

Settlement of Bankruptcy Assets in A Form of Crypto Assets Throughout Bankruptcy Process

**Tomi Hidayatullah, Bambang Sugeng Ariadi Subagyono,
Zahry Vandawati Chumaida, Kukuh Leksono Suminaring Aditya**
tomi.hidayatullah-2021@fh.unair.ac.id
Universitas Airlangga

Abstract

This research analyzes Crypto Assets as bankruptcy assets in the procedures for settlement by the curator in relation to statutory regulations, as well as the criteria for objects that can be included in bankruptcy assets. Generally, wealth is in the form of objects that can be seen, but the emergence of Crypto Assets in society breaks the stigma that exists in general. Based on bankruptcy practices in Indonesia, the categories or characteristics of objects that can be included as bankruptcy assets belonging to debtors are object that have resale value or economic value. This research is juridical-normative in nature. The results of this research show that crypto assets have met the classification as intangible objects. As bankruptcy assets, Crypto Assets cannot necessarily be used as a means of paying debts to creditors, because in Indonesia Crypto Assets are only allowed as an investment tool. However, Crypto Assets as bankruptcy assets must first be cleared by the curator until they are in the form of rupiah currency through certain stages in accordance with applicable law and regulations.

Keywords: Bankruptcy; Bankruptcy Assets; Crypto Assets; Settlement.

Copyright © 2023 Tomi Hidayatullah, Bambang SAS, Zahry Vandawati Chumaida, Kukuh Leksono SA.
Published in Notaire. Published by Universitas Airlangga, Magister Kenotariatan.



Introduction

A bankruptcy petition is a legal process in which a creditor submits a request to the court to declare that a debtor is unable to fulfill his obligations to make payments on his debts. The situation of not being able to pay is usually caused by financial distress in the debtor's business which has experienced a setback.¹ In Article 1 number 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the Bankruptcy Law) states that, Bankruptcy is a general confiscation of all assets of the Bankrupt Debtor, the management and settlement of which is carried out by the Curator under the supervision of the Supervisory Judge. as regulated in this Law. General confiscation carried out on debtors covers all assets of bankrupt debtors, both

¹ M Hadi Shubhan, *Hukum Kepailitan: Prinsip, Norma dan Praktik di Peradilan* (Prenadamedia Group 2008).[1].

existing and those that will exist in the future. Then the curator, in this case, begins to settle the bankruptcy estate after the bankruptcy estate is unable to pay.²

Theoretically, the main purpose of bankruptcy is to distribute debtor assets to creditors, this is done with the aim that creditors can receive rights in payment of unpaid debts.³ Assets are assets owned by individuals or groups, whether in tangible or intangible form, have economic value and can be bought and sold and can be used as collateral. In the event that a person is declared bankrupt by the court, all of the debtor's assets, including in this case the debtor's Crypto Assets, will by law be in general confiscation status or under the supervision of a curator appointed by the court. This means that the Crypto Assets will be used to pay all outstanding debts to creditors in the bankruptcy process.

Cryptocurrency is a digital assets designed to work as a medium of exchange that uses cryptography to secure financial transactions, control the process of creating additional units and verify assets transfers. The decentralized nature of cryptocurrency means that it is not controlled by a central authority but rather through the use of blockchain technology.⁴

Based on the description above, it is interesting for the author to carry out research in the form of a juridical study of the settlement of bankruptcy assets in the case of debtor's assets in the form of crypto assets. This research is expected to provide a legal view regarding the handling of assets in the form of Crypto Assets. Apart from that, it is hoped that this research can become a reference/start of further research for other researchers who discuss the disposal of bankruptcy assets in the form of crypto assets.

Research Methods

This research is normative legal research, namely research using legal materials to solve legal facts or problems and to obtain these legal materials and

² R Besse Kartoningrat, dkk, 'Prinsip Independensi dan Pertanggungjawaban Kurator Dalam Pengurusan dan Pemberesan Harta Pailit' (2021) 16 *RechtIdee*. [20].

³ *ibid.* [126].

⁴ Dhanu Prayogo, *Mengenal Hukum Aset Kripto* (Deepublish 2022). [18].

analyze them through literature studies and legislation. Legal research is carried out in order to produce new arguments, theories or concepts as prescriptions for solving the problems faced.⁵ The main aim of legal research is to understand, analyse and provide a deeper understanding of complex legal aspects, as well as to develop innovative thinking in the legal domain.

