

Legal Convergence between Banking Law and Commodity Futures Law in the Practice of Bullion Banking

Diana R.W. Napitupulu ✉
Universitas Kristen Indonesia, Indonesia
✉ diana.napitupulu@uki.ac.id

Entere : December 01, 2025
Accepted : February 20, 2026

Revised : January 11, 2026
Published : February 28, 2026

Abstract

This article examines the legal convergence between banking law and commodity futures law in bullion banking. The financialization of gold has shifted its role from a purely tangible commodity to a dual-function asset that operates as both a tradable commodity and a financial instrument, thereby blurring the regulatory boundaries between prudential banking supervision and commodity futures regulation. Bullion banking includes gold accounts, gold-based financing, custody services, and gold-linked derivatives such as swaps and forwards. These activities resemble traditional banking intermediation when banks accept gold deposits or create claims over gold, while simultaneously mirroring commodity futures trading through derivative contracts. This creates regulatory tension, as banking law prioritizes systemic stability, capital adequacy, and depositor protection, whereas commodity futures law emphasizes market integrity, transparency, and investor protection. Legal convergence is most evident in three areas: unallocated gold accounts functioning like monetary deposits, over-the-counter gold derivatives resembling futures contracts, and custody and clearing mechanisms overlapping with exchange-based infrastructures. In Indonesia's sectoral regulatory system, where banking and commodity futures oversight are institutionally separated, bullion banking may generate jurisdictional ambiguity, inconsistent risk standards, and opportunities for regulatory arbitrage. The unclear legal classification of gold as property, financial instrument, or contractual claim further complicates ownership, insolvency treatment, and priority rights, ultimately affecting legal certainty and systemic resilience.

Keywords: Banking Law, Commodity Futures Law, Bullion Bankinh, Gold as Financial Asset, Gold Derivatives, Prudential Regulation, Market Supervision, Regulatory Overlap

Citation :

Napitupulu. D.R.W (2026) Legal Convergence between Banking Law and Commodity Futures Law in the Practice of Bullion Banking, *Leges Privatae* Vol 2(5) February 2026 pages (12-28)

Corresponding Author:

Email : diana.napitupulu@uki.ac.id

1. Introduction

Gold has historically occupied a unique position in economic and legal systems. Traditionally perceived as a tangible commodity used for trade, ornamentation, and reserve storage, gold has gradually undergone a process of financialization. In contemporary financial markets, gold no longer functions solely as a physical asset subject to delivery^{1,2}. It increasingly operates as a financial instrument embedded in structured products, derivative contracts, and balance sheet management strategies. This transformation has significant legal consequences. When gold becomes the underlying asset of complex financial arrangements, its regulatory treatment can



no longer be confined to conventional commodity law^{3,4}.

The financialization of gold has contributed to the emergence of bullion banking models. Bullion banking refers to banking activities that involve gold-based accounts, custody services, financing, and derivative transactions linked to precious metals. In practice, banks may accept gold deposits, offer allocated and unallocated gold accounts, provide hedging facilities such as gold swaps and forwards, and facilitate liquidity management through gold-backed instruments⁵⁻⁷.

These activities exhibit characteristics of financial intermediation, as banks intermediate between holders of gold and market participants seeking exposure or financing. At the same time, bullion banking incorporates elements typically associated with commodity futures trading, particularly when transactions replicate forward contracts or derivative structures commonly executed within organized exchanges^{8,9}.

This hybrid nature challenges the traditional compartmentalization of financial regulation. Banking law is principally concerned with prudential supervision. It focuses on capital adequacy, liquidity requirements, risk management standards, and depositor protection, with the overarching objective of maintaining systemic stability^{10,11}. Commodity futures law, by contrast, regulates organized trading in derivative contracts, emphasizing transparency, margin systems, clearing mechanisms, and investor protection to preserve market integrity. When bullion banking activities simultaneously resemble deposit-taking and derivative trading, the distinction between these regulatory domains becomes blurred^{12,13}.

In Indonesia, the financial regulatory architecture is structured along sectoral lines. Banking activities fall within a prudential supervisory framework, while commodity futures trading is governed by a separate statutory regime that regulates exchanges, clearing institutions, and brokerage activities^{14,15}. This institutional separation reflects a functional differentiation between credit intermediation and organized market trading. However, the rise of gold-based financial products exposes the limitations of a strictly sectoral approach. When a bank offers gold accounts that function similarly to deposits, or provides gold derivatives that replicate futures contracts, questions arise regarding the appropriate legal classification and supervisory authority^{16,17}.

The coexistence of these regimes creates the potential for regulatory overlap and institutional fragmentation. Without clear criteria to determine whether a particular bullion activity constitutes a banking service or a commodity futures transaction, regulatory uncertainty may emerge. Such ambiguity risks inconsistent standards of risk management, uneven consumer protection, and possible regulatory arbitrage. In a financial system increasingly characterized by product innovation and cross-sector integration, the adequacy of existing legal frameworks must therefore be reassessed^{18,19}.

