

IUS CONSTITUENDUM OF EXPERT ADVISOR IN COMMODITY FUTURES TRADING: A LEGAL CERTAINTY

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Abstract

This study aims to construct further arrangements regarding Expert Advisors in commodity futures trading. The legal issue being studied is the legal vacuum of regulating trading robot software or commonly known as an Expert Advisor in commodity futures trading. The novelty of this research is legal discovery through the legal construction of the development of Expert Advisors in commodity futures trading. The study confirmed that the urgency setting up an Expert Advisor as a futures adviser in commodity futures trading is needed in order to provide legal certainty for commodity futures transaction actors. Legal certainty related to the arrangement of Expert Advisors as futures advisers in commodity futures trading is also needed for CoFTRA as a supporting element of the Ministry of Trade as well as being a supervisor and enforcer of various legal provisions in the practice of commodity futures trading. Therefore, the supervision and enforcement process can be more optimal and guarantee legal certainty, benefits, and fairness for commodity futures trading actors. The Ius constituendum of expert advisor as an adviser in commodity futures trading to ensure legal certainty can be carried out by revising the Law on commodity futures trading, including conducting a judicial review at the Constitutional Court regarding the provisions in the Law on commodity futures trading.

Keywords: *Commodity Futures Trading; Expert Advisor; Legal Certainty*

1. INTRODUCTION

Commodity futures trading or *Perdagangan Berjangka Komoditi* (in Indonesian) is essential in a country, especially concerning business development in the early 21st century.¹ In general, commodity futures trading is interpreted as buying and

¹ David S Bloch, "Non-Fungible Tokens: A Solution to the Challenges of Using Blockchain Bills of Lading in the International Sales of Goods," *Journal of Law, Market & Innovation* 1, no. 1 (2022): 44–65. gaming companies can sell unique in-game products, and athletic leagues have started selling digital cards depicting key moments in sporting events. Like cryptocurrencies, NFTs are applications of blockchain technology. A blockchain is a series of cryptographically linked records. The blockchain itself is public in the sense that every transaction is visible to all participants. But an encrypted block cannot be changed without altering all prior blocks and alerting all other users in the blockchain. Cryptocurrencies and NFTs differ in a critical respect. A unit of cryptocurrency is a fungible token, meaning it is identical to any other unit of cryptocurrency. In the same way that one Euro is equal to any other Euro, one Bitcoin has the same value and same characteristics as any other Bitcoin. An NFT, by contrast, is uniquely identified in the blockchain. So while one NFT may have the same market value as another NFT, no two NFTs are the same. This means NFTs are not useful as currency, but are valuable as incorruptible identifiers. NFTs have other useful attributes. For example, they inherently include ownership information. This means that the NFT itself indicates who owns it when it was created and by whom, who controls it now, and every transaction leading from the original to the current owner at all times. Also, they are extensible. This means that NFTs can be added together or merged in order to create a new NFT in a traceable way. There are, of

selling commodities based on futures contracts. The importance of regulating commodity futures trading is due to the growing trend of business digitization which has made the practice of commodity futures trading unavoidable. In 2021, Indonesia's digital economy will reach 70 billion US dollars.² Until the end of 2022, Indonesia's digital economy will increase to 77 billion US dollars.³ Massive developments related to Indonesia's digital economy, even in 2025, are projected to increase to 140 billion US dollars.⁴ Based on these data, optimism in Indonesia's digital economy development is expected to prosper the Indonesian people. The digital economy in Indonesia is growing increasingly massive with the empowerment of crypto asset trading in Indonesia, which has the potential to generate profits in the projections of the Indonesian economy going forward.⁵

Crypto asset trading is part of commodity futures trading, which has the potential to be optimized in Indonesia. The development of commodity futures trading in Indonesia has also shown a positive increase, especially in supporting a conducive digital economic climate for Indonesia. Based on data from the Commodity Futures Trading Regulatory Agency or *Badan Pengawas Perdagangan Berjangka Komoditi* (hereinafter referred to as Bappebti), commodity futures trading in Indonesia at the end of 2022 has increased by 21 %, with a transaction value in November 2022 reaching 1.60 trillion rupiahs.⁶ The great potential of commodity futures trading, especially related to digital crypto asset trading practices, actually needs optimal regulatory support from the state.⁷ The state's role in providing legal regulations that are conducive and responsive to the development of commodity futures trading is an important thing, even more so with the presence of trading robot software or Expert Advisors in commodity futures trading practices.⁸

