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THE LEGALITY OF CRYPTO ASSETS AS A MEANS OF DEBT PAYMENT IN BANKRUPTCY ACCORDING TO CIVIL LAW AND BANKRUPTCY LAW

Alfat Hoki Sri Meliana Dewi[1]

[1]*Master of Notarial Universitas Islam Malang,*
Email : alfathokisri22@gmail.com

Abstract : Crypto assets have been regulated by the Commodity Futures Trading Supervisory Agency as tradable assets or commodities and not as a medium of exchange or payment. How is the legality of crypto assets and forms of legal protection for recipients of crypto assets as a means of debt payment in bankruptcy? The research method used in this study is normative legal research, which uses the statutory approach (statute approach) and conceptual approach (conceptual approach). The legal materials used are primary, secondary and tertiary legal materials and the legal material analysis techniques used in this study are qualitative descriptive analysis. The results of the study in saying that the legality of crypto assets as a means of debt payment in bankruptcy according to the Civil Code has binding force because it meets the legal requirements of the object of payment, so that crypto assets cannot be used as fulfillment of collection rights. The form of legal protection for recipients of crypto assets as a means of debt payment in bankruptcy is related to the payment process by the curator to creditors, the curator will settle the assets up to rupiah as stipulated in article 36 of Bappebti number 08 of 2021.

Keywords: Legality, Crypto Asset, Debt Payment Instrument, Bankruptcy, Civil Law and Bankruptcy Law

1. Introduction

A. Background

The financial stability of a country is very important for the development of the country's economy. It is likened that the country's economy is a body, then financial stability is an organ in the body. So that the two complement each other's existence. In a country's economy, money is needed to rotate our economy so that the country's economy continues to grow. Literally the market is a meeting place for sellers and buyers. But in today's modern context, the market has become a transaction mechanism where transactions are flexible, meaning they can occur anywhere.[1]

The payment system in the economy also changes from time to time. In society, money as a means of payment when making transactions has developed. Along with the development of money continues to change, today the paperless payment instrument that has developed is digital money. As a result of these changes in life patterns on the career and busyness of the community, it has caused some other new phenomena in terms of transactions using digital money.

[1] Abdulkadir Muhammad, 2010, Law of Agreement, PT Alumni, Bandung

Crypto is becoming an asset that is in demand today, the popularity of crypto currencies started by bitcoin has increased interest by the public 1 Abdulkadir Muhammad, 2010, Law of Agreement, PT Alumni, Bandung 2 all over the world including Indonesia. The legality of crypto assets in Indonesian law has not received firm regulation in its use. The decentralized nature of cryptocurrencies so that there is no regulatory body that regulates all transaction activities makes digital assets often used as illegal trade.

Crypto assets are intangible commodities that are digitally shaped using cryptography, information networks, technology, and distributed ledgers to govern the creation of new units, verify transactions and secure transactions without interference from the other party. Article 202 of Bank Indonesia Regulation Number 23/5/PBI/2021 concerning Payment Service Providers explains that bitcoin, blackcoin, dash, dogecoin, litecoin, namecoin, nxt, peercoin, primecoin, ripple and ven are included in cryptocurrencies. The article explains that cryptocurrency or virtual currency is digital money issued by parties other than monetary authorities.

Bank Indonesia had stated that bitcoin and other virtual currencies are not legal currencies or tender in Indonesia as stated in Bank Indonesia's statement in Bank Indonesia Press Release No. 16/6/Dkom, in the statement, Bank Indonesia affirmed that all risks arising from the use of bitcoin and other virtual currencies are the responsibility of bitcoin users and the Indonesian government is not responsible for the risks that may occur and be experienced by the user.

Along with the development of technology, debtors who are bankrupt and still have assets in the form of crypto or cryptocurrency can pay their bankruptcy debts with crypto assets. Theoretically, the purpose of bankruptcy is to distribute the debtor's assets to its creditors. Debtors who are bankrupt and have crypto assets according to the law, all assets of the debtor are in general confiscation status, including crypto assets owned. This means that crypto assets cannot be used as fulfillment of creditors' billing rights in bankruptcy proceedings. The debtor's bankruptcy can be resolved by the curator by making the debtor's assets into rupiah currency by making withdrawals in rupiah as stipulated in article 36 of the Commodity Supervisory Agency Regulation No. 8 of 2021.

Based on what has been described above, the author is interested in conducting research on the legality of using crypto assets and forms of legal protection for recipients of crypto assets as a means of debt payment in bankruptcy. Therefore, the author takes the title "The Legality of Crypto Assets as a Means of Debt Payment in Bankruptcy According to Civil Law and Bankruptcy Law".