Against this background, this article addresses three central questions. First, how should bullion banking be characterized under Indonesian banking law and commodity futures law? This inquiry requires an examination of the legal nature of gold-based accounts and derivative transactions, as well as an assessment of whether their economic substance aligns more closely with deposit-taking activities or futures trading mechanisms.

Second, where does legal convergence occur between the two regulatory regimes? The concept of legal convergence refers to the phenomenon whereby distinct legal frameworks increasingly intersect due to evolving market practices. Identifying the points of convergence necessitates a functional analysis of bullion banking operations, including gold deposit structures, over-the-counter derivatives, and custody arrangements, and evaluating how these activities engage both prudential and market-based regulatory principles.

Third, what are the implications of such convergence for legal certainty and financial stability? The existence of overlapping regulatory domains may create interpretative ambiguity, particularly concerning ownership rights, insolvency treatment, capital requirements, and supervisory competence. From a systemic perspective, unclear regulatory boundaries may impair effective risk oversight and weaken coordinated responses to financial distress. This

article therefore explores whether the current Indonesian legal system provides sufficient clarity and resilience in addressing bullion banking practices.

The primary objective of this study is to analyze the legal positioning of bullion banking within the Indonesian regulatory framework and to determine the extent to which convergence between banking law and commodity futures law has occurred. By employing normative juridical research supported by conceptual and comparative approaches, this article seeks to clarify the doctrinal foundations relevant to gold-based financial activities and to evaluate the coherence of the existing sectoral model.

A further objective is to propose a functional analytical framework capable of addressing regulatory overlap. Rather than relying solely on institutional boundaries, such a framework would assess bullion banking activities based on their economic substance and risk profile. This approach aims to contribute to the development of more coherent supervisory coordination and to prevent fragmentation within the financial legal order.

The significance of this study lies in its contribution to contemporary debates on financial regulatory reform. As financial markets evolve and assets such as gold assume hybrid characteristics, legal systems must adapt to ensure both certainty and stability. By examining bullion banking as a case study of legal convergence, this article highlights broader structural challenges within sectoral regulation and underscores the need for an integrated perspective in Indonesian financial law.

2. Method

This study employs normative legal research as its principal methodological framework. Normative legal research is concerned with the systematic examination of legal norms, doctrines, and principles as expressed in legislation, regulatory instruments, and scholarly interpretation. Rather than relying on empirical data collection, this method focuses on analyzing the coherence, hierarchy, and internal consistency of legal rules governing bullion banking within the broader structure of financial regulation. The objective is to assess whether existing legal provisions adequately address the hybrid character of gold-based financial activities.

A statutory approach is adopted to examine the Indonesian financial regulatory framework. This includes a structured analysis of constitutional provisions, banking legislation, commodity futures statutes, and implementing regulations issued by relevant supervisory authorities. Through this approach, the research evaluates the scope of institutional mandates, the definition of regulated activities, and the legal standards applicable to gold-based transactions. Particular attention is given to identifying areas of overlap or ambiguity between prudential banking supervision and commodity futures oversight.

In addition, a conceptual approach is applied to clarify key legal notions such as legal convergence, financial asset transformation, deposit liability, and derivative instruments. By developing precise doctrinal definitions, the research seeks to determine how bullion banking should be classified based on its economic substance rather than its formal designation. Conceptual analysis supports a more coherent interpretation of regulatory boundaries. Finally, a comparative approach is utilized to draw insights from selected jurisdictions where bullion banking practices are more developed. Comparative examination allows for the identification of alternative regulatory models and supervisory coordination mechanisms. These comparative references serve as analytical tools to evaluate the strengths and limitations of the Indonesian framework and to inform proposals for a more integrated regulatory structure.

3. Results and Discussion

Legal Convergence in Financial Regulation

Legal convergence in financial regulation refers to the process by which distinct regulatory regimes increasingly intersect as a result of financial innovation and evolving market structures. It does not necessarily entail formal legislative unification. Rather, convergence occurs when different regulatory systems begin to govern overlapping subject matters because economic practices no longer fit neatly within traditional legal categories. In the financial sector, where product innovation frequently transcends institutional boundaries, convergence is often a structural consequence of market development.

Convergence must be distinguished from harmonization. Harmonization typically involves deliberate policy alignment aimed at reducing discrepancies between legal regimes, whether domestically or across jurisdictions. It is a conscious legislative or regulatory effort. Convergence, by contrast, may arise organically when economic functions blur regulatory classifications. For instance, a financial product that resembles both a banking deposit and a derivative contract may simultaneously implicate prudential supervision and market conduct oversight. The overlap is functional rather than formally coordinated ²⁰.

Such overlap can generate regulatory fragmentation. Fragmentation arises when separate supervisory authorities exercise partial jurisdiction over a single economic activity without a coherent integrative framework. This condition may result in inconsistent compliance standards, duplicative reporting obligations, or gaps in supervision. In the context of bullion banking, fragmentation becomes particularly salient because gold-based financial products may fall within both banking regulation and commodity market oversight. The absence of clear functional demarcation increases the risk of regulatory uncertainty and institutional tension.

