Legal Construction of Crypto Assets as Objects of Fiduciary Guarantee

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Abstract

Since the covid 19 pandemic, the crypto asset trading industry has become one of the assets that people are interested in. Crypto Assets are digital commodities that utilize blockchain technology. They are intangible and exist in a digital form using cryptography, IT networks, and distributed ledgers to regulate their creation, verify transactions, and ensure security without outside interference, as outlined in Article 1, point 7 of the Bappebti (CoFTRA) Regulation No. 8 of 2021. Crypto assets have become commodities traded on the Futures Exchange. Based on data from the Ministry of Trade, the number of crypto asset investors in Indonesia will have reached 11 million people by the end of 2021. The high level of crypto investment and public interest in crypto as a digital asset provides excellent opportunities for Indonesia’s digital economy growth. Whether crypto assets can be employed as objects of fiduciary promises is the issue at hand in this study. What legal framework applies if crypto assets are made the subject of fiduciary guarantees? The purpose of this study is to determine how cryptocurrency assets are construed legally as fiduciary assurances. Utilizing a conceptual and statutory perspective, normative juridical research methodology was applied. Secondary data collecting and qualitative analysis of the data. The results of the study show that crypto assets are intangible movable objects that have economic value and can be transferred due to agreements through each user’s account, so conceptually, crypto assets can be used as fiduciary collateral objects, but considering that crypto assets are digital currencies are unpredictable, hence legal protection for creditors holding crypto asset guarantees is still weak, in addition to the absence of regulations specifically governing crypto assets that can be used as fiduciary collateral objects, there are also difficulties in executing, so there is a need for legal constructions that regulate crypto assets can be used as fiduciary collateral objects.

Keywords: Legal construction; Crypto Assets; Fiduciary Guarantee Object

1. **Background**

During the Covid 19 pandemic that hit the world, Indonesia was no exception, searching for added value for investors to invest in digital assets. Crypto Assets are digital assets that utilize blockchain technology or blockchain. According to Article 1 Number 7 of CoFTRA Regulation Number 8 of 2021, crypto assets are intangible commodities in digital form that use cryptography, information technology networks, and distributed ledgers to control the creation of new units, verify transactions, and secure transactions without the interference of third parties.

Crypto is a digital asset on top of the blockchain system that can be used for internet network-based virtual transactions. Crypto assets provide opportunities for digital economic growth in Indonesia. By looking at data from the Ministry of Trade, the number of crypto asset investors in Indonesia will have reached 11 million people by the end of 2021. This proves that crypto asset users in Indonesia have become an investment choice. Digital investments in crypto assets are also known as virtual currencies, which are intangible and not issued by a country or a central bank in a particular country.

Bitcoin is the original cryptocurrency. Its concept was described in an article titled 'Bitcoin: Peer to Peer Electronic Money System' by Satoshi Nakamoto, which can be found on the bitcoin.org website. In the article, Nakamoto presents the cryptocurrency as a digital payment system based on cryptographic proof, rather than trust. Cryptography is a technique for securing information and communication through the use of codes. Cryptographic proof can be seen in the verified and recorded transactions stored in the blockchain. (Fauzia, 2021).

The following authors of certain research findings: Different definitions have an impact on the legal and normative regulation of cryptocurrencies. While the Ministry of Trade sees it as a digital asset that may be exchanged on futures exchanges, Bank Indonesia sees it as digital money, making it illegal to use as a form of payment. In similarity to Malaysia, the Security Commission determines cryptocurrency is a legal digital asset under the Capital Markets and Services Order 2019. However, the central bank shall not qualify this asset as legal money or a payment instrument (Cointelegraph, 2022). Likewise, pursuant to Hong Kong law, cryptocurrency is not recognized as a legal tender by Hong Kong Moneytary Authority, but it is identified as one of virtual assets for dealing and distributing by the Security Commission (Cointelegraph, 2022). Seeing the existence of these two different concepts shows the weakness of the rules related to the implementation of crypto assets (Najibur Rohman, 2021). Crypto assets are digital currencies that exist in an open-source, peer-to-peer (P2P) payment network system. P2P refers to a network model where two or more computers are connected and each device can share resources within the network. The network makes it easier for users to make transactions directly without going through third-party services such as banks (Nurcholis et al., 2021). Crypto assets are digital assets that are intangible objects that can be transferred from one owner to another via electronics with an internet network. Therefore crypto assets can be used as a guarantee for credit (Rahman et al., 2020). According to Imanda's research findings, crypto assets can be considered as intangible assets and, if used as guarantees, can utilize pawnbroker institutions. However, there are no established regulations or standards for using crypto assets as collateral in peer-to-peer lending, leading to a significant risk of loss due to cybercrime (Imanda, 2020).

Some of the research above underlies researchers to conduct research with a focus on studying crypto assets that can be used as objects of fiduciary guarantees, considering that fiduciary guarantees are guarantee institutions that submit collateral objects in trust. This means that the object (crypto asset) is still in the hands of the debtor (object owner), but the crypto asset document has been transferred to the collateral holder to be used as collateral. The problem is; if crypto assets can be used as fiduciary collateral objects, documents as proof of ownership of crypto assets in the digital world are difficult to detect because they are hampered by account ownership.