In this research, 2 (two) problem approaches will be used, namely the statute approach which is carried out by examining the law and regulations related to the legal issue being researched. The second (two) approach is to use a conceptual approach which departs from the views and doctrines that develop in Legal Science.

Crypto Assets as Bankruptcy Assets

The rapid development of technology and informations in the era of globalization has had a significant impact on various aspects of human life.⁶ This is proven by the assets or assets owned by a person. Generally, assets or treasures have a physical shape or form and can be seen. However, the emergence of Crypto Assets among society breaks the stigma that assets or property have a physical shape or form and can be seen.⁷

Please note that, in the Commodity Futures Trading Supervisory Agency Regulation Number 5 of 2019 concerning Technical Provisions for the Implementation of the Physical Market for Crypto Assets on the Futures Exchange Article 1 number 7 (hereinafter referred to as CoFTRA Regulation No. 5 of 2019) Crypto Assets are commodities intangible digital assets, using cryptography, peer-to-peer networks, and distributed ledgers, to regulate the creation of new units, verify transactions, and secure transactions without interference from other parties.

⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana 2016).[35].

⁶ Man Suparman and Sastrawidjaja, *Perjanjian Baku Dalam Aktivitas Dunia Maya, Cyberlaw: Suatu Pengantar* (Elips 2002).[14].

⁷ Jefry Tarantang, 'Perkembangan Sistem Pembayaran Digital Pada Era Revolusi Industri 4.0 Di Indonesia' (2019) 4 Al- Qardh.[2].

The definition/understanding of bankruptcy assets in the bankruptcy law does not clearly define what bankruptcy assets are, but there is a phrase/sentence which explains that bankruptcy includes all of the debtor's assets at the time the bankruptcy declaration decision was pronounced as well as everything obtained during the bankruptcy. Then, after a debtor is declared bankrupt, the management and settlement will be taken over by the curator. This is as explained in the bankruptcy law, article 16 paragraph (1), which states that the curator has the authority to carry out the duties of managing and/or settling bankruptcy assets from the date the bankruptcy decision is pronounced, even if the decision is submitted for cassation or judicial review.

The bankruptcy law does not provide a specific definition or classification of debtor assets that can be included as bankruptcy assets. The bankruptcy law regulates procedures and mechanism related to the bankruptcy process, but does not provide specific details about what is included as bankruptcy assets. This is usually the task of the curator in the bankruptcy process to determine and manage bankruptcy assets, as stated in article 98, namely that the curator must carry out all efforts to secure the debtor's bankruptcy assets and store them, whether in the form of documents, money, jewelry, securities and letters. Other valuables by providing a receipt. The object as stated in article 98 must be included in the bankruptcy assets register as stated in article 101 paragraph (1). Furthermore, article 108 paragraph (1) of the bankruptcy law states that money, jewellery, securities and other securities must be kept by the curator himself, unless the supervising judge determines otherwise.

In other words, implicitly, the provisions contained in article 98, article 101 paragraph (1) and article 108 paragraph (1) of the bankruptcy law can be said to mean that assets belonging to debtors that can be included in bankruptcy assets are in the form of money, jewelry, securities and other securities.

On the one hand, the bankruptcy law regulates that debtor assets that are not included in bankruptcy assets are divided into several categories. These categories can include assets that are excluded from the bankruptcy process or assets that are deemed unable to be used to pay debts to creditors. These categories

are as stated in article 22 of the bankruptcy law which reads:

- a. Objects, including animals that are really needed by the debtor in connection with his work, equipment, medical equipment used for health, beds and equipment used by the debtor and his family, and food for 30 (thirty) days for the debtor and his family, who are there;
- b. Everything the debtor obtains from his own work as remuneration for a position or service, as wages, pensions, waiting money or allowances, to the extent determined by the supervising judge; or
- c. Money given to the debtor to fulfill an obligation to provide maintenance according to the law.

Paying attention to the provisions of Article 1 number 1 and Article 21 of the Bankruptcy Law, it can be concluded that the provisions regarding the debtor's assets which are subject to general confiscation are all of the debtor's assets, so that these assets are related to the provisions regarding objects as property rights. Article 570 of the Civil Code (hereinafter referred to as BW) explains that, Property rights are the right to enjoy an item more freely and to act with that item completely freely, as long as it does not conflict with the law or general regulations established by competent authority and as long as it does not interfere with the rights of others. The debtor's assets can be in the form of movable and immovable objects and also include visible and invisible objects, such as rights as the person can sell and pawn their rights.⁸

Based on this, Crypto Assets as commodities that are intangible and have economic value can be categorized as intangible objects. In Article 499 BW it is explained that, objects are every item and every right, which can be controlled by the owner, whether tangible or intangible, which is explained in Article 503 BW that every object has a body or bodyless.