Legal Nature of Gold

The legal nature of gold forms the conceptual foundation for understanding regulatory convergence. Historically, gold has been classified as a commodity. As a tangible movable object, it is subject to property law, commercial sale regulations, and trade standards. Under a commodity classification, legal issues typically concern transfer of title, physical delivery, quality assurance, and contractual performance. In this paradigm, gold is treated as a tradable good within market exchange.

However, contemporary financial markets have transformed gold into a hybrid asset. Through mechanisms such as book-entry gold accounts, structured products, and derivative instruments, gold increasingly functions as a financial asset rather than solely as a physical good. In many transactions, the holder of a gold account does not possess specific physical bullion but instead maintains a contractual claim denominated in gold units. This shift from proprietary possession to financial entitlement alters the legal analysis.

The transformation of gold into a financial asset introduces credit risk, counterparty exposure, and systemic considerations. When gold holdings are expressed as liabilities on a bank's balance sheet, they resemble deposit obligations. Conversely, when gold is used as an underlying asset for derivative contracts, its role aligns with financial market instruments. The coexistence of these characteristics complicates regulatory classification. The central conceptual issue is whether gold-based arrangements should be governed primarily by property and trade principles or by financial regulatory norms oriented toward systemic risk and investor protection ²¹.

Bullion Banking Structure

Bullion banking represents the institutional manifestation of gold's hybrid legal character. It encompasses banking activities that incorporate gold into intermediation, financing, and risk management operations. Structurally, bullion banking may be analyzed through three principal components: gold deposit accounts, the distinction between allocated and unallocated gold, and derivative transactions.

Gold deposit accounts permit customers to place gold with a banking institution, either

physically or through book-entry mechanisms. These accounts may function analogously to monetary deposits, except that the liability is denominated in units of gold rather than currency. When a bank accepts gold and records a corresponding obligation to return equivalent gold, it engages in a form of asset-based intermediation. The legal characterization of such accounts depends on whether the customer retains ownership of specific bullion or merely holds a general claim against the bank.

The distinction between allocated and unallocated gold is therefore critical. Allocated gold accounts grant the customer proprietary rights over specifically identified bullion held in custody. The bank acts as a custodian, and the customer bears minimal credit exposure. In contrast, unallocated accounts provide only a contractual entitlement to a quantity of gold, without segregation of physical assets. The bank may pool and utilize the gold for liquidity or trading purposes. Unallocated accounts thus resemble unsecured deposit liabilities and engage prudential regulatory concerns, including capital adequacy and liquidity management.

Gold derivatives and swaps further complicate the structure. Banks may offer gold forwards, options, and swaps to facilitate hedging or speculative strategies. These instruments often mirror commodity futures contracts, yet they are frequently executed over-the-counter rather than through organized exchanges. Such transactions integrate elements of banking services and commodity trading. As a result, bullion banking embodies the convergence of deposit-taking, asset management, and derivative trading within a single institutional framework ²².

Regulatory Theories

The theoretical assessment of bullion banking requires engagement with several regulatory paradigms. Prudential regulation theory prioritizes the stability and resilience of financial institutions. Its central concern is the mitigation of systemic risk through capital requirements, liquidity buffers, and comprehensive risk management. When bullion banking activities generate credit exposure or maturity transformation, prudential safeguards become essential to prevent contagion and institutional failure.

Market conduct regulation focuses on fairness, transparency, and the protection of market participants. It addresses disclosure obligations, prevention of manipulation, and orderly trading practices. Where gold derivatives resemble exchange-traded futures or involve retail investors, market conduct principles are engaged. The objective is to ensure informed participation and to maintain integrity in price formation mechanisms.

Institutional competence theory examines the allocation of regulatory authority among supervisory bodies. It emphasizes that regulatory effectiveness depends on aligning institutional expertise with the economic substance of regulated activities. In contexts of convergence, institutional competence may be strained if multiple authorities assert jurisdiction over overlapping domains. A coherent framework requires clear delineation of roles or coordinated oversight mechanisms to prevent regulatory gaps or duplication ²³.

Collectively, these theories illuminate the structural complexity of bullion banking. Legal convergence in this field is not merely a descriptive phenomenon but a doctrinal challenge requiring careful normative analysis. The interplay between commodity classification and financial asset transformation, combined with overlapping regulatory objectives, underscores the necessity of a functional and integrated regulatory approach.

Indonesian Banking Law Framework

Constitutional and Statutory Basis

The Indonesian banking system is grounded in constitutional principles that shape the structure and objectives of financial regulation. Article 33 of the 1945 Constitution of the Republic of Indonesia establishes the foundation of economic democracy and affirms the role of

the state in controlling sectors that are vital to the national economy. This provision reflects the principle that financial institutions, including banks, operate not merely as private commercial entities but as institutions carrying public interest functions. Consequently, banking regulation in Indonesia is designed to balance market efficiency with systemic stability and social welfare considerations.