course, other digital representations of physical assets. Goods already are stamped with bar or QR codes, expensive products typically have serial numbers or other unique identifiers, and software often is accompanied by one-time-only passwords. But none of these are cryptographically secure in the way NFTs are, and none of them combine proof of authenticity and proof of ownership in a single instrument. The bill of lading is a venerable institution in international trade. Evolving over centuries and well developed by the time of the medieval *lex mercatoria*, the bill of lading is a paper form specifically contemplated and described in the key treaties enabling modern cross-border sales of goods the Vienna Convention, the Hague-Visby Rules, and the U.S. Carriage of Goods by Sea Act. It indicates ownership of goods in transit, evidences the terms ... , "author": [{"dropping-particle": "", "family": "Bloch", "given": "David S", "non-dropping-particle": "", "parse-names": false, "suffix": ""}], "container-title": "Journal of Law, Market & Innovation", "id": "ITEM-1", "issue": "1", "issued": {"date-parts": ["2022"]}, "page": "44-65", "title": "Non-fungible tokens: A solution to the challenges of using blockchain bills of lading in the international sales of goods", "type": "article-journal", "volume": "1", "uris": [{"http://www.mendeley.com/documents/?uuid = 37cb5802-57c4-471c-b733-d46a73fc-267d"}]}, "mendeley": {"formattedCitation": "David S Bloch, "Non-Fungible Tokens: A Solution to the Challenges of Using Blockchain Bills of Lading in the International Sales of Goods," < i > Journal of Law, Market & Innovation < / i > 1, no. 1 (2022

² Kominfo, "Menko Airlangga: Ekonomi Digital Di Indonesia Tertinggi Di Asia Tenggara" (Menko Airlangga: Ekonomi Digital di Indonesia Tertinggi di Asia Tenggara, 2022).

³ Elsa Catriana, "Ekonomi Digital RI Diproyeksi Capai 77 Miliar Dollar AS Di 2022, Ini Pendorongnya" (money.kompas.com, 2022).

⁴ Novy Lumanauw, "John Riady: Visi Presiden Jokowi Soal Ekonomi Digital Sangat Relevan Dan Kontekstual" (investor.id, 2022).

⁵ Ni Made Puspasutari Ujjianti Kadek Dyah Pramitha Widyarani, Ida Ayu Putu Widiati, "Kajian Yuridis Penggunaan Koin Kripto Sebagai Alat Pembayaran Di Indonesia," *Jurnal Preferensi Hukum* | 3, no. 2 (2022): 301.

⁶ Kominfo, "Perkuat Ekonomi Digital, Pemerintah Kembangkan Perdagangan Aset Kripto" (www.kominfo.go.id, 2023).

⁷ Sony Hartono and Riani Budiarsih, "Potensi Kesuksesan Penerapan Pajak Penghasilan Terhadap Transaksi Aset Kripto Di Indonesia," *Jurnal Pajak Dan Keuangan Negara (PKN)* 4, no. 1 (2022): 132-46, <https://doi.org/10.31092/jpkn.v4i1.1740>.

⁸ Lennart Ante, "The Non-Fungible Token (NFT) Market and Its Relationship with Bitcoin and Ethereum," *SSRN Electronic Journal* 1, no. 1 (2021): 216-24, <https://doi.org/10.2139/ssrn.3861106>.

Although in fact, the practice of Expert Advisors in commodity futures trading has been carried out as part of the development of digital technology.

The provisions of the laws and regulations in Indonesia still need to be included in providing regulations related to the development of Expert Advisors in the practice of commodity futures trading. Article 6 of Law no. 10 of 2011 concerning Amendments to Law No. 32 of 1997 concerning Commodity Futures Trading (*Perdagangan Berjangka Komoditi*) (hereinafter referred to as CFT Law) has not provided specific arrangements regarding Expert Advisors. That is understandable because when the CFT Law was formulated, the development of digital economic technology was small, so the arrangements regarding Expert Advisors in 2011 were considered unimportant. However, in 2022, arrangements regarding Expert Advisors will become necessary because it is a demand of the times, especially in developing digital businesses.⁹ The arrangement regarding Expert Advisors in commodity futures trading activities should be constructed as a futures advisor as stipulated in the CFT Law.