In other words, as previously explained in Article 108 of the Bankruptcy Law, taking into account the type of object, it can be concluded that the classification of

⁸ Subekti, *Pokok-Pokok Hukum Perdata* (Intermasa 2017).[4].

the debtor's bankruptcy assets is that they have economic value like the Crypto Asset itself. So that all of the debtor's assets at the time the bankruptcy declaration decision is pronounced as well as everything obtained during the bankruptcy are used as payment of the bankruptcy debtor's debts to creditors. In terms of debt repayment, if a bankrupt debtor has Crypto Assets, then by law all of the debtor's assets are in general confiscation status including the Crypto Assets he owns.

Handling of Crypto Assets by Curator

The decision of a debtor to become a bankrupt debtor by the Commercial Court has legal consequences, namely that the debtor is subject to general confiscation of all of the bankrupt debtor's assets and the bankruptcy debtor's authority to control and manage his bankrupt assets is lost. Meanwhile, creditors will experience uncertainty regarding the legal relationship that exists between creditors and bankruptcy debtors. For this purpose, the Bankruptcy Law determines the party who will handle the issue of bankrupt debtors and creditors, namely the curator:⁹

The curator is an institution established by law to settle bankrupt assets. Vollmar stated that De curator is legast, al dus de wet het beheer en de vereffening van de failhete boedel.¹⁰ Settlement is one of the tasks carried out by the curator regarding the management of the bankrupt debtor's assets, where the settlement can only be carried out after the bankrupt debtor is truly in a state of insolvency following the decision to declare bankruptcy. Insolvency is a bankrupt debtor who is no longer able to pay his debts. Debt is an obligation which is expressed or can be expressed in amounts of money in either Indonesian or foreign currency, either directly or which will arise at a later date or is contingent, which arises due to an agreement or law and which the debtor is obliged to fulfill and if not fulfillment gives the creditor the right to obtain fulfillment from the debtor's assets. As explained in the Bankruptcy Law Article 1 number 6.

⁹ Imran Nating, *Peranan Dan Tanggung Jawab Kurator Dalam Pengurusan Dan Pemberesan Harta Pailit* (Edisi Revisi, Raja Grafindo Persada 2005).[57].

¹⁰ Volkmar Gessner et al, 'Three Functions of Bankruptcy Law: The West German Case' (1978) 12 Law & Society Review.

As soon as the debtor is declared bankrupt by the court, the bankrupt by law has no authority to manage and/or transfer his assets, which have become bankruptcy assets. It is the curator who carries out all legal actions, including the management and transfer of bankruptcy assets, under the supervision of the supervising judge. From this proposition, it appears that the curator is very decisive in completing the settlement of the bankruptcy estate. Therefore, the law is very strict and very detailed in providing what authority the curator has and what duties the curator must carry out.¹¹

The curator begins the settlement of bankruptcy assets after the debtor is unable to pay and/or the debtor's business is stopped. The curator decides how to settle the bankruptcy estate by always paying attention to the best value at the time of settlement. Settlement can be carried out as one or more business units (going concerns). The curator carries out the arrangements for the sale in public as regulated in the Minister of Finance Regulation Number 213/PMK.06/2020 concerning Instructions for Implementing Auctions. If a general auction cannot be reached, private sales can be carried out with the permission of the supervising judge. The permission given by the supervisory judge to the curator is his duty as supervisor.

In carrying out the sale of a bankrupt debtor's assets, the curator must pay attention to these things, among others:¹²

1. Must sell for the highest price;
2. Must decide whether certain assets should be sold immediately and other assets should be saved first because their value will increase in the future;
3. Must be creative in getting the highest value for the bankruptcy debtor's assets.

Considering that in this case the bankrupt debtor has Crypto Assets, when the settlement is carried out by the curator, these assets cannot immediately

¹¹ Shubhan (n 1).[108].

¹² Timur Sukiio, *Tanggung Jawab Kurator Terhadap Harta Pailit dan Penerapan Actio Paulina*, dalam Rudhy A. Lontoh, *Penyelesaian Utang Piutang Melalui Pailit atau Penundaan Kewajiban Pembayaran Utang* (Alumni 2011).[371-372].

fulfill the creditor's claim rights in the bankruptcy process.¹³ In order to fulfill the creditor's claim rights, in this case the curator can settle the crypto assets in the form of rupiah currency. As emphasized in Article 21 paragraph (1) letter b of Law Number 7 of 2011 concerning Currency, it is stated that rupiah must be used to settle other obligations that must be fulfilled with money. Article 139 paragraph (1) of the Bankruptcy Law also emphasizes that receivables whose value is not determined, uncertain, not stated in the currency of the Republic of Indonesia or not at all determined in money, must be adjusted according to their estimated value in the currency of the Republic of Indonesia.