The primary statutory framework governing conventional banking activities is Law No. 7 of 1992 concerning Banking, as amended by Law No. 10 of 1998. This legislation defines a bank as a business entity that collects funds from the public in the form of deposits and distributes them in the form of credit or other financing mechanisms. The statutory definition emphasizes the intermediation function as the core characteristic of banking business. Fund collection and credit distribution constitute the essential operational pillars that distinguish banking institutions from other financial entities.

The Banking Law also delineates permissible banking activities. In addition to accepting deposits and extending loans, banks may provide payment services, engage in foreign exchange transactions, and conduct other financial services consistent with prudential principles. The statutory language is sufficiently flexible to accommodate financial innovation, provided that such activities remain within the scope of banking intermediation and comply with regulatory safeguards. This flexibility is particularly relevant when assessing whether gold-based accounts or derivative products fall within the legally recognized domain of banking operations²⁴.

For Islamic financial institutions, Law No. 21 of 2008 concerning Sharia Banking provides a parallel regulatory framework. Sharia banks operate on principles derived from Islamic jurisprudence, including the prohibition of interest and the requirement of asset-backed transactions. Gold-based products may be structured within Sharia-compliant contracts, such as murabaha or ijarah arrangements, thereby integrating precious metals into Islamic financial intermediation. The Sharia Banking Law demonstrates that Indonesian banking regulation is adaptable to asset-based financing models, which may include gold as an underlying asset, provided that prudential and Sharia governance standards are satisfied.

Institutional supervision of banking activities is entrusted to the Financial Services Authority under Law No. 21 of 2011. This statute establishes the Financial Services Authority (Otoritas Jasa Keuangan or OJK) as an independent body responsible for regulating and supervising financial services sectors, including banking, capital markets, and non-bank financial institutions. OJK exercises microprudential oversight, ensuring that banks comply with capital adequacy requirements, risk management standards, governance principles, and consumer protection obligations. Its supervisory mandate encompasses licensing, ongoing monitoring, enforcement actions, and regulatory issuance.

Complementing OJK's supervisory role, Law No. 23 of 1999 concerning Bank Indonesia, as amended by Law No. 6 of 2009, designates Bank Indonesia as the central bank with authority over monetary policy and macroprudential stability. Bank Indonesia is responsible for maintaining the stability of the rupiah, regulating payment systems, and implementing macroprudential instruments aimed at safeguarding systemic resilience. While OJK focuses on institutional soundness at the micro level, Bank Indonesia addresses systemic risks that may arise from interconnected financial activities. This dual structure reflects a layered approach to financial stability within the Indonesian legal system.

Operational implementation of banking law is further detailed through regulations issued by OJK (Peraturan OJK or POJK). These regulations specify standards for risk management implementation, including credit risk, market risk, liquidity risk, and operational risk controls. They also govern the scope of bank business activities, including participation in derivative transactions and other complex financial instruments. Importantly, OJK regulations impose consumer protection obligations, requiring transparency, fairness, and adequate disclosure in financial service provision. Together, the constitutional mandate, statutory provisions, and implementing regulations form a comprehensive legal framework for banking activities in Indonesia. This framework establishes the normative and institutional foundation against which

innovative practices, including gold-based financial products and bullion-related services, must be assessed.

Indonesian Commodity Futures Law Framework

Statutory Foundation

The legal regime governing commodity futures trading in Indonesia is primarily established under Law No. 32 of 1997 concerning Commodity Futures Trading, as amended by Law No. 10 of 2011. This statute provides the normative basis for the organization, supervision, and operation of futures markets, including transactions involving gold. The law defines a commodity as any good, service, right, or interest that may become the subject of a futures contract and be traded on a futures exchange. This broad definition encompasses agricultural products, energy resources, and precious metals, thereby legally positioning gold within the commodity regulatory domain.

A futures contract, as recognized under the statute, is a standardized agreement to buy or sell a specified commodity at a predetermined price for future delivery, executed through a futures exchange. The contractual structure emphasizes standardization, transparency, and exchange-based trading, distinguishing it from bilateral over-the-counter arrangements. The statutory framework requires that futures transactions be conducted through licensed exchanges and clearing institutions to ensure legal certainty and market integrity²⁵.

An essential element of the commodity futures system is the clearing and margin mechanism. Clearing institutions act as central counterparties, guaranteeing the performance of contracts and mitigating counterparty risk. Market participants are required to deposit margin funds as a form of financial security, which may be adjusted based on price fluctuations and exposure levels. This margin system functions as a prudential safeguard within the commodity trading environment, aiming to reduce systemic vulnerabilities arising from leveraged positions.

Government Regulations further elaborate the operational structure of futures exchanges, including governance requirements, capital thresholds, and transaction procedures. These implementing regulations provide detailed rules on exchange organization, reporting obligations, dispute resolution, and the conduct of market participants. Through this regulatory layering, the statutory principles are translated into enforceable operational standards.

