, is actually the right arrangement because OJK's position as an independent institution can certainly be an important part of efforts to optimally supervise crypto asset transactions.(Susilowardhani et al., 2022) Moreover, the development of kripto assets can substantively have an impact on national financial stability.

When compared to the Bappebti institution which was previously a crypto asset supervisor, the position of the Bappebti institution itself which is an institution under the Ministry of Trade makes the movement and efforts to carry out the function of crypto asset supervision by Bappebti limited and not as optimal as if carried out by the OJK.(Hasani, 2022) *Third*, the regulation regarding the supervision of crypto assets delegated to OJK based on the PPSK Law is actually based on the legal politics of the formulation of the PPSK Law which idealizes comprehensive regulation of the national financial sector. The regulation of crypto asset supervision delegated to OJK based on the PPSK Law is actually based on the risk of crypto asset development that can affect national financial stability so that the PPSK Law specifically regulates crypto assets initiated by OJK. From the three arguments above, it can be concluded that the strengthening of regulations regarding the supervision of crypto assets delegated to the OJK based on the PPSK Law is a constructive step in which various risks and negative impacts of crypto asset development can be closely monitored by the OJK.

The regulation regarding the supervision of crypto assets delegated to OJK based on the PPSK Law as based on the three arguments above is also an effort by the government and DPR to carry out social engineering in the community related to regulations and efforts to strengthen the national financial system. The formulation of the PPSK Law as social engineering in society actually has relevance to the idea of law as a tool of social engineering as initiated by Roscoe

Pound.(M. Yusuf Yahya, 2022) Roscoe Pound's idea of the function of law as a means to engineer society means that the existence of a norm or legal product is intended to direct society to a certain attitude and legal action. This shows that in the perspective of social engineering is used as a cause whose consequences are in the form of legal actions or behavior in society. Regarding the regulation regarding the supervision of crypto assets delegated to the OJK based on the PPSK Law from a social engineering perspective, at least it can be seen from three important aspects why the PPSK Law delegates regulations regarding crypto asset supervision to the OJK.

First, the conception of social engineering as proposed by Roscoe Pound actually confirms the existence of legal behavior that is practical and in the near future can be applied.(H'ng et al., 2022) The identification of practical aspects in the idea of social engineering as initiated by Roscoe Pound can be seen from the term "engineering" which literally relates to something practical. This means, viewed from a social engineering perspective, the passage of the PPSK Law which substantively mandates the supervision of crypto assets delegated to the OJK actually has an orientation to practical aspects. The practical orientation why the PPSK Law which substantively mandates the supervision of crypto assets delegated to OJK is on the development of crypto assets which with the supervision of crypto assets delegated to OJK is expected to provide optimal legal protection to the public.

Optimal legal protection for the public, especially for users of crypto asset transactions, is expected to run optimally through OJK so that crypto asset transactions can take place conducive, productively, and benefit the community. *Second*, in Roscoe Pound's view, the idea of social engineering in law is always initiated by a certain phenomenon in society so that the existence of certain phenomena makes the law facilitate and regulate so that certain phenomena can be directed to the fulfillment of legal goals in society. This context emphasizes that the idea of social engineering starts from bottom-up

characteristics and then formulates a rule of law to be top-down.(As-suvi & Zainullah, 2022) In relation to crypto asset transactions, the bottom-up context can be seen from the fact of the mushrooming of crypto transactions carried out by the community while on the other hand there have been no certain arrangements made by the state related to crypto transactions. In this top-down context, the state then took the initiative to provide regulations while guaranteeing legal protection efforts for the public related to crypto asset transactions. One of the manifestations of this top-down context is the formulation of the PPSK Law which substantively regulates the supervision of crypto assets delegated to the OJK, which was originally the domain of Bappebti's authority.

Third, the idea of social engineering emphasizes the fulfillment of social goals in society as one of the goals of the formation of a legal product.(Muttaqin, 2021) In relation to the PPSK Law, the purpose of the establishment of the PPSK Law can be seen from the consideration that contains sociological, philosophical, and juridical foundations. In general, it can be seen that the main purpose of the establishment of the PPSK Law is to strengthen national financial aspects in an effort to face international financial developments. One of the focuses of this aspect of national finance is efforts to optimize crypto assets so that they need to be monitored comprehensively through the right institutions. In accordance with the PPSK Law, OJK was chosen as a crypto asset transaction supervisory institution so that crypto asset transactions are carried out productively and have an impact on strengthening national financial aspects. This is because one of the impacts of crypto asset transactions is in the form of national financial instability if it is not regulated and monitored comprehensively.

From the three aspects of social engineering in regulating crypto asset supervision through the PPSK Law, it can be seen that the PPSK Law is actually positioned as a means to engineer the community and make the public actively

able to maximize the use of crypto asset transactions with legal protection in the form of comprehensive supervision and regulation by the OJK. From the analysis above, the orientation of crypto asset supervision in the perspective of law as a social engineering can be seen that the social engineering orientation in the PPSK Law, especially in the suspension of crypto asset supervision by OJK, aims to carry out community engineering. This is done with future efforts so that the public can optimize crypto asset transactions to increase national financial strengthening and to provide public security for crypto asset transactions carried out, the state took the initiative by formulating crypto asset supervision by OJK because OJK is considered an appropriate and appropriate institution in efforts to regulate and supervise crypto asset transactions.

3. Conclusion

The implication of crypto asset supervision after the enactment of the PPSK Law is to make the existence and position of Bappebti as a supervisor of transactions using crypto assets increasingly unclear because by referring to the PPSK Law, the authority regarding crypto asset supervision becomes the authority of the OJK. The existence and position of Bappebti as a supervisor of transactions using crypto assets is increasingly unclear because there is no regulation that requires OJK to coordinate with Bappebti which has implications for the invalidity of Bappebti regulations governing crypto asset supervision. The orientation of crypto asset supervision in the perspective of law as a social engineering can be seen that the orientation of social engineering in the PPSK Law, especially in the suspension of crypto asset supervision by OJK, aims to carry out community engineering, that is, in the future so that the public can optimize crypto asset transactions to increase national financial strengthening and to provide public security for crypto asset transactions carried out, the state takes the initiative by formulating crypto asset supervision by OJK because OJK is considered an appropriate and appropriate institution in efforts to regulate and supervise crypto asset transactions.

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