

CHAPTER I

INTRODUCTION

1.1 Background

As time passes by, technology evolved alongside humanity. With each invention and breakthrough, technology surpasses expectations and establishes a new playing field for us to explore. As humans we must adapt to the current situation and take full advantages on the situation. One invention that changes the ballgame of transaction in the financial market was founded by Satoshi Nakamoto in 2009, a new virtual currency called cryptocurrency. We can consider cryptocurrency as a form of digital medium exchange, based on principles of cryptography allowing performance of secure, decentralized and distributed economic transactions¹. Essentially, it is a virtual currency that can be transferred back and forth without any middle intermediary between users using peer-to-peer (P2P) blockchain technology, they operate without the conventional banking structure and involved no banks, credit card or other third parties².

The technology that is owed for cryptocurrency's large appeal to the public was born through the blockchain technology. Blockchain is the technology that separates cryptocurrency to the other existing digital

¹ A. Greenberg, "Crypto currency". 2011. [online]. Forbes: <http://www.forbes.com/forbes/2011/0509/technology-psiloycbin-bitcoins-gavin-andresen-Crypto-currency.html>, accessed 12 October 2021

² Vigna, P. & Chasey, M. J. "*Cryptocurrency How bitcoin and digital money are challenging the global economic order*", (London, The Bodley Head., 2015)

currency. It works as a database similar to the function of third party in a traditional transaction setting like banks, government or other financial companies.³ In common transaction, an intermediary is needed to provide trust, security and facilitate the given transaction, as mentioned above – (and it is usually in the form of financial institution). With the existence of the given technology, it completely removed the need for the financial institution’s intermediary and allows the crypto users to transact directly with each other.⁴ Essentially, the function is to store records of value and transactions of the cryptocurrency transaction. It is also important to highlight that cryptocurrency is a blockchain-based system but blockchain is not a cryptocurrency-based system – it actually has a wide range of uses to transfer other arrays of valuable currency.⁵ Hence, the existence of cryptocurrency has opened a new realm in the financial world.

The number of cryptocurrency growth in the global financial market has been enormous, 2012 and 2021 the price of one of the cryptocurrency coins “Bitcoin” has increased over 540,000%.⁶ The highest all-time high capping was \$64,800 (sixty four thousands and eight hundreds US Dollars) in April, 2021.⁷ In 2021, it is estimated that cryptocurrency ownership rates

³ Gates, Mark, “*Blockchain: Ultimate Guide to Understanding Blockchain, Bitcoin, Cryptocurrencies, Smart Contracts and the Future of Money*”, Wise Fox Publishing and Mark Gates 2017, pg 10

⁴ *Ibid*

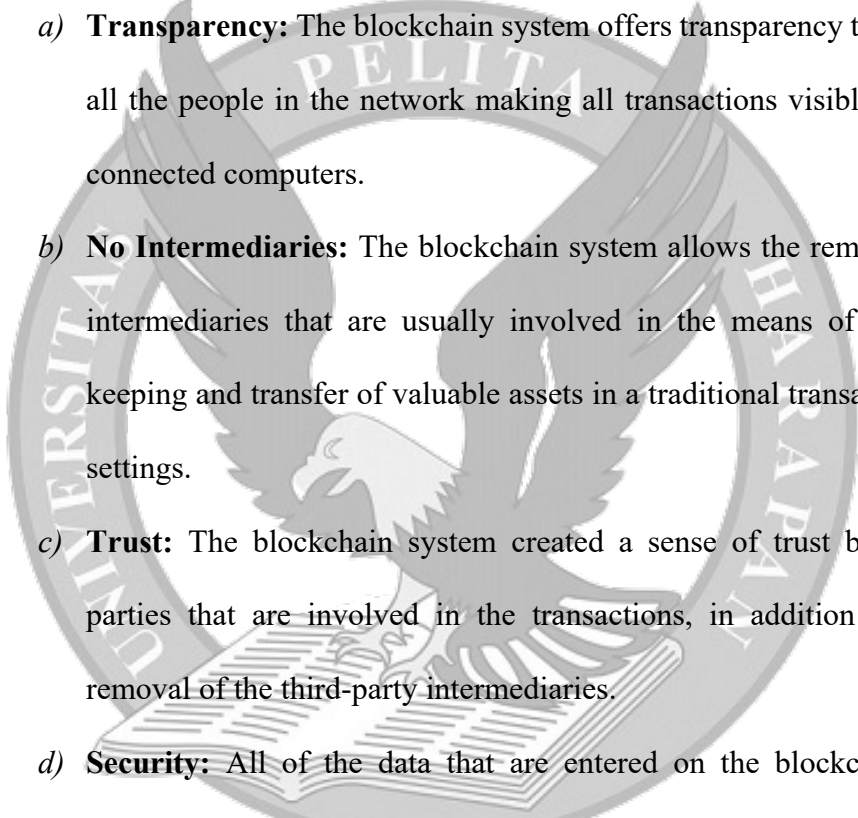
⁵ Gates, Mark, “*Blockchain: Ultimate Guide to Understanding Blockchain, Bitcoin, Cryptocurrencies, Smart Contracts and the Future of Money*”, Wise Fox Publishing and Mark Gates 2017, pg 9