The regulatory momentum related to Expert Advisors in commodity futures trading came when the enactment of Law no. 4 of 2023 concerning the Development and Strengthening of the Financial Sector (*Pengembangan dan Penguatan Sektor Keuangan*) (hereinafter referred to as the PPSK Law). One of the substances in the PPSK Law is related to changes to the Commodity Futures Trading Amendment Law. In the PPSK Law, revisions or changes to the Commodity Futures Trading Changes Law are only in Articles 3 and 4. It means the arrangements in Article 6 of the CFT Law should be corrected by regulating Expert Advisor provisions in commodity futures trading have yet to be implemented. Arrangements regarding Expert Advisors in commodity futures trading are essential to ensure legal certainty in commodity futures trading practices. This study aims to construct future arrangements regarding Expert Advisors in the CFT Law.

Research related to commodity futures trading has been carried out by several researchers before, such as (i) DanastriPuspitasari and Faiq Rizqi Aulia Rachim (2021), who focus on the urgency of regulating binary options as a product in commodity futures trading.¹⁰ Furthermore, research conducted by (ii) DwiReny Windy Astuti and Hero Samudra (2022) focuses on analysing legal cases related to commodity futures trading.¹¹ Furthermore, (iii) Sheila NamiaMarchellia's (2022) research discusses standard clauses in commodity futures trading agreements.¹² Of the three previous studies, research focusing on regulatory aspects regarding Expert Advisors in the CFT

⁹ Bappebti, "Atur Regulasi Expert Advisor, Bappebti Berharap Penipuan Robot Trading Tak Terulang" (bappebti.go.id, 2022).

¹⁰ Faiq Rizqi Aulia Rachim Danastri Puspitasari, "Binary Option Sebagai Komoditi Perdagangan Berjangka Di Indonesia," *Lex Generalis* 2, no. 8 (2021): 630.

¹¹ Hero Samudra Dwi Reny Windy Astuti, "Studi Kasus: Masalah Dan Penyelesaian Dalam Perdagangan Berjangka Komoditi," *Synotic Law: Jurnal Ilmu Hukum* 1, no. 2 (2022): 90.

¹² Sheila Namia Marchellia, "Klausula Baku Pada Perjanjian Berjangka Dan Perlindungan Hukum Bagi Investor Perdagangan Berjangka Komoditi," *Cendekia Niaga Journal of Trade Development and Studies* 6, no. 1 (2022): 35.

Law has yet to have specific research, so the authors conducted original research. This study seeks to answer two problem formulations. *First*, What is the urgency of setting up an Expert Advisor as a futures adviser in commodity futures trading? *Second*, How is the iusconstituendum Expert Advisor as a futures adviser in commodity futures trading to ensure legal certainty?.

This research is a juridical-normative law research with a focus on forward regulation regarding Expert Advisors in the CFT Law.¹³ The primary legal materials in this study are: the CFT Law and the PPSK Law. Secondary legal materials are: journal articles both in physical and online form, books, as well as the results of studies on commodity futures trading. Non-legal materials include legal dictionaries.

2. ANALYSIS AND DISCUSSION

2.1. Expert Advisor Rules As Futures Advisors in Commodity Futures Trading: An Urgency

Commodity futures trading is one of the trading activities in which trading activities are based on futures contracts.¹⁴ Regulations regarding commodity futures trading in Indonesia gained momentum in 1997 when commodity futures trading had already begun to be involved in business practices in Indonesia. In the 1998 reform era, regulation and practice of commodity futures trading received more and more attention given that the increasingly massive business development required specific policies and regulations by the state.¹⁵ As well as obtaining various recommendations from various international bodies related to fiscal matters such as Asia-Pacific Economic Cooperation (APEC), World Trade Organization (WTO), and Asean Free Trade Area (AFTA), one of which demanded that the state must regulate the practice of business development, one of which is commodity futures trading.¹⁶ The urgency of the need for regulation by the state regarding business development, especially in the practice of commodity futures trading, is based on three arguments.