Supervisory authority over commodity futures trading is exercised by the Commodity Futures Trading Regulatory Agency (Badan Pengawas Perdagangan Berjangka Komoditi or BAPPEBTI). BAPPEBTI issues regulations governing specific products, including gold futures contracts and mechanisms for physical gold trading conducted within the futures exchange framework. Its regulatory instruments also cover licensing requirements for brokers, clearing institutions, and other market intermediaries. Licensing serves as a gatekeeping function to ensure professional competence, financial soundness, and compliance with regulatory standards. Collectively, the Commodity Futures Law framework establishes a structured, exchange-based system for gold trading as a commodity, supported by centralized clearing, margin discipline, and administrative supervision. This regime forms the legal reference point when assessing the classification of gold-related financial activities within Indonesia's broader financial regulatory architecture.

Points of Legal Convergence in Bullion Banking Practice

Bullion banking represents a hybrid financial activity situated at the intersection of traditional banking intermediation and commodity market operations. Its operational features generate areas of legal convergence between banking law and commodity futures law, particularly where functional characteristics overlap, institutional mandates intersect, and regulatory classifications remain indeterminate.

a. Overlapping Functional Domains

One significant point of convergence arises from gold accounts that resemble deposit-taking activities. In bullion banking, customers may place physical gold or acquire gold-denominated balances maintained by a bank. Functionally, such arrangements mirror conventional deposit accounts: the institution receives value from customers, records a corresponding liability, and may utilize the underlying asset for liquidity or trading purposes. Where the account holder's claim is denominated in gold but operates economically as a repayable balance, the structure closely parallels fund collection under banking law. This resemblance triggers prudential concerns, including liquidity management, capital adequacy, and depositor protection, even though the underlying asset is a commodity rather than fiat currency.

A second area of convergence concerns gold derivatives that resemble futures contracts. Banks engaged in bullion operations frequently enter into forwards, swaps, and options referencing gold prices. These instruments may serve hedging, speculative, or liquidity management purposes. From a functional standpoint, standardized gold forwards or swaps can replicate the economic substance of exchange-traded futures contracts. When transactions involve margining, mark-to-market adjustments, and settlement obligations tied to gold price movements, they align conceptually with commodity derivatives regulated under futures law. The legal tension emerges where identical economic exposures are regulated differently depending on whether the transaction is executed within a banking balance sheet or on a licensed futures exchange.

A further overlap concerns custody and clearing functions. Bullion banking commonly involves safekeeping of physical gold, settlement of transfers between account holders, and netting of positions. These functions bear structural similarities to exchange-based clearing and central counterparty mechanisms within the commodity futures framework. When banks internally match buy and sell orders or maintain pooled reserves backing unallocated accounts, they effectively perform quasi-clearing roles. Such activities blur the distinction between bank-based infrastructure and exchange infrastructure, raising questions about whether centralized clearing safeguards mandated in futures markets should also apply to bullion banking operations.

b. Institutional Jurisdiction Issues

The functional overlap between banking and commodity trading inevitably produces institutional jurisdiction questions. In Indonesia's dual regulatory architecture, the Financial Services Authority (OJK) exercises supervision over banking institutions, while the Commodity Futures Trading Regulatory Agency (BAPPEBTI) oversees commodity futures exchanges and related intermediaries. Bullion banking may fall within the supervisory purview of both authorities, depending on how the activity is characterized.

If gold accounts are treated as deposit-like liabilities, prudential supervision by OJK becomes paramount. Capital buffers, risk management standards, and consumer protection obligations would apply to safeguard financial stability and depositor interests. Conversely, if gold-based derivatives or trading platforms operated by banks are regarded as commodity futures transactions, BAPPEBTI's market supervision mandate may be implicated. This creates potential regulatory fragmentation, where similar transactions are subject to divergent compliance requirements.

The distinction between prudential supervision and market conduct supervision further complicates the landscape. Prudential regulation focuses on institutional resilience, solvency, and systemic risk containment. Market conduct regulation emphasizes transparency, fairness, and orderly trading conditions. In bullion banking, these dimensions are intertwined. A gold derivative transaction may simultaneously affect a bank's capital adequacy (a prudential matter) and the integrity of price formation (a market conduct matter). The absence of a clearly

delineated boundary between these supervisory objectives can result in duplicated oversight or, conversely, regulatory gaps.

Institutional competence theory suggests that regulatory authority should align with functional expertise and risk exposure. However, bullion banking challenges traditional allocations of competence because it integrates intermediation, trading, custody, and derivative exposure within a single operational framework. Without coordinated oversight mechanisms, regulatory arbitrage may arise, allowing institutions to structure transactions in a manner that exploits jurisdictional ambiguities.

c. Normative Gaps and Legal Uncertainty

Beyond institutional overlap, bullion banking reveals substantive normative gaps. One core issue concerns the legal status of gold ownership within account structures. In allocated accounts, specific bars or quantities are segregated and held in custody for the customer, supporting a property-based claim. In contrast, unallocated accounts generally confer a contractual claim against the bank rather than ownership of identified physical gold. The distinction has profound implications in insolvency scenarios. If gold is treated as property belonging to the customer, it may be insulated from the bank's estate. If it constitutes a mere claim right, customers become unsecured creditors. Indonesian law does not yet provide explicit statutory clarification regarding this differentiation in the context of bullion banking.