Matching the estimated value of crypto assets into rupiah is a form of settlement carried out by the curator to fulfill the debts of bankrupt debtors to creditors, considering that as in CoFTRA Regulation No. 5 of 2019 states that, Crypto Assets are intangible commodities in the form of digital assets, using cryptography, peer-to-peer networks, and distributed ledgers, to regulate the creation of new units, verify transactions, and secure transactions without interference from other parties. In other words, this Crypto Asset uses a blockchain database. Blockchain is a digital data storage system technology that contains connected transaction records and uses unique and unchangeable codes.¹⁴ This record records all transactions that have ever been carried out, allowing the user's computer to verify the validity of each transaction. The authenticity of each transaction is protected with a digital signature, this digital signature identifies the owner of the crypto asset and ensures that the transaction is valid, and only the owner of the user has full control over the delivery of the Crypto Asset. Crypto assets are stored in e-wallets and can only be accessed by the owner of the e-wallet. In Commodity Futures Trading Supervisory Agency Regulation Number 7 of 2020 concerning Determining the List of Crypto Assets That Can Be Traded on the Physical Crypto Asset Market, there are 229

¹³ Kukuh Leksono Suminaring Aditya, 'Dapatkah Aset Kripto Jadi Alat Pembayaran Utang dalam Kepailitan', (Hukum Online, 2021), <<https://www.hukumonline.com/klinik/a/aset-kripto-jadi-alat-pembayaran-utang-dalam-kepailitan-lt62d411f0405ce>, 06-12-2022> dikunjungi pada tanggal 06 Desember 2022.

¹⁴ Bhiantara, I. B. P, 'Teknologi Blockchain Cryptocurrency di Era Revolusi Digital' (2018), Seminar Nasional Pendidikan Teknik Informatika Ke-9. Bali: Universitas Pendidikan Ganesha.

crypto assets, including: Bitcoin, Ethereum, Xrp/ripple, Tether, Binance Coin, Polkadod, and so forth.

If analyzed further, Crypto Assets belonging to the bankrupt debtor, where the curator in this case has the authority to settle the bankrupt debtor's assets, must first have access/keys to sell the crypto assets, because they are online and use the debtor's personal data, so The curator does not have access to the debtor's wallet unless granted by the debtor himself and every transaction carried out by a crypto asset customer facilitated by a crypto asset trader must be verified by a clearing house. Where a clearing institution is a business entity that organizes and provides systems and/or facilities for implementing clearing and guaranteeing the settlement of futures trading transactions and physical markets.

Conclusion

The criteria debtor assets that can be included as bankruptcy assets in the bankruptcy law are not clearly stated, but implicitly mention several types of bankruptcy assets such as money, jewelry, all documents, whether in the form of securities or other securities. Based on bankruptcy practice in Indonesia, objects registered as bankruptcy assets are objects that can be used as collateral in a bank and have economic value.¹⁵ It can be understood that crypto assets as intangible commodities in the form of digital assets fulfil the classification as assets based on the material concept regulated in the BW. Looking at its nature, crypto assets are intangible movable objects that have material rights attached to them so that they can be controlled and enjoyed the benefits and economic value contained in crypto assets. Because crypto assets have economic value and can be traded, they can be included by the curator in the bankruptcy estate list. Proof of ownership of crypto assets is issued by the storage place manager in the form of a document called proof of crypto assets holding.

¹⁵ Trisandini Prasastinah Usanti, 'Bisakah Aset Kripto Dijadikan Jaminan Utang', (Hukum Online, 2021), <https://www.hukumonline.com/klinik/a/bisakah-aset-kripto-dijadikan-jaminan-utang-1t6154145ca7d7e?utm_source=website&utm_medium=internal_link_klinik&utm_campaign=aset_kripto_jaminan_utang_06-12-2022> dikunjungi pada tanggal 06 Desember 2022.