First, business development, in this case, the practice of commodity futures trading, is a product of the development of civilization and progress and therefore the law must become frame that protects the parties from potential losses arising from business processes.¹⁷ That is understandable because the law must develop along and in tune with

¹³ Pradeep M.D., "Legal Research- Descriptive Analysis on Doctrinal Methodology," *International Journal of Management, Technology, and Social Sciences*, no. December 2019 (2019): 95–103, <https://doi.org/10.47992/ijmts.2581.6012.0075>.

¹⁴ Dara Puspita, "Perlindungan Hukum Terhadap Nasabah/ Investor Dalam Transaksi Online Di Perusahaan Pialang Berjangka (Studi Di Pt.Best Profit Futures Cabang Medan)," *Jurnal Law of Deli Sumatera* 1, no. 1 (2021): 109.

¹⁵ A'An Efendi and Fradhana Putra Disantara, "Post Conditionally Unconstitutional of Job Creation Law: Quo Vadis Legal Certainty?," *Yuridika* 37, no. 2 (2022): 329–66, <https://doi.org/https://doi.org/10.20473/ydk.v37i2.33364>.

¹⁶ Ramanitya Dewi Putri, "Perlindungan Hukum Penerapan Klausula Eksonerasi Pada Perjanjian Investasi Perdagangan Kontrak Berjangka Bagi Nasabah Di Pt Kontak Perkasa Future Pekanbaru Berdasarkan Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," *AHKAM: Jurnal Syariah Dan Hukum* 2, no. 1 (2021): 32.

¹⁷ Bruno Deffains and Claude Fluet, "Social Norms and Legal Design," *The Journal of Law, Economics, and Organization* 36, no. 1 (August 14, 2019): 139–69, <https://doi.org/10.1093/jleo/ewz016>.

the development of society.¹⁸ In commodity futures trading, the state's role is essential as a regulator and facilitator to expedite the commodity futures trading process following existing capacity and business conditions. In this context, the state's role is limited to facilitating and protecting potential losses from the parties due to a violation of the law.¹⁹ Therefore, in this case, the state plays a role in maintaining the conduciveness of implementing the commodity futures trading process.

Second, regulation by the state regarding the practice of commodity futures trading is necessary to ensure that the practice of commodity futures trading can occur in accordance with developments in business practices. In this case, there are demands by APEC, WTO, and AFTA for Indonesia to regulate commodity futures trading so that the country "does not interfere too much" in the practice of commodity futures trading, which is in the business domain.²⁰ In the context of commodity futures trading, the state is expected to act as a supervisor over any legal violations of commodity futures trading practices. In its business processes and procedures, the state must not "intervene" too much in commodity futures trading practices.²¹ *Third*, the regulation by the state relating to the practice of commodity futures trading is intended so that the state establishes a certain body or institution to oversee the practice of commodity futures trading so that it is in line with the principles and the rule of law.²² In Indonesia, the agency overseeing the practice of commodity futures trading is Bappebti. Bappebti was founded based on the 1997 Commodity Futures Trading Law, whose orientation was to supervise the practice of commodity futures trading.²³

In the aspect of supervision, Bappebti has an important position both directly and indirectly. Referring to these three arguments, it is stated that the need for the role of the state in regulating commodity futures trading is intended as an effort to anticipate and at the same time try to enforce legal processes and procedures if in the practice of commodity futures trading there are various things that are contrary to law. The important role of Bappebti as a manifestation of the state in the practice of commodity futures trading is an effort by the state to guarantee protection and legal certainty for the community in business processes.²⁴ In that position, Bappebti is under and responsible to the Minister of Finance.²⁵ Bappebti's position under the Minister of Finance is affirmed in the provisions of Article 4 paragraph (2) of the Law on Changes in Commodity Futures

¹⁸ I Gede Agus Kurniawan, "The Reconstruction of Subjectum Litis in Term of Reflections on Constitutional Dissolution of Political Parties," *Jurnal Akta* 9, no. 1 (2022): 104–19, <https://doi.org/http://dx.doi.org/10.30659/akta.v9i1.20970>.

¹⁹ Suzanne Cardell Mirande Valbrune, Renee de Assis, *Business Law I Essentials* (Texas: Rice University, 2019).

²⁰ Deli Bunga Saravistha and I Wayan Wisadnya, "Optimalisasi Perlindungan Hukum Investor Indonesia Di Bursa Berjangka Komoditi Melalui Teknologi Blockchain," *Jurnal Raad Kertha* 5, no. 2 (2022): 9.