⁶ Coin Dance, “*Bitcoin Statistics*” <https://coin.dance/stats>, accessed 21 October 2021

⁷ John Edwards, Investipedia “*Bitcoin’s Price History*”, <https://www.investopedia.com/articles/forex/121815/bitcoins-price-history.asp>

at an average 3.9% with over 300 million crypto users worldwide.⁸ With India, USA and Nigeria as the top three countries of cryptocurrency users.

The high demand of cryptocurrency users across the globe can be linked back towards the benefits of the blockchain technology as briefly discussed previously, the benefits are arraying from⁹;

- 
- a) **Transparency:** The blockchain system offers transparency towards all the people in the network making all transactions visible to all connected computers.
 - b) **No Intermediaries:** The blockchain system allows the removal of intermediaries that are usually involved in the means of record keeping and transfer of valuable assets in a traditional transactional settings.
 - c) **Trust:** The blockchain system created a sense of trust between parties that are involved in the transactions, in addition to the removal of the third-party intermediaries.
 - d) **Security:** All of the data that are entered on the blockchain is immutable, it helps prevents the criminal act of frauds or any manipulation transaction and the history behind every transaction. All of the transactions that happened on the blockchain leaves a clear trail to the very start of the blockchain, and it essentially allowed any transactions to be easily traced.

⁸ <https://triple-a.io/Crypto-ownership/>, accessed 21 October 2021

⁹ Gates, Mark, “*Blockchain: Ultimate Guide to Understanding Blockchain, Bitcoin, Cryptocurrencies, Smart Contracts and the Future of Money*”, (Wise Fox Publishing and Mark Gates 2017), pg 38

- e) **Accessible Technology;** The blockchain technology creates a sense of easiness for future developer to create applications without any significant investment in the technology world. Creating a room for more creation in the future.
- f) **Cost Reduction;** When the blockchain technology removed the third-party intermediaries that are used in the traditional transactional settings, it automatically reduced the cost of validating and contracts that usually happens across multiple financial institutions.
- g) **Transactions Speed;** The blockchain technology helps reduce the time of transactions speed by removing a third party intermediaries compared to the traditional setting of financial transactions.

Hence, the benefits of blockchain technology above creates a strong appeal towards worldwide population in using the cryptocurrency technology as the means of finance and further transactions towards valuable assets.

10 years after the release of cryptocurrency to the public, Indonesia has finally joined the global trends in setting their national legal policy in accommodating the cryptocurrency ecosystem. On February 8th, 2019; the Indonesian Future Trading Regulatory Agency (“BAPPEBTI”) under the Indonesian Ministry of Trade issued BAPPEBTI Regulation No. 5 of 2019 concerning Technical Text for the implementation of the “Physical Market for Crypto Asset in the Futures Exchange”. Prior to the enactment of the

given BAPPEBTI's regulation, whilst Bank Indonesia has already established a prior definition of "Cryptocurrency" as a virtual currency and specifically distinct it as a "digital money issued by a party other than the monetary authority obtained by way of mining, purchase or transfer of reward and includes Bitcoin, Blackcoin, Dash Dogecoin, Litecoin, Nxt, Peercoin, Primecoin, Ripple, and Ven"¹⁰