So, if a debtor goes bankrupt and has crypto assets, then these assets become part of the debtor's assets which will be used to pay creditors. In the procedures for managing and settling crypto assets as bankruptcy assets, the curator can use his authority as regulated in the bankruptcy law to obtain control of crypto assets owned by the bankruptcy debtor, considering that crypto assets are intangible assets stored in digital wallets that can only be accessed by the user. Then, in this case the curator can arrange the crypto assets in the form of rupiah currency, remembering that crypto assets are not a currency which is a legal means of payment based on law number 7 of 2011 concerning currency. The settlement carried out by the curator can be carried out by selling the crypto assets, either by auction or privately with the permission of the supervising judge. So these crypto assets can be cashed in rupiah currency.

Bibliography

Books

Gessner V, *Three Functions of Bankruptcy* (The West Germany Case, in Law and Society 1978).

Marzuki PM, *Penelitian Hukumn* (Kencana Prenada Media Group 2016).

Nating I, *Peranan dan Tanggung Jawab Kurator Dalam Pengurusan dan Pemberesan Harta Pailit* (Raja Grafindo Persada 2005).

Prayogo D, *Mengenal Hukum Aset Kripto* (Deepublish 2022).

Sastrawidjaja MS, *Perjanjian Buku dalam Aktifitas Dunia Maya, Cyberlaw: Suatu Pengantar* (Elips 2002).

Shubhan M. Hadi, *Hukum Kepailitan: Prinsip, Norma dan Praktik Di Peradilan* (Kencana Prenadamedia Group 2014).

Subekti, *Pokok-Pokok Hukum Perdata* (Intermasa 2017).

Sukio T, *Tanggung Jawab Kurator Terhadap Harta Pailit dan Penerapan Actio Paulina, dalam Rudhy A. Lontoh, Penyelesaian Utang Piutang Melalui Pailit atau Penundaan Kewajiban Pembayaran Utang* (Alumni 2001).

Journal

Bhiantara, I. B. P, 'Teknologi Blockchain Cryptocurrency di Era Revolusi Digital' (2018), Seminar Nasional Pendidikan Teknik Informatika Ke-9. Bali: Universitas Pendidikan Ganesha.

Kartoningrat R.B, Peter M. Marzuki, M. Hadi Shubhan, 'Prinsip Independensi dan Pertanggungjawaban Kurator dalam Pengurusan dan Pemberesan Harta Pailit' (2021) 16 *RechtIdee*

Tarantang J, 'Perkembangan Sistem Pembayaran Digital pada Era Revolusi Industri 4.0 di Indonesia' (2019) Vol. 4 Nomor 1. *Jurnal Al-Qardh*.

Website

Aditya KLS, 'Dapatkah Aset Kripto Jadi Alat Pembayaran Utang dalam Kepailitan', (*Hukum Online*, 2021), <<https://www.hukumonline.com/klinik/a/aset-kripto-jadi-alat-pembayaran-utang-dalam-kepailitan-lt62d411f0405ce>, 06-12-2022> dikunjungi pada tanggal 06 Desember 2022.

Bitcoin.org.(2023)<<https://bitcoin.org/id/faq#bagaimana-cara-kerja-bitcoin>> dikunjungi pada tanggal 20 Januari 2023.

Usanti TP, 'Bisakah Aset Kripto Dijadikan Jaminan Utang', (*Hukum Online*, 2021), <https://www.hukumonline.com/klinik/a/bisakah-aset-kripto-dijadikan-jaminan-utang-lt6154145ca7d7e?utm_source=website&utm_medium=internal_link_klinik&utm_campaign=aset_kripto_jaminan_utang, 06-12-2022> dikunjungi pada tanggal 06 Desember 2022.

Statute

Kitab Undang-Undang Hukum Perdata (Burgelijk Wetboek).

Peraturan Badan Pengawas Perdagangan Berjangka Komoditi Nomor 5 Tahun 2019 tentang Ketentuan Teknis Penyelenggaraan Pasar Fisik Aset Kripto (Crypto Asset) Di Bursa Berjangka.

Peraturan Badan Pengawas Perdagangan Berjangka Komoditi Nomor 7 Tahun 2020 tentang Penetapan Daftar Aset Kripto Yang Dapat Diperdagangkan Di Pasar Fisik Aset Kripto.

Undang Nomor 37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.

Undang-Undang Nomor 7 Tahun 2011 tentang Mata Uang.

How to cite: Tomi Hidayatullah, Bambang Sugeng Ariadi Subagyono, Zahry Vandawati Chumaida, Kukuh Leksono Suminaring Aditya, 'Settlement of Bankruptcy Assets in A Form of Crypto Assets Throughout Bankruptcy Process' (2023) 6 *Notaire*.

--This page is intentionally left blank--