²¹ Robert C. Bird, "On the Future of Business Law," *Journal of Legal Studies Education* 35, no. 2 (2018): 304.

²² Shabrina Puspasari, "Perlindungan Hukum Bagi Investor Pada Transaksi Aset Kripto Dalam Bursa Berjangka Komoditi," *Jurist-Diction* 3, no. 1 (2020): 303, <https://doi.org/10.20473/jd.v3i1.17638>.

²³ Bappebti, "Perdagangan Aset Kripto Di Indonesia" (bappebti.go.id, 2021).

²⁴ Rusno Haji, "Urgensi Penerapan Kerangka Regulasi Aset Kripto Yang Komprehensif, Adaptif, Dan Akomodatif," *Rusno Haji* 1, no. 1 (2022): 34.

²⁵ Puspasari, "Perlindungan Hukum Bagi Investor Pada Transaksi Aset Kripto Dalam Bursa Berjangka Komoditi."

Trading which confirms that Bappebti is under the coordination of the Minister of Finance. It can be concluded that Bappebti is a supporting system organ of the Minister of Finance, especially in the field of commodity futures trading.

In carrying out its duties, Bappebti directly supervises the futures market, in which, in this task, the existence of Bappebti is parallel to the Futures Clearing House. Another task of Bappebti is the management of futures fund centres. Bappebti carries out this task by emphasizing the aspects of cooperation, coordination, and being a term advisor. This task also requires Bappebti to cooperate with banks and other financial institutions related to funding in commodity futures trading practices. Based on the description above, Bappebti actually has several tasks, such as²⁶:

1. Formulate and establish various rules and regulations regarding the practice of trading commodity futures;
2. Supervise and monitor the activities of various exchanges and futures clearinghouses;
3. Granting and issuing business licenses in commodity futures trading practices;
4. Conducting inspections on parties who have obtained business licenses in commodity futures trading practices so that no violations of the law are committed;
5. Provide for the ratification of futures contracts and exchanges in relation to commodity futures trading practices;
6. Cracking down on any party that violates legal provisions in commodity futures trading practices;
7. Require the violating party not to carry out promotions that provoke incomprehension in society; and
8. Formulate solutions to any problems encountered in commodity futures trading practices.

Based on these tasks, in general between Bappebti and Financial Services Authority or *Otoritas Jasa Keuangan* (OJK) having the same tasks in principle, of course, apart from being both state institutions under the coordination of the Ministry of Finance.²⁷ Even so, there are several differences in duties between Bappebti and OJK, namely Bappebti is oriented towards supervision and formulation of rules in trading activities, especially commodity futures trading. At the same time, OJK focuses on regulating, supervising, and enforcing rules related to banking, capital markets, and financial institutions, both banks and not banks.²⁸ In this context, the regulation from Bappebti is important considering the development of commodity futures trading practices relevant to business and technology developments. Technological developments, particularly concerning digitisation, correlate with commodity futures trading practices. The development of

²⁶ Bappebti, "Peraturan Menteri Perdagangan Ri Nomor 01/m-Dag/per/3/2005" (bappebti.go.id, n.d.).

²⁷ Kornelius Benuf, Siti Mahmudah, and Ery Agus Priyono, "Perlindungan Hukum Terhadap Keamanan Data Konsumen Financial Technology Di Indonesia," *Refleksi Hukum: Jurnal Ilmu Hukum* 3, no. 2 (2019): 145–60, <https://doi.org/10.24246/jrh.2019.v3.i2.p145-160>.

²⁸ Ante, "The Non-Fungible Token (NFT) Market and Its Relationship with Bitcoin and Ethereum."

technology and digitization oriented towards the era of society 5.0 also emphasizes the Internet of Things (IoT) and the ability of artificial intelligence in commodity futures trading practices.²⁹