B. Problem Formulation

This research examines whether the legality of Crypto Assets as a means of debt payment in bankruptcy aligns with civil and bankruptcy law, considering the applicable legal provisions. The author is intrigued by this study, exploring various problem formulations: What is the legality of using crypto assets as a debt payment tool in bankruptcy? What forms of legal protection exist for recipients of crypto assets as a means of payment in bankruptcy?

C. Research Methods

This research method is prepared using normative juridical research types. Normative juridical research is research conducted by examining library materials or secondary data as basic material for research by conducting searches on regulations and literature related to the problem under study. The approach used in this study is the statutory approach (statute approach) and conceptual approach (conceptual approach). The technique of collecting legal materials used in this study is to use secondary materials or literature studies on legal materials, both primary legal materials, secondary legal materials, and tertiary legal materials. The technique of collecting Primary Legal Material is carried out by collecting material based on laws and regulations, using applicable rules, identifying laws and collecting laws and regulations in accordance with the issues discussed, Secondary legal materials by reading, recording, reviewing library materials, or searching through internet media related to the issues discussed, Tertiary legal materials are carried out and billed by reviewing and identifying Legal dictionaries and large dictionaries Indonesian.

Legal Material Analysis Techniques After the legal material, both primary, secondary and tertiary legal materials, has been collected, then an analysis of legal materials is carried out using qualitative descriptive analysis, meaning to describe or explain the provisions of laws and regulations and existing legal concepts associated with existing legal materials, conclusions are then drawn.

2. Discussion

A. How is the Legality of Using Crypto Assets as a Means of Debt Payment in Bankruptcy

The development of the technology and information industry in the era of globalization has had an impact on all aspects of human life, including social behavior. This makes development economically, has rapid development and can be improved. In the field of banking, information and technology began to develop with the aim of supporting public welfare in economic growth without neglecting the principle of prudence. [2] In today's world, crypto currency is a technology for creating digital money using a crypto system that can ensure security against counterfeiting. Virtual currencies are the result of the emergence of cryptocurrencies that dominate domestic and international society. In Indonesia alone, crypto currency users have reached millions of investors and thousands of users. That is, the Indonesian people are very enthusiastic about the emergence and use of crypto currency.[3]

There are several advantages to using cryptocurrency :

1. First, the transaction is carried out directly by the parties involved.

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[2]Moh Khasan, Principles of Legal Justice in the Principle of Legality of Islamic Criminal Law, Journal of Rechts Vinding Vol. VI No 1 April 2017, p, 27

[3]Bhiantara, Ida Bagus Prayoga. "Blockchain technology: cryptocurrencies in the era of the digital revolution." National Seminar on Informatics Engineering Education (SENAPATI). Vol. 9. 2018. p 173

2. Cost savings can occur because all transactions can be carried out without going through an intermediary organization.
3. The scope of crypto currency transactions is very wide, crypto currency can be used anywhere as long as there is an internet connection. However, using crypto currency is not without risks.

Some of the risks that can arise from the use of crypto currencies include exchange rate fluctuations, the risk of system failure, hacking, and unclear regulations. Crypto currency, is a blockchain-based digital asset commonly used as a digital currency. Digital currencies are very different from common currencies that commonly circulate in society, which do not have a physical form but are simply blocks of data connected by hash functions for authentication. The data is transmitted to every cryptocurrency user in the region. If when the user makes a transaction, data mining is complete, then this crypto currency comes in many variants including Litecoin, Monero, Ether, Ripple, Ethereum, Qtum, Dash, Zcash and Bitcoin.

Cryptocurrencies have been in development since the 1990s, but it is only in the last decade that it has become known to the global community. Some types of cryptocurrencies that are commonly used include Litecoin, Ethereum, Monero, Ripple and of course Bitcoin. Currently, there are more than 1000 cryptocurrencies in circulation around the world. There is also a blockchain system that ensures the security of digital currency transactions. Blockchain is like a ledger that keeps records of all transaction activity in a decentralized, valid, and running system with minimal errors. This plan allows us to conclude that digital currency trading is easier, safer, and more practical than the traditional banking system.[4]

Currently, the currency officially used in Indonesia is the Rupiah currency issued specifically by Bank Indonesia. The party that has the authority to print and distribute money in Indonesia is still centralized by Bank Indonesia, it is in accordance with what is regulated in Law No. 7 of 2011 on Currency. But this is very different from Cryptocurrency digital money where there is no special country or institution that has the authority to print or issue digital currency in society, but every individual, both individuals and The company can do mining independently. This is what causes Cryptocurrency to have no intrinsic value to the money produced in contrast to rupiah money where the currency is very dependent on the development of the Indonesian economy.