The treatment of unallocated gold accounts presents further complexity. Such accounts function economically like demand deposits but are denominated in a commodity. The bank may use pooled gold reserves to meet withdrawal requests, similar to fractional reserve banking. However, the legal classification of these balances whether as deposits, investment instruments, or derivative exposures remains unsettled. This ambiguity affects consumer protection standards, disclosure requirements, and the applicability of deposit insurance schemes.

Capital and risk-weight treatment constitutes another area of uncertainty. Under prudential frameworks, banks must assign risk weights to assets and exposures for capital adequacy calculations. The appropriate classification of gold holdings and gold-denominated liabilities influences regulatory capital requirements. If gold is treated as a commodity inventory, market risk considerations dominate. If gold accounts are treated analogously to deposits or derivatives, counterparty credit risk and liquidity risk parameters apply. The absence of specific guidance tailored to bullion banking may result in inconsistent capital treatment across institutions.

In sum, bullion banking operates within a zone of legal convergence characterized by overlapping functions, intersecting supervisory mandates, and unresolved normative classifications. Addressing these challenges requires an integrated regulatory approach that recognizes the hybrid nature of gold as both commodity and financial asset, while ensuring legal certainty, institutional accountability, and systemic stability.

Legal Implications

The convergence between banking law and commodity futures law in bullion banking practice produces significant legal implications. These implications extend beyond doctrinal classification and directly affect regulatory coherence, systemic resilience, and the protection of market participants.

a. Fragmentation of Regulatory Authority

One principal implication is the fragmentation of regulatory authority. Bullion banking operates across functional domains traditionally supervised by different institutions. Banking regulators focus on deposit-taking, credit intermediation, and balance sheet stability, while commodity futures authorities supervise exchange-based trading and derivative markets. When gold-related activities exhibit characteristics of both regimes, jurisdictional boundaries become

blurred.

Fragmentation may generate duplication of oversight, inconsistent reporting requirements, and regulatory gaps. For example, a gold derivative transaction executed by a bank may be treated as part of treasury operations under banking supervision, while a substantively similar transaction conducted through an exchange falls within commodity futures oversight. Divergent supervisory approaches to risk assessment, disclosure, and enforcement can undermine regulatory coherence. In the absence of formal coordination mechanisms, institutions may face uncertainty regarding applicable licensing requirements and compliance standards. Such fragmentation weakens legal predictability and complicates institutional accountability.

b. Systemic Risk and Prudential Concerns

Bullion banking also raises systemic risk considerations. Gold-denominated accounts and derivative exposures may create liquidity, market, and counterparty risks comparable to those associated with conventional financial instruments. Unallocated gold accounts, in particular, resemble fractional reserve structures, where customer claims exceed immediately available physical reserves. In periods of market stress or sharp price volatility, a sudden increase in redemption demands could strain liquidity buffers.

Gold derivatives further amplify systemic exposure. Swaps, forwards, and options linked to gold prices can produce significant off-balance-sheet liabilities. If such instruments are insufficiently collateralized or inadequately risk-weighted, they may transmit shocks across financial institutions. The interconnectedness between banks and commodity markets increases the risk of contagion, particularly where clearing and settlement infrastructures overlap.

From a prudential perspective, the absence of clear capital treatment standards for bullion-related exposures may distort risk measurement. Inconsistent risk-weight assignments or liquidity coverage calculations can weaken the effectiveness of macroprudential oversight. Consequently, legal ambiguity in classification directly affects the robustness of systemic safeguards.

c. Consumer and Investor Protection

Another critical implication concerns the protection of consumers and investors. Bullion banking products often present complex legal characteristics that may not be readily understood by retail clients. The distinction between allocated and unallocated gold accounts, for example, has substantial consequences for ownership rights and insolvency treatment. Without clear disclosure obligations, customers may mistakenly assume that they hold physical property when they merely possess a contractual claim against the bank.

Similarly, gold-linked derivatives marketed to clients may entail substantial market risk. If such products are structured outside exchange-based transparency requirements, price formation and risk exposure may be less visible to customers. Effective consumer protection requires transparent contractual terms, accurate risk disclosure, and mechanisms for dispute resolution. Where regulatory competence is fragmented, enforcement of these protections may be inconsistent.

Investor confidence depends on clarity regarding legal status and supervisory oversight. Ambiguity about which authority is responsible for monitoring gold-based financial products can erode trust and discourage market participation. Thus, legal certainty is not merely a theoretical objective but a prerequisite for market integrity.

d. Regulatory Arbitrage Risks

Finally, the convergence of legal regimes creates opportunities for regulatory arbitrage. Financial institutions may structure bullion-related transactions in a manner that places them under the less stringent regulatory framework. For instance, derivative contracts may be

designed as over-the-counter banking products rather than exchange-traded futures to avoid margin or clearing obligations. Conversely, gold deposit-like products may be characterized as investment instruments to circumvent prudential capital requirements.