One of the implementations of the Internet of Things (IoT) and artificial intelligence in commodity futures trading practices is the presence of a trading robot software that functions as an Expert Advisor or expert Advisor in commodity futures trading practices.³⁰ The presence of an Expert Advisor in the practice of commodity futures trading creates legal problems. *First*, as part of technological developments, the presence of an Expert Advisor in the practice of commodity futures trading encounters problems because it has not been regulated further in various laws and regulations in Indonesia.³¹ The absence of regulated Expert Advisors in commodity futures trading practices, aside from not guaranteeing legal certainty aspects, also has the potential to not provide optimal legal protection for Expert Advisor users. *Second*, the absence of regulated Expert Advisors in this matter also complicates the role of Bappebti as a supervisor and in formulating rules relating to commodity futures trading practices. With no Expert Advisor yet regulated, Bappebti can categorize the Expert Advisor as a form of illegal activity because it has not received comprehensive regulation in the CFT Law. *Third*, the unregulated provisions for Expert Advisors also can harm the parties carrying out activities in commodity futures trading because the role of Expert Advisors is important in commodity futures transactions. In addition, arrangements regarding Expert Advisors can also provide protection and guarantee legal certainty for commodity futures transaction actors.

Based on the three arguments related to the unregulated Expert Advisor in laws and regulations related to the practice of commodity futures trading, the urgency of setting up an Expert Advisor as a futures adviser in commodity futures trading is needed. So, that it can provide legal certainty for commodity futures transaction actors. Legal certainty for perpetrators of commodity futures transactions is needed to guarantee a smoother transaction climate because it has been confirmed in laws and regulations. Legal certainty regarding the arrangement of Expert Advisors as futures advisers in commodity futures trading is also needed for Bappebti as supervisors and enforcers of various legal provisions in commodity futures trading practice. So, that the supervision and enforcement process can be more optimal and can guarantee legal certainty, benefits and justice for perpetrators of commodity futures trading.

2.2. Ius Constituendum Expert Advisor As Futures Advisor in Commodity Futures Trading to Guarantee Legal Certainty

²⁹ Anita Asnawi, "Kesiapan Indonesia Membangun Ekonomi Digital Di Era Revolusi Industri 4.0," *Jurnal Ilmiah Indonesia* 7, no. 1 (2022).

³⁰ Reza Dea Yogaswara, "Artificial Intelligence Sebagai Penggerak Industri 4.0 Dan Tantangannya Bagi Sektor Pemerintah Dan Swasta," *Masyarakat Telematika Dan Informasi* 10, no. 1 (2019): 67–72.

³¹ Fajar Widhiyanto, "Bappebti Keluarkan Izin Profesi 'Expert Advisor' Untuk Rekomendasi Berbasis TI" (investor.id, 2022).

The development of commodity futures trading, one of which involves Expert Advisors in the form of software, is an effort to be professional and attentive in carrying out commodity futures trading. In general, commodity futures trading has two benefits. *First*, risk management, which is oriented towards risk management based on hedging activities.³² *Second*, as a means of price formation or price discovery due to fluctuations in primary commodities due to certain factors beyond human control, such as sudden changes in seasons to natural disasters. Due to minimizing fluctuations, commodity futures trading seeks to protect trading transactions with futures contract instruments whose orientation is to lock in prices before price factors cause price fluctuations more; the benefits derived from commodity futures trading are the formation of transparent and accountable prices so that they can comprehensively describe the supply and demand. The various benefits above regarding commodity futures trading, the most important of which is that prices in commodity futures trading exchanges often also become reference prices or reference prices in physical transactions or transactions in general.

That means there are implications between the prices determined in commodity futures trading practices and conventional or physical trading practices. Because of the importance of understanding and controlling prices regarding commodity futures trading, the role of an Expert Advisor in software is very important, one of which is as an adviser for every transaction that will or is being carried out in commodity futures trading practices. In practice, the role of Expert Advisor in the form of software in commodity futures trading practices is important, at least based on three important aspects of the role of Expert Advisors in the form of software in futures trading practices. *First*, Expert Advisors in the form of software in futures trading practices as data analysis whose output is in the form of advice or certain considerations in the practice of commodity futures trading.³³ This is because using the Internet of Things (IoT) and artificial intelligence makes Expert Advisors in software more accurate in helping humans in every transaction of commodity futures trading practices.³⁴

Second, the importance of role of Expert Advisors in commodity futures trading practice transactions is also not only providing data analysis and considerations related to advise or certain steps that must be taken but also providing various features. That can provide information and educational facilities for commodity futures trading practitioners to can think carefully and determine the various steps to be taken in commodity futures trading practices. *Third*, the importance of Expert Advisors in commodity futures

³² Fransiskus Litoama, "Kepastian Hukum Investasi Perdagangan Berjangka Komoditi Berdasarkan Undang-Undang Nomor 10 Tahun 2011 Tentang Perdagangan Berjangka Komoditi," *Dinamika Masalah Hukum Dan Keadilan* 9, no. 1 (2018): 57.