Despite the effort of establishing a national policy concerning cryptocurrency, there is still a lack of a clear essence in the policy concerning how to specifically regulate the given market and to legally provide protection of all the various parties that are involved. To further understand the issue, first we must take a step back and look at the way Indonesia's format their policies that seems to illustrate their doubt whether the cryptocurrencies' role can contribute to the national financial stability and economic growth in the long run.

Before the release of BAPPEBTI's regulation in 2019, Indonesia has first address cryptocurrency in BI Regulation No. 19/12/PBI/2017 that prohibited fintech firms in Indonesia from processing any payment transactions that use digital currency. Following this ban, a prominent Indonesian crypto platform; *Toko Bitcoin* and *Bitbayar* have closed in October 2017¹¹. With the enactment of this regulation, other surviving virtual currency exchange was in a high awareness to look out for other

¹⁰ Official Elucidation of each Article 34 Item. (a) of BI Reg. 18/69/PBi/2016 and Article 8 of BI Reg. 19/12/PBI/2017)

¹¹ Bitcoin Talk, "Bitcoin Forum", <https://bitcointalk.org/index.php?topic=2321386.40> accessed 21 October 2021

Government's regulation that might abolish their given industry in Indonesia¹².

Moving forward to January 2018, the market price of Bitcoin; one of the biggest digital currencies has reached its highest peak – at approximately 20,000 U.S dollars per coin.¹³ Even though cryptocurrency has not yet been regulated and some of the aspect has been banned in Indonesia, the demand of users in the country has spiked and alerted the Government to take further precaution. Due to the spike, Bank Indonesia, the Indonesian Ministry of Finance, and the Indonesian Financial Transaction Reports and Analysis Center (*Pusat Pelaporan dan Analisis Transaksi Keuangan* or *PPATK*) circulated a press lease to alert the public against the usage and investment of virtual currency.¹⁴ Simultaneously, Bank Indonesia and the Financial Supervisory Services Authority (*Otoritas Jasa Keuangan* or *OJK*) has also pressed the public to refrain from owning, acquiring or trading any crypto assets.¹⁵ During this interval, the Indonesian government has lack in their exploration in judiciary, academic explications or any theoretical developments concerning cryptocurrency to further accommodate the public needs.

¹² Sri Rahayu and Indriana Pramestri, Fintech 2018 Indonesia (22 May 2018) “*International Comparative Legal Guides*” (<https://iclg.com/practice-areas/fintech-laws-and-regulations/indonesia>)

¹³ Statista, “*Bitcoin BTC/USD Price History Up Until December 14, 2021*” <https://www.statista.com/statistics/326707/bitcoin-price-index/#:~:text=The%20first%20price%20hike%20occurred,U.S.%20dollars%20in%20late%202017>. Accessed 21 December 2021

¹⁴ Communication Department of Bank Indonesia, “*Bank Indonesia Warns All Parties Not to Sell, Buy, or Trade Virtual Currency*” (13 January 2018: Indonesian Ministry of Finance, Warming Against the Use of Virtual Currency in Indonesia, 22 January 2018)

¹⁵ Adinda Normala, “*OJK Warns of New Cryptocurrency-Based Investment*” Jakarta Globe, 2018

Despite strong warnings from the Government and the lack of regulation and safety, the number of cryptocurrency users in Indonesia still spiked off the chart having grown more than 2,263% since 2015 and is currently estimated to 6,5 million traders in 2021¹⁶. With this reality in hand, the Indonesia's Government must accommodate the public needs to regulates this newly invention. Hence, BAPPEBTI (*Badan Pengawas Perdagangan Berjangka Komoditi*) or Commodity Futures Trading Regulatory Agency is an institution established in 2015, enacted BAPPEBTI's Regulation No. 5 of 2019 concerning "Technical Provisions for the Implementation of the Physical Market for Crypto Asset in the Futures Exchange" in Indonesia.