Regulatory arbitrage undermines the principle of functional equivalence, whereby similar economic activities should be subject to comparable regulatory standards. If identical risk profiles are treated differently solely because of formal classification, competitive imbalances and systemic vulnerabilities may arise. Over time, arbitrage-driven innovation can erode the effectiveness of both banking and commodity futures regulation.

Accordingly, the legal implications of bullion banking convergence underscore the necessity of an integrated and function-based regulatory approach. Clear allocation of supervisory authority, harmonized prudential standards, and enhanced consumer safeguards are essential to preserve legal certainty and financial stability in an increasingly hybrid financial environment.

Toward a Functional and Integrated Regulatory Model

The hybrid character of bullion banking necessitates a regulatory response that transcends rigid sectoral classifications. Because gold simultaneously operates as a tangible commodity and as a financial instrument, a purely formalistic approach—based solely on institutional labels—fails to capture the economic substance of bullion-related activities. A functional and integrated regulatory model offers a more coherent solution, aligning supervisory treatment with the nature of risks generated by each activity.

First, bullion banking activities should be classified according to their functional characteristics rather than their nominal designation. Gold deposit accounts that create repayable obligations analogous to conventional deposits should be treated as deposit-taking activities and therefore subjected to prudential banking standards. This includes capital adequacy requirements, liquidity coverage obligations, and risk management controls. Conversely, gold-linked derivative instruments that replicate the economic profile of futures or options contracts should be regulated in accordance with derivative risk principles, including margin requirements and transparency standards. Custody arrangements involving segregated physical gold should be assessed under property and safekeeping doctrines, ensuring clear demarcation between proprietary assets and customer property. A functional taxonomy reduces ambiguity by focusing on the risk profile and legal substance of each transaction.

Second, an integrated supervisory framework between the Financial Services Authority (OJK) and the Commodity Futures Trading Regulatory Agency (BAPPEBTI) is essential. Rather than competing jurisdictional claims, the two authorities should adopt coordinated oversight mechanisms. This may take the form of memoranda of understanding, joint supervisory committees, or shared reporting systems. Where bullion banking products involve both prudential and market conduct dimensions, parallel supervision with defined lead authority principles can enhance regulatory coherence. For example, OJK may assume primary responsibility for institutional solvency and consumer protection in bank-issued gold accounts, while BAPPEBTI may oversee exchange-linked derivative trading and price formation mechanisms. Structured coordination mitigates fragmentation while preserving each authority's statutory mandate.

Third, legal certainty requires a clear statutory definition of gold-based financial instruments. Current classifications often rely on broad definitions of commodities or banking services, which may not sufficiently address hybrid products. Legislative clarification should distinguish between allocated gold accounts (conferring proprietary rights), unallocated gold accounts (establishing contractual claims), and gold derivatives (creating contingent financial obligations). Such differentiation would guide insolvency treatment, capital calculation, and disclosure standards. A precise legal taxonomy reduces interpretative inconsistencies and strengthens enforceability.

Finally, legislative refinement is necessary to prevent regulatory overlap and arbitrage. Amendments to existing banking and commodity futures statutes may introduce cross-references recognizing the dual nature of bullion activities. Clear demarcation clauses can define the circumstances under which one regulatory regime prevails or when concurrent supervision applies. Additionally, harmonized prudential benchmarks for economically equivalent risks would uphold the principle of functional equivalence, ensuring that similar exposures receive comparable regulatory treatment regardless of institutional form. An integrated regulatory model grounded in functional analysis, institutional coordination, and statutory clarity offers a sustainable framework for bullion banking governance. By aligning legal classifications with economic realities, Indonesia can enhance legal certainty, promote financial innovation, and safeguard systemic stability within an increasingly convergent financial landscape.

4. Conclusions

The analysis confirms the existence of a legal convergence phenomenon within the practice of bullion banking. Gold, as an asset, no longer occupies a purely commodity-based classification; rather, it functions simultaneously as a financial instrument, a store of value, and an object of trade within organized markets. This dual character generates overlapping regulatory claims between banking law and commodity futures law. Bullion banking activities—such as gold deposit accounts, unallocated gold balances, and gold-linked derivatives—demonstrate functional characteristics that correspond to both prudential banking intermediation and exchange-based commodity trading. The resulting intersection illustrates that sectoral regulatory boundaries are increasingly porous in modern financial systems.

Such convergence necessitates deliberate regulatory coordination. Fragmented oversight risks inconsistent legal treatment, supervisory duplication, or regulatory gaps that may undermine legal certainty and financial stability. Because bullion banking implicates both institutional solvency concerns and market integrity considerations, effective supervision cannot rely on isolated mandates. Coordinated mechanisms between financial services and commodity trading authorities are essential to ensure coherent standards in capital adequacy, disclosure, risk management, and consumer protection. Regulatory cooperation should be structured, formalized, and guided by clearly allocated competencies in order to prevent jurisdictional conflict.