³³ Febrian Duta Pratama and Dewi Rahmawati Gustini, "Perkembangan Aset Kripto Sebagai Subjek Kontrak Berjangka Baru Di Bursa Berjangka Dalam Rangka Menyongsong Indonesia Emas," *Nusantara* 1, no. 1 (2022): 7.

³⁴ Nori Katagiri, "Why International Law and Norms Do Little in Preventing Non-State Cyber Attacks," *Journal of Cybersecurity* 7, no. 1 (February 16, 2021): 1–9, <https://doi.org/10.1093/cybsec/tyab009>.

trading practice transactions also requires regulation either through regulation by Bappebti or by laws and regulations. This regulation is necessary because supervision and enforcement related to the rule of law in commodity futures trading practices are needed as an effort to protect the perpetrators of the transaction. Judging from the three aspects of the importance of Expert Advisors in the practice of commodity futures trading transactions above, the state as a social institution that is oriented towards the realization of legal certainty and order in the practice of commodity futures trading should provide arrangements and a legal basis related to Expert Advisors in the form of software.

Even though Bappebti has provided arrangements for Expert Advisors in the form of software in the practice of commodity futures trading, in the author's opinion, this is not enough because it is based on the several argument. *First*, Bappebti regulations in the context of legal science are technical regulations issued by authorized institutions in formulate rules and oversee the practice of commodity futures trading.³⁵ That means regulations issued by Bappebti must comply with the provisions of the statutory regulations above it, namely the Law. Referring to the Law that regulates the practice of commodity futures trading, then there is Article 6 of the CFT Law, which provides space for arrangements regarding futures advisors, but Expert Advisors in the form of software in commodity futures trading practices have not been specifically regulated in the Act. *Second*, the absence of regulated Expert Advisors in the form of software in the Law can cause disharmony in formulating rules and policies related to commodity futures trading conducted by Bappebti.³⁶ That is understandable because Bappebti harmonizes and synchronizes with existing laws and regulations in advance in formulating rules and policies relating to commodity futures trading. That means the importance of setting up Expert Advisors in the form of software to be regulated as in Article 6 of the CFT Law is important to ensure aspects of legal certainty.

The aspect of legal certainty in the practice of commodity futures trading also requires special attention due to the view of Hans Kelsen that legal certainty in legal practice is oriented towards three aspects;³⁷ namely: legal certainty as a means of preventing inconsistencies in the application of a statutory regulation, legal certainty preventing the incoherence of positive legal rules so that every positive legal rule can be implemented effectively, and legal certainty prevents the arbitrary application of law from authorized officials.³⁸ Of the three functions of legal certainty as emphasized by Hans Kelsen above,

³⁵ Bayu Dwi Anggono, *Pokok-Pokok Pemikiran Penataan Peraturan Perundang-Undangan Di Indonesia*, 1st ed. (Jakarta: Konstitusi Press, 2020).

³⁶ M Jeffri Arlinandes Chandra, Febrian Febrian, and Bayu Dwi Anggono, "The Urgency of Reharmonization in Construction of The Stage Formation of Law," *Jurnal Penelitian Hukum De Jure* 22, no. 3 (2022): 311, <https://doi.org/10.30641/dejure.2022.v22.311-324>.

³⁷ I Gede Agus Kurniawan, "Putusan Mahkamah Konstitusi Terhadap Undang-Undang Cipta Kerja Dalam Perspektif Filsafat Utilitarianisme," *JURNAL USM LAW REVIEW* 5, no. 1 (2022): 282–98, <https://doi.org/http://dx.doi.org/10.26623/julr.v5i1.4941>.

³⁸ Hans Kelsen, "On the Basic Norm," *California Law Review*, 1959, <https://doi.org/10.2307/3478775>.