Following the release of the BAPPEBTI's Regulation, that became the umbrella law for cryptocurrency market in Indonesia, it is followed by another addition of crypto regulation, the BAPPEBTI's Regulation No. 7 of 2020 concerning "Establishment of List of crypto assets that can be Traded in the Crypto Asset Physical Market". Which contains an official list of approved crypto assets and clarification of specific guidelines and criterion required for types of cryptocurrencies - if they were wanted to be approved by BAPPEBTI to be traded in Indonesia.

Hence, in Indonesia - cryptocurrency is put and regulated in the same category as a commodity that can be traded in the crypto assets

¹⁶ Asosiasi Blockchain Indonesia, Indodax, Indonesia Crypto Network, "Indonesia Crypto Outlook Report" <https://asosiasiblockchain.co.id/wp-content/uploads/2020/09/Indonesia-Crypto-Outlook-2020-Report.pdf>, accessed 22 October 2021

physical market based on the Trade Ministry Regulation No. 99 of 2018 concerning “*Kebijakan Umum Penyelenggaraan Perdagangan Berjangka Aset Kripto*”. Even though it is legal to be traded, any kind of crypto assets or cryptocurrency is strictly prohibited by the Indonesian Government to become an instrument of payment. As Indonesian Rupiah is the only recognize currencies in Indonesia, for the society to use.

Despite the high demand of cryptocurrency users in Indonesia. Indonesia is still lacking on clear Regulations that guarantees the safety and development of cryptocurrency realm in the country, especially the enforcement of it. Taking into example, in 2018 the Central Bank of Indonesia (Bank Indonesia) conduct an investigation due to the increase of cryptocurrency transactions as a payment tool that being carried out in Bali, even though it is clear that cryptocurrency is not legalized to be used as a payment tool in Indonesia.¹⁷ Moreover, in 2021 three suspects in a corruption case are hiding their proceeds of their crimes through cryptocurrency transaction of bitcoin.¹⁸ cryptocurrency essentially becomes a vessel for money laundering.

We can see that the enforcement of the regulations and laws concerning cryptocurrency, specifically on the aspect of cryptocurrency trading has been not yet been optimal. Despite that, the number of users of

¹⁷ Jeko I.R, Liputan 6 Website, “*Transaksi Bitcoin Marak di Bali, BI Lakukan Investigasi*” <https://www.liputan6.com/teknoread/3231909/transaksi-bitcoin-marak-di-bali-bi-lakukan-investigasi>, accessed 24 October 2021

¹⁸ Nicholas Ryan Aditya, Kompas Website, “*Tersangka Kasus Asabri Cuci Uang Lewat Bitcoin, PPAK: Modus Baru TPPU*” <https://nasional.kompas.com/read/2021/04/22/10341781/tersangka-kasus-asabri-cuci-uang-lewat-bitcoin-ppak-modus-baru-tppu?page=all>, accessed 24 October 2021

cryptocurrency still grew topping of the chart. According to the data from the Commodity Futures Trading Regulatory Agency (BAPPEBTI), the number of crypto assets investors in Indonesia has reached 9.500.000 (nine million and five hundred thousand) users as of October 2021.¹⁹ Whilst the transaction of crypto assets investment in Indonesia increases 5 times than regular, it has reached Rp 478.500.000.000.000 as of July 2021 with the average transaction valued up to Rp 1.700.000.000.000 (one point seven trillions) per day.²⁰

Taking into comparison towards Canada. Canada, which located in North America is home to 38 million (thirty-eight million) people in 2020 and have been growing ever since.²¹ It is estimated in 2020, 1,2 million people in Canada or 3.2% of Canada's total population, currently own and uses cryptocurrency and the number is still growing ever since.²² Despite a significant lower number of cryptocurrencies users compared to Indonesia, Canada has been an active country and hub in developing the cryptocurrency technology through their regulations and laws.