Accordingly, this study proposes structured legal harmonization within Indonesian financial law. Harmonization does not require the elimination of distinct regulatory regimes, but rather their systematic alignment through functional classification, statutory clarification, and cross-referential provisions. By integrating prudential safeguards with market conduct principles under a coherent legal framework, Indonesia can accommodate innovation in gold-based financial services while preserving systemic resilience. A harmonized approach will enhance predictability, strengthen supervisory effectiveness, and provide a stable legal foundation for the continued development of bullion banking within the national financial architecture.

BIBLIOGRAPHY

- Al-Khadash, H. A., Jireis, J. R., & Embassy-Jordan, U. S. (2017). COSO enterprise risk management implementation in Jordanian commercial banks and its impact on financial performance. *International Journal of Business and Management*, 6(3), 208–233.
- Avgouleas, E. (2012). *Governance of global financial markets: the law, the economics, the politics*. Cambridge University Press.
- Carey, B. P. (1966). Regulation and Supervision of Futures Trading. *Futures Trading Seminar, Vol. III, S, 139*.
- Cranston, R., Avgouleas, E., Van Zwieten, K., Hare, C., & Van Sante, T. (2018). *Principles of banking law*. Oxford University Press.
- de Gioia Carabellese, P., & Della Giustina, C. (2024). *Banking Law and Financial Regulation in the UK and EU: Technology, Human Rights and Crises*. Routledge.

- Dhole, S. S. (2014). Commodity Futures Market in India: The Legal Aspect and its Rationale. *International Journal of Research in Management & Business Studies*, 1(2), 38–47.
- Huan, X., & Parbonetti, A. (2019). Financial derivatives and bank risk: evidence from eighteen developed markets. *Accounting and Business Research*, 49(7), 847–874.
- Hülsmann, J. G. (2004). Legal tender laws and fractional-reserve banking. *Journal of Libertarian Studies*, 18(3), 33–55.
- Lastra, R. M. (2015). *International financial and monetary law*. Oxford University Press.
- Law, J. (2014). *A dictionary of finance and banking*. OUP Oxford.
- Markham, J. W., & Gilberg, D. J. (1983). Federal Regulation of Bank Activities in the Commodities Market. *Bus. Law.*, 39, 1719.
- Mengle, D. (2007). Credit derivatives: An overview. *Economic Review-Federal Reserve Bank of Atlanta*, 92(4), 1.
- Muhammad, B., Khan, S., & Xu, Y. (2018). Understanding risk management practices in commercial banks: The case of the emerging market. *Risk Governance and Control: Financial Markets and Institutions*, 8(2), 54–62.
- Osayi, V. I., Kasimu, A., & Nkwonta, H. C. (2018). Financial market derivatives and the performance of deposit money banks in Nigeria. *International Journal of Economics, Commerce and Management*, 6(11), 382–396.
- Poser, F. (2021). *Broker-Dealer Law and Regulation* (Vol. 1). Wolters Kluwer Law & Business.
- Rehman, Z. U., Muhammad, N., Sarwar, B., & Raz, M. A. (2019). Impact of risk management strategies on the credit risk faced by commercial banks of Balochistan. *Financial Innovation*, 5(1), 44.
- Santomero, A. M. (1997). Commercial bank risk management: an analysis of the process. *Journal of Financial Services Research*, 12(2), 83–115.
- Schwarcz, S. L. (2009). Regulating complexity in financial markets. *Wash. UL Rev.*, 87, 211.
- Scopino, G. (2015). Preparing Financial Regulation for the Second Machine Age: The Need for Oversight of Digital Intermediaries in the Futures Markets. *Colum. Bus. L. Rev.*, 439.
- Supervision, B. (2011). Basel committee on banking supervision. *Principles for Sound Liquidity Risk Management and Supervision (September 2008)*.
- Syadali, M., Segaf, S., & Parmujianto, P. (2023). Risk management strategy for the problem of borrowing money for Islamic commercial banks. *Enrichment: Journal of Management*, 13(2), 1227–1236.
- Tian, W. (2017). Commercial Banking Risk Management. *Regulation in the Wake of the Financial Crisis*.
- Titova, Y., Penikas, H., & Gomayun, N. (2020). The impact of hedging and trading derivatives on value, performance and risk of European banks. *Empirical Economics*, 58(2), 535–565.
- Vasiliev, Ii., Smelov, Pa., Klimovskih, Nv., Shevashkevich, Mg., & Donskaya, En. (2018). Operational risk management in a commercial bank. *International Journal of Engineering & Technology*, 7(4.36), 524–529.
- Wanjohi, S. M., Wanjohi, J. G., & Ndambiri, J. M. (2017). The effect of financial risk management on the financial performance of commercial banks in Kenya. *International Journal of Finance and Banking Research*, 3(5), 70–81.