Lon Fuller also provides criteria and classification regarding positive law that guarantees legal certainty, which includes³⁹:

1. Consistency and coherence between the rules of law, this means that if there is an inconsistent and incoherent rule of law it does not guarantee the aspect of legal certainty;
2. One of the important aspects of legal certainty is the existence of publicity in society. This means that any generally binding rule of law must be public;
3. The rule of law has an anticipatory and prospective character so that it must accommodate the development of law that develops in society;
4. The rule of law that has been formulated must be firm, clear, and understandable to society;
5. The importance of harmonization and synchronization between applicable legal rules;
6. The need for relevant substantive arrangements in the huukum rules;
7. Changes in the rule of law are allowed, but not with any changes with each time. In this case, changes in the rule of law are required to be carried out with careful planning;
8. Implementing and enforcing the law must be consistent with practice in the community.

Referring to the views of Hans Kelsen and Lon Fuller above, to guarantee legal certainty for Expert Advisors in the form of software related to commodity futures trading practices, it is necessary to have future arrangements related to commodity futures trading practices to facilitate Expert Advisors in software form. Future regulation, or in legal terms called *ius constituendum* is an effort to regulate through existing laws and regulations against a fact or legal action that requires guaranteed regulation and protection from positive law. In relation to Expert Advisors in the form of software related to commodity futures trading practices, it is necessary to revise the CFT Law in the future

Article 1 point 18 of the CFT Law provides an authentic interpretation that futures trading advisers are parties who provide advice in the practice of commodity futures trading. Article 1 number 13 of the CFT Law provides a limitation that parties are individuals or legal entities. By systematically interpreting the provisions of Article 1 point 18 and Article 1 point 13 of the CFT Law, the Expert Advisor in the form of software is not a party to the practice of commodity futures trading. Because the Expert Advisor in the form of software in *argumentum a contrario* has no relevance for becoming an individual or legal entity. In that case, the future arrangement in providing legal certainty guarantees for Expert Advisors in software form is to revise Article 1 point 13 and Article 6 of the CFT Law, which substantively confirms that parties include Expert

³⁹ Najmadeen Ahmed Muhamad, "The Legal Philosophy of Lon L. Fuller: Profile," *The Social Contract Journal SCJ* 1, no. 1 (2020): 2.

Advisors in software form as part of technological development. Therefore, a revision is needed to the provisions in the CFT Law. In addition, future arrangements regarding Expert Advisors in the form of software as part of technological development. Because waiting for the process of revising the Law also requires a long time, efforts to judicial review at the Constitutional Court are needed by asserting that the Constitutional Court strives to provide constitutional interpretations conditional on the Expert Advisor in the form of software which is a party.

So, the Expert Advisor in the form of software in futures trading practices can qualify as a futures trading advisor. *Ius constituendum* Expert Advisor as a futures adviser in commodity futures trading to guarantee legal certainty can be done by revising Article 1 number 18, Article 6, and Article 1 number 13 of the CFT Law. That confirms that Expert Advisors are in the form of software, which is a party so that the Expert Advisors in the form of software in futures trading practices can be qualified as futures trading advisors. In addition, because waiting for the process of revising the Law, which is certainly not a moment, to ensure legal certainty, it is necessary to carry out a judicial review at the Constitutional Court. Advisors in the form of software in futures trading practices can be qualified as futures trading advisors.

3. CONCLUSION

The urgency of setting up an Expert Advisor as a futures adviser in commodity futures trading is needed to provide legal certainty for commodity futures transaction actors. Legal certainty for perpetrators of commodity futures transactions is needed to guarantee a smoother transaction climate because it has been confirmed in laws and regulations. Legal certainty regarding the arrangement of Expert Advisors as futures advisers in commodity futures trading is also needed for Bappebti as supervisors and enforcers of various legal provisions in commodity futures trading practices. So, the supervision and enforcement process can be more optimal and guarantee legal certainty, benefits and justice for perpetrators of commodity futures trading. *Ius constituendum* Expert Advisor as a futures adviser in commodity futures trading to guarantee legal certainty can be done by revising Article 1 number 18, Article 6, and Article 1 number 13 of the CFT Law, which confirms that Expert Advisors are in the form of software which is a party so that the Expert Advisors in the form of software in futures trading practices can be qualified as futures trading advisors. In addition, because waiting for the process of revising the Law, which is certainly not a moment, to ensure legal certainty, it is necessary to carry out a judicial review at the Constitutional Court. Advisors in the form of software in futures trading practices can be qualified as futures trading advisors.

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