The Indonesian government has main provisions regarding rules on money as described in Law Number 7 on Money Year 2011. Another law that is often referred to is Law No. 1999 concerning Bank Indonesia. 23 and later promulgated Law No. About Electronic Information and Transactions. However, in its

[4]Rianto, Agung Prasetyo. "Juridical Review of the Use of Digital Currency in Buying and Selling Transactions in Indonesia." 2019.

development, the government announced various new policies related to the legality of this cryptocurrency, including Bank Indonesia Regulation No . Bank Indonesia Regulation No. concerning Payment Transaction Processing, Application of Financial Technology. 19/12/PBI/2017, Decree of the Minister of Trade Number 2018 concerning General Policy for the Implementation of Crypto Asset Futures Trading. 99 and Commodity Futures Trading Supervisory Agency Regulation 2019 No. 5 describe the technical conditions for implementing a physical market for crypto assets (crypto assets) on futures exchanges . Given the variety of these regulations , a critical interpretation of this legal product is certainly needed in an effort to provide certainty in spurring economic movements.

In Article 34 of Bank Indonesia Regulation Number 18/40/PBI/2016, it is explained that payment system service providers are prohibited from processing payment transactions using virtual currency, are prohibited from misusing data and Customer information as well as payment transaction data and information, and/or prohibited from owning and/or managing a value that can be equated with a monetary value that can be used outside the scope of Legal Payment System Service Delivery. In addition, Bank Indonesia also prohibits Financial Technology Providers from conducting payment systems using digital currencies because digital currencies are not legal tender in Indonesia. During Bank Indonesia Press Release Number 20/4/DKom concerning Virtual Currency, Bank Indonesia explained the risks or negative sides of using digital currencies . In its explanation, Bank Indonesia explained that there are 3 (three) major risks in the use of digital currencies, such as fluctuating exchange rates, the potential to be used in money laundering and terrorism financing, and vulnerable to cyber attacks.[5]

Theoretically, the purpose of the election is to distribute the debtor's assets to his creditors. In the event that the bankrupt debtor owns crypto assets , for the sake of law all assets he has. All of his assets will be in general confiscation status including crypto assets he owns. In general, all assets belonging to the bankrupt debtor will be liquidated to be distributed to creditors in the distribution list made by the Curator. The basis for compiling the division list according to article 155 of Law number 37 of 2004 is about the registration of bills by creditors accompanied by calculations or other written statements showing the nature and amount of receivables.

B. What is the form of legal protection for recipients of crypto assets as a means of payment in bankruptcy.

The development of the use of cryptocurrency or cryptocurrency in Indonesia is no longer dubbed "digital money", but dubbed "commodity". This is regulated in the minister's policy and trade supervision which he does not only regulate the marketplace that wants to become a cryptocurrency platform but a policy for investors. This policy is for digital money users who want to carry out

[5]M. Hadi Subhan, Bankruptcy Law: Principles, Norms, and Practices in the Judiciary, Jakarta, Kencana 2014

buying and selling activities and are eligible to place the capital used in transactions between accounts that are different from the marketplace name.

This use does not rule out the possibility of crimes against legalized use because it will be one of the obstacles for the State to achieve its goal of realizing the welfare of the entire community. Welfare is difficult to achieve if the resilience is still weak due to crimes against the State's policy on the use of virtual currencies, then sanctions are imposed on users if a crime occurs. From these crimes, sanctions are imposed in accordance with criminal laws and those imposed on their use and in accordance with the general policy of conducting crypto asset futures trading.6

Before the user has cryptocurrency, he first enters into an electronic contract with the organizer so that he becomes a member of his community. Then there is buying and selling carried out through electronic media between sellers and buyers who transact with digital currencies. However, based on Law Number 11 of 2008 concerning Electronic Information and Transactions, as updated by Law Number 19 of 2016 concerning Electronic Information and Transactions, the terms and procedures are determined. Then this policy has provided the legality of electronic transactions in Indonesia both from buying and selling and other transactions that are electronic. Electronic contracts are regulated in Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions which guarantees the availability of service level agreements, the availability of information security agreements for information technology services used, and information security of internal communication facilities organized. In addition, the electronic system operator guarantees every component and integration of all systems that operate properly. So that the electronic system operator applies risk management to damage or loss arising from the agreement.7