Several parties are involved in buying and selling crypto assets, namely physical traders of crypto assets; crypto asset customers; and managers of crypto asset storage areas in network applications. Proof of ownership of someone having crypto assets is an account integrated with the crypto market. As the owner of a crypto asset account, you have rights. At the same time, your obligations will be charged with fees for each sale and purchase transaction of crypto assets, free transactions, and obligations that the crypto assets that will be used as collateral are in the form of a wallet account, a kind of crypto account that can be registered on each blockchain.

Since the enactment of the Bank Indonesia Regulation initiated the process of implementing a cryptocurrency payment system, crypto money has not been considered legal tender in Indonesia. The laws mentioned above include PBI 11/12/PBI/2009 concerning Electronic Money, PBI 18/40/PBI/2016 concerning Clearing Processing Transactions, and PBI 19/12/PBI/2017 concerning Financial Technology Regulations related to the use of virtual currency. According to this law, virtual currency includes digital money exchanged between parties in addition to traditional currencies used through mining, staking, or other gift transfers, such as Bitcoin, Blackcoin, and Ethereum. It also follows Law Number 7 of 2011 concerning Currency and Bank Indonesia Regulation Number 17/3/PBI/2015 concerning the Use of Rupiah, which recognizes currency as the primary means of payment.

Since the creation of cryptocurrencies as a result of technological advancements in e-commerce activities, virtual money has become a phenomenon in society. Cryptocurrency is a collection of cryptographic codes that have been designed to be kept in a computer, sent as email, and utilized as a form of payment in a business transaction. There are 100 different kinds of cryptocurrencies, including Bitcoin, Ethereum, Litecoin, Ripples, and RonPaulCoin. The market leader among all of these cryptocurrencies is bitcoin, which has a market capitalization of $11,495,123,941 and a price of $ 7,266.07 per bitcoin (BTC) (Honggowongso & Kholil, 2021).

Crypto assets are intangible assets that can be transferred through buying and selling or used as collateral objects. A fiduciary guarantee is a guarantee with delivery in the trust where the debtor or owner still controls the material object used as collateral. Conceptually, crypto assets can be used as objects of fiduciary guarantees because they are based on Article 499 of the Civil Code that crypto assets fulfill material elements, namely that they can be transferred for sale and purchase, as well as objects of fiduciary guarantees. However, since crypto assets are intangible moving objects with unpredictable nature, transactions are digital in the internet network. Legally, no regulations specifically regulate it, so legal protection for creditors holding fiduciary guarantees is very weak, even though crypto assets have economic value. The need for the legal construction of crypto assets as objects of fiduciary guarantees in the future is to provide legal certainty and legal protection.

1. **Research Method**

This research is a normative juridical research, using a conceptual and statutory approach. The specific research in this research includes analytical prescriptive research. The legal material used is in the form of secondary legal material. The technique of collecting legal materials uses secondary data or library research. This research is analyzed qualitatively after the secondary or library data are analyzed with theory to draw conclusions.

1. **Discussion**

**C.1. Juridical Aspects of Crypto Assets as Digital Commodities**

The growth of investment in crypto assets promotes the advancement of Indonesia's digital economy. Legally, crypto assets can be traded on futures exchanges in Indonesia. As stated in Article 1, point 7 of the CoFTRA Regulation No. 5 of 2019, which governs the technical requirements for organizing the physical market for crypto assets on futures exchanges, crypto assets are intangible digital commodities using cryptography, peer-to-peer networks, and distributed ledgers to regulate the creation of new units, verify transactions, and ensure secure transactions without outside interference. In Indonesia, crypto assets are commonly referred to as cryptocurrencies, but they cannot be used as a form of payment. The most well-known virtual currency in the digital realm is Bitcoin.

Bitcoin is a virtual currency that functions for payments like money in general. It is decentralized in nature or only fully controlled by its users without the intervention of certain parties. Bitcoin can only be obtained from the mining process or mined by a specific tool, and after that, it can only be used for buying and selling between users. To make buying and selling transactions can be done directly between users or through a buying and selling exchange called the Exchange(Andreas M.Antonopulos, 2017: 9-10). The first Bitcoin exchange was the New Liberty Standard when Bitcoin had a price of $0.0007 in 2009. At that time, Bitcoin transactions were buying and selling, and there was no use in paying for goods and services. In its development, Bitcoin was eventually used as a means of payment for various goods and services.

The study conducted by Teguh Wisnu and Yudho has shown that the first Indodax website, which facilitates bitcoin transactions, adheres to the principles of contracts and the legal provisions outlined in the Civil Code, as well as the regulations set forth in Government Regulation No. 82 of 2012 on the implementation of electronic systems and transactions, and the provisions of Law No. 11 of 2008 on information and electronic transactions. In Indonesia, the buying and selling of Bitcoin now have official recognition and legal support through the issuance of the Commodity Futures