When cryptocurrency firstly enter Canada, the Canadian Government also has it doubts. Whilst the number of cryptocurrency users sprung across Canada, without a clear regulation. The Canadian Government actively seeks to accommodate the demand by formulating and

¹⁹ Danielisa Putriadita, Investasi Kontan Website, <https://investasi.kontan.co.id/news/perkembangan-pasar-kripto-indonesia-menarik-exchange-global-masuk> , accessed 15 December 2021

²⁰ *Ibid*

²¹ United States Census Bureau, https://www.census.gov/glossary/#term_Populationestimates

²² <https://triple-a.io/Crypto-ownership-canada/>, accessed 25 October 2021

enacting new regulation towards cryptocurrency but back then, in the meantime whilst the Canadian Central Bank is looking into dept towards the cryptocurrency realm - anti-money laundering and counter-terrorism laws are applicable. The Canadian Central Bank have also considered the blockchain technology behind cryptocurrency as a genius masterpiece but yet considered the cryptocurrency trading itself be a form of gambling.²³

Throughout the cryptocurrency growth in the world, Canada has been one of the leading countries that accepts the development of crypto technology and translate them into enacted laws and regulations. Canada was the first country in the world that approved an Anti-Money-Laundering related to cryptocurrency services, enacted a clear regulation on cryptocurrency taxation, enacted the first national law applied to digital currencies related to Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

Moreover, the way Canada treats cryptocurrency is fairly similar to Indonesia, Canada also treats cryptocurrencies as commodities – especially in the use of their taxation system. The Canadian Government also ban cryptocurrency as a payment system or legal tender under the Bank of Canada Act.²⁴ Identical to Indonesia the only legalized legal tender that can

²³ Ali, B., “11 Bitcoin start-ups from London you need to know in 2017”, *Tech Flier*, 10/08/2017, www.techflier.com/2017/08/10/11-bitcoin-startups-from-london-you-need-to-know-about-in-2017/, 2017, accessed 25 October 2021

²⁴ Sia-Partners, “Canadian Regulation for Cryptocurrency Businesses” <https://www.sia-partners.com/en/news-and-publications/from-our-experts/canadian-securities-regulations-Cryptocurrency-businesses#:~:text=Under%20the%20Bank%20of%20Canada,are%20subject%20to%20securities%20requirements>, accessed 9 September 2021

be used in Canada as a payment system is only banknotes or coins that were issued by the Bank of Canada and the Royal Canadian Mint Act. It essentially means, the Canadian Government does not support cryptocurrencies as a payment system in their given country. We can see that Canada has the most up respect and opted for releasing action to leverage on the opportunities from cryptocurrency whilst also being mindful of the challenges and risk associated with cryptocurrency.²⁵

Since then, a lot of regulations and its enforcement has been enacted in Canada. It shows that Canada has a positive views and attitude towards the blockchain and cryptocurrency technology. They have been in the forefront where the design of regulatory frameworks concerning the given topic has been enacted, whilst still having the same boundaries of cryptocurrency as Indonesia, regulating them as commodities and banning them to be a payment system in each of their given country. As we can see from the table below;

No.	Indonesia	Description	Canada
1.	BAPPEBTI's Regulation No. 5 of 2019 concerning "Ketentuan Teknis Penyelenggaraan Pasar Fisik Aset Kripto di Bursa Berjangka"	Umbrella Law	Provincial & Territorial Securities Regulator

²⁵ Gerstein, I.R., Hervieux-Payette, C. (2015), "Digital currency. You can't flip this coin", *Senate Committee on Banking, Trade and Commerce Paper*, 30/06/2015, <https://sencanada.ca/content/sen/Committee/412/banc/rep/rep12jun15-e.pdf>, accessed 26 October 2021.

2.	BAPPEBTI's Regulation No. 7 of 2020 concerning <i>Establishment of List of Crypto Assets that can be Traded in the Crypto Asset Physical Market</i>	Trading	Joint CSA/IIROC Staff Notice 21-329 Guidance for Crypto-Asset Trading Platforms: Compliance and Regulatory Requirements.
3.	Not Yet Regulated	Anti-Money-Laundering specifically for Cryptocurrency	Financial Transaction and Reports Analysis of Canada (FINTRAC)
4.	Not Yet Regulated	Taxation	Canadian Income Tax Act of 1990 Canadian Revenue Agency (CRA)

Table 1.1 Indonesia and Canada Cryptocurrency trading

Regulation Chart

The table above shows how a comparative study would be beneficial for Indonesia despite the difference on Legal System that both countries possessed. The Author acknowledge that both Indonesia and Canada have a different set of legal system, but nevertheless their stance on cryptocurrency is somewhat similar; regulating cryptocurrencies as a commodity that can be traded whilst banning the use of cryptocurrency as their legal tender. Through the comparison discussed further on Chapter IV, the comparative method will help Indonesia to develop it laws and regulation towards cryptocurrency technology and further access the way

Canada's authorities institution enforced their given laws in protecting their citizen who uses cryptocurrency technology.

In summary, taking into note that there are two main reasons why the author decides to compare the given aspect of law between Indonesia and Canada. Firstly, each jurisdiction regulates cryptocurrency in the same real of commodities-securities whilst still prohibiting them to be used as a legal tender/payment. Secondly, Canada is one of the fastest countries for their legislation to regulate anything related to cryptocurrency trading. In fact, the first country that enacted and applies a *lex specialis* law in the terms of anti-money laundering concerning of cryptocurrency trading was Canada. Hence, with these consideration – the author derives that Canada was a perfect fit to be compared with Indonesia. In the end, it is hope that through this legal comparison, the Indonesian national law can be further developed and enacted for the greater good of the Indonesian people.

Nevertheless, at the juncture of the development, we can see that Indonesia have not accommodated the concerns of global policies in the fundamental lever, but only providing temporal regulations while evading the hard effort to bring out a clear regulation from this particular matter. Even though the doubt on cryptocurrency is understandable, the protection on various parties involved is a different realm of issues and needs an urgent attention from the Government as the policy makers, judiciary, legal practitioners, and academic researchers. Therefore, in this thesis, the Author will focus on the comparison of Regulatory Enforcement of cryptocurrency

as a trading instrument in Indonesia and Canada. Through the comparison, the Author hopes to find a recommendation through its laws and enforcement that could be beneficial and be applied in Indonesia concerning the cryptocurrency technology.

1.2 Formulation of Issues

In regards to the topic of this thesis, the Author will discuss the following formulation of issues:

1. How is Cryptocurrency trading regulated in Indonesia and Canada?
2. How is Cryptocurrency trading regulatory enforcement being implemented in Indonesia and Canada?

1.3 Purposes

The Author's purpose of writing this thesis is to answer the formulation of issues that are stipulated above, namely.

1. To know how Cryptocurrency trading are regulated under the Indonesian legal system.
2. To know how enforcement of the Cryptocurrency trading law is implemented and the impact that it has into the Crypto users in Indonesia in comparison to Canada.

1.4 Benefits

1.4.1 Theoretical Benefits

Theoretically, from this thesis the Author hopes to provide the reader a thorough insights of Cryptocurrency's legal standing in the realm of Indonesian Law that is stipulated on Regulation of the Commodity Futures Trading Regulatory Agency BAPPEBTI's No. 5 of 2019 concerning Technical Provisions for the implementation of the Physical Market for Crypto Asset in the Futures Exchange. From the discrepancies, the Author hopes that this research will point out the lack of keynote in national policy regarding how to specifically regulate the Cryptocurrency market in Indonesia as an investment in comparison to Canada.

1.4.2 Practical Benefits

Practically, the Author hopes that this research can provide an input for the government in further developing and fixing the national policies to create legal certainties regarding the Cryptocurrency market in Indonesia, which would essentially leads to creating a possibility in making Cryptocurrency as a future payment in Indonesia.

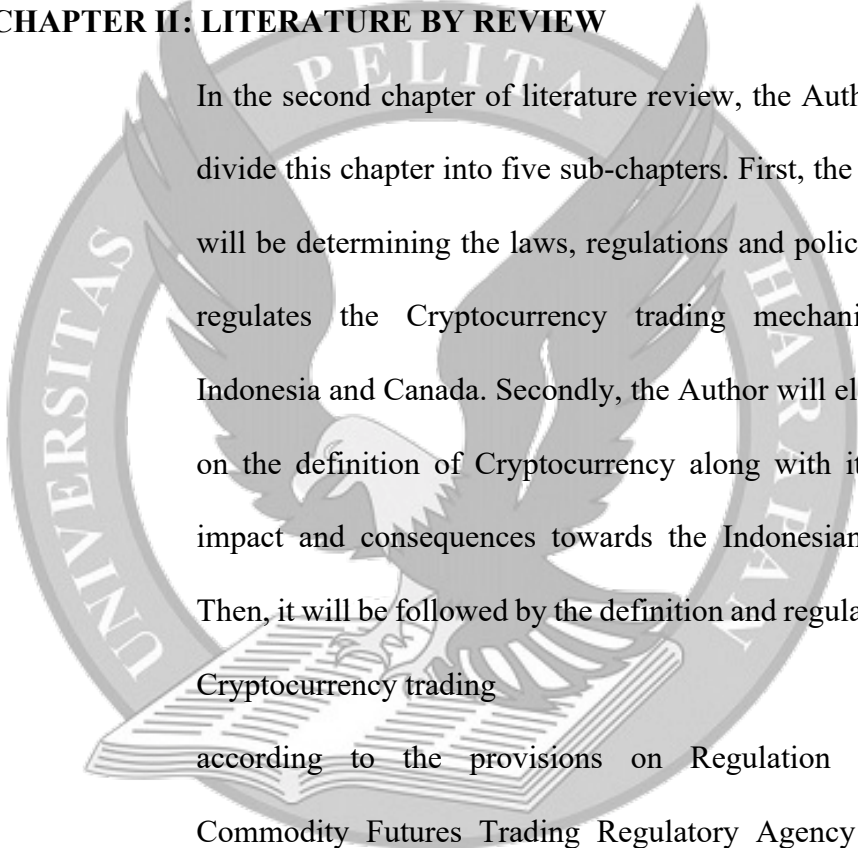
1.5 Systematics of Writing

This thesis is arranged into five main chapters that will ease the readers to understand the discussion of this thesis.

CHAPTER 1 : INTRODUCTION

This chapter is consisting of the introduction, which will be further divided into five main parts, namely, background, formulation of issues, purposes, benefits of the thesis and the systematics of writing.

CHAPTER II: LITERATURE BY REVIEW



In the second chapter of literature review, the Author will divide this chapter into five sub-chapters. First, the Author will be determining the laws, regulations and policies that regulates the Cryptocurrency trading mechanism in Indonesia and Canada. Secondly, the Author will elaborate on the definition of Cryptocurrency along with its legal impact and consequences towards the Indonesian users. Then, it will be followed by the definition and regulation on Cryptocurrency trading

according to the provisions on Regulation of the Commodity Futures Trading Regulatory Agency No. 5 Year 2019 concerning Technical Provisions for the implementation of the Physical Market for Crypto Asset in the Futures Exchange and other correlating law. Fourth, the Author will elaborate on the comparison between Cryptocurrency regulation between Indonesia and Canada

and the enforcement of the laws impacting the subjected law.

CHAPTER III : RESEARCH METHODS

This chapter will discuss in general about the type of research, the type of data, data analysis technique and the type of research approach. Followed by the types of research, data, data analysis technique and research approach that the author use to discuss the issues in this particular Thesis.

CHAPTER IV : DISCUSSION AND ANALYSIS

The fourth chapter will further discuss in regard to the research problem along with its solution. This chapter will be divided into two further sub-chapters and each sub-chapter will answer the respective research question as stipulated in chapter two of this thesis. The first sub-chapter will consist of the analysis on the current regulations of Cryptocurrency trading in Indonesia and Canada and the challenges arises from the legal regulation at hand that have an impact on the user itself.

CHPATER V : CLOSING

In this last chapter, the Author will explain the conclusion to the answer of the given issue stipulated and analyzed throughout chapter four. Not only giving suggestions and recommendations towards the discussed issues of enforcement of the law, the Author will assess the limitation that the Indonesian Law provided in comparison to Canada's regarding the Cryptocurrency.