An agreement that arises an electronic sale and purchase transaction activity as contained in Article 1313 of the Civil Code which confirms that an agreement is an act of one or more persons binding themselves to one or more other persons. This policy is regulated in Book III of the Civil Code, which has an open nature meaning that its provisions can be set aside, so it only functions to regulate it. This nature is reflected in Article 1338 paragraph (1) of the Civil Code which contains the principle of Freedom of Contract, which means that everyone is free to determine the form, type and content of the agreement. Then this freedom is limited by the provisions of Article 1337 of the Civil Code which states that an agreement must not contradict the applicable laws and regulations, decency and public order. Buying and selling that does not meet the legal provisions occurs in buying and selling using crypto currencies in Indonesia but is

[6] Ida Ayu Samhita Chanda Thistanti et al, Juridical Study on the Legality of Cryptocurrency in Indonesia, Journal of Legal Reference, ISSN: 2746-5039, Vol. 3, No. 1, 2022, p, 11

[7] Dimas Dwi Arso et al, Comparison of Electronic Sale and Purchase Contracts According to Positive Law and Islamic Law, Justitia et Fak Journal of Law, Volume 37, Number 1 June 2021, p, 107

not a legal means of transaction because it does not have legality that overshadows it.8

Bankruptcy application is one form of legal remedy that can be done by creditors to receive back their rights in the form of receivables from debtors who are unable to make payments. The situation of not being able to pay is usually caused by financial distress from the debtor's business that has regressed. Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the Bankruptcy Law) stipulates that what is meant by bankruptcy is a general confiscation of all assets of bankrupt debtors whose management and settlement is carried out by the curator under the supervision of a supervisory judge.

Article 108 of the Bankruptcy Law has provided examples of debtor assets that can be registered as bankruptcy assets in the form of money, jewelry, securities and other securities. Taking into account these types of objects, it can be concluded that the main criterion of debtor assets that can be registered as bankruptcy assets is to have economic value. In the practice of settling bankruptcy assets, bankruptcy assets are considered to have economic value if they can be used as collateral at the bank.

Currently in Indonesia there are no rules or laws that specifically regulate crypto assets. Crypto assets currently in Indonesia have a high selling value and leave pros and cons related to their use as a means of payment. and experts say that blm crypto assets meet the elements and criteria as a legal currency to use in Indonesia. Crypto assets are digital currencies. It is not available in physical form like money in general, cryptocurrency transactions can only be done online and have the same value in all countries, and every crypto transaction will be entered into a ledger called blockchain.9

Blockchain is a technology used as a storage system or digital data bank connected to cryptography. Its use cannot be separated from bitcoin and other cryptocurrencies. Article 1 point 1 of Law 7/2011 on Currency states that currency is money issued by the Unitary State of the Republic of Indonesia, hereinafter referred to as rupiah. Based on press release no. 16/6/DKom issued on February 6, Bank Indonesia has stipulated provisions related to the legality of using cryptocurrency as a means of payment in Indonesia, then Bank Indonesia also confirmed that Bank Indonesia is not responsible for any risks caused by the use or ownership of crypto assets.

The Commodity Futures Trading Supervisory Agency has issued official rules related to crypto assets as commodities in commodity futures trading in Indonesia. This rule is considered to have provided opportunities in the digital financial market. The Indonesian government through BAPPEBTI and the official

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[8] Arfianna Novera and Sri Turatmiyah, Legal Analysis of the Binding Power of Online Buying and Selling (E-Commerce) in the Perspective of Legal Protection for Parties, National Seminar, Results of Legal Researchers in 2015, p, 4

[9] F Yudhi Priyo Amboro, Agustina Christi "The Prospect of Regulating Cryptocurrency as Virtual Currency in Indonesia (comparative study of Japanese and Singapore law)", Journal of Judicial Review, 21, No. 2 (2019): p. 22

Minister of Trade Regulation regulate crypto assets can be used as the subject of futures contracts, Sharia derivative contracts and other derivative contracts traded on commodity futures exchanges. Crypto assets have not been recognized as legal tender but only rupiah which is recognized as a means of payment in the form of coins, paper, and digital.

In seeking rupiah stability to support the advancement of the national economy, Bank Indonesia as the central bank of Indonesia is the only financial institution that has the authority to regulate and maintain a smooth domestic payment system. With this authority, Bank Indonesia has the right to establish and enforce payment system policies in Indonesia through Law No. 23 of 1999 concerning Bank Indonesia.[10]

3. Conclusion

A. The legality of crypto assets as a means of debt payment in bankruptcy according to the Civil Code has binding force because it meets the legal requirements as an object of agreement in transactions with the existence of Bappebti regulation No. 5 of 2019. However, transactions are carried out only on digital transactions. Bank Indonesia declares that the legal tender is rupiah. So that crypto assets cannot be used as fulfillment of creditor collection rights in bankruptcy proceedings.

B. The form of legal protection for recipients of crypto assets as a means of debt payment in bankruptcy is related to the payment process by the curator to creditors recorded in the distribution list that has been approved by the supervisory judge and complies with Article 201 of Law 37 of 2004. In the event that a bankrupt debtor owns crypto assets or cryptocurrencies, for the sake of law, all assets of the debtor are in public confiscation, including the crypto assets he owns. All assets belonging to the insolvent debtor will be liquidated to be distributed to creditors in a division list made by the receiver. The preparation of the division list is based on Article 115 of Law 37 of 2004 which contains the registration of bills by creditors accompanied by calculations or other written statements showing the nature and amount of receivables. The distribution of assets of bankrupt debtors carried out by receivers is normatively mandatory in rupiah because Article 21 paragraph 1 letter b of the currency law confirms that rupiah must be used in settling other obligations that must be fulfilled with money. In the event of bankruptcy, the curator will settle the assets in rupiah by withdrawing them in rupiah as stipulated in article 36 of Bappeti Regulation Number 8 of 2021.

4. Advice

Based on the research findings, the author suggests the following contributions of thought:

1. To overcome these obstacles, the author recommends that to streamline the payment system, the government should increase the variety of currencies. This

[10] "Payment System: Definition, Role of Bank Indonesia, Policy Principles," accessed November 1, 2022, https://www.studiobelajar.com/sistem-pembayaran/.

way, crypto assets can be legalized as one of the currencies usable for transactions in Indonesia.

2. The author agrees with the legal provisions requiring crypto to be recognized as a payment method alongside the Indonesian Rupiah but suggests that the government or legislature draft laws specifically addressing crypto assets to ensure their proper integration.

5. References

Books

Abdulkadir Muhammad, 2010, Law of Agreement, PT Alumni, Bandung

Moh Khasan, Principles of Legal Justice in the Principle of Legality of Islamic Criminal Law, Journal of Rechts Vinding Vol. VI No 1 April 2017.

M. Hadi Subhan, Bankruptcy Law: Principles, Norms, and Practices in the Judiciary, Jakarta, Kencana 2014

Rianto, Agung Prasetyo. "Juridical Review of the Use of Digital Currency in Buying and Selling Transactions in Indonesia." 2019.

Journal

Bhiantara, Ida Bagus Prayoga. "Blockchain technology: cryptocurrencies in the era of the digital revolution." National Seminar on Informatics Engineering Education (SENAPATI). Vol. 9. 2018.

Ida Ayu Samhita Chanda Thistanti et al, Juridical Study on the Legality of Cryptocurrency in Indonesia, Journal of Legal Reference, ISSN: 2746-5039, Vol. 3, No. 1, 2022,

Dimas Dwi Arso et al, Comparison of Electronic Sale and Purchase Contracts According to Positive Law and Islamic Law, Justitia et Fak Journal of Law, Volume 37, Number 1 June 2021, p, 107

Arfianna Novera and Sri Turatmiyah, Legal Analysis of the Binding Power of Online Buying and Selling (E-Commerce) in the Perspective of Legal Protection for Parties, National Seminar, Results of Legal Researchers in 2015,

F Yudhi Priyo Amboro, Agustina Christi "The Prospect of Regulating Cryptocurrency as Virtual Currency in Indonesia (comparative study of Japanese and Singapore law)", Journal of Judicial Review, 21, No. 2 (2019):

Internet

"Payment System: Definition, Role of Bank Indonesia, Policy Principles," accessed November 1, 2022, https://www.studiobelajar.com/sistem-pembayaran/.

Legal Rules

Civil Code

Law Number 7 of 2011 concerning Currency

Law Number 37 Tahnu 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

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Minister of Trade Regulation Number 99 of 2018 concerning General Policy for the Implementation of Crypto Asset Futures Trading

Regulation of the Commodity Futures Trading Supervisory Agency Number 5 of 2019 concerning Technical Provisions for the Implementation of the Physical Market of Crypto Assets

Commodity Futures Supervisory Agency Number 8 of 2021 concerning Guidelines for Implementing Physical Market Trading of Crypto Assets on Futures Exchanges.

Regulation of the Commodity Futures Trading Supervisory Agency Number 11 of 2022 concerning the Determination of the List of Crypto Assets traded in the Physical Market of Crypto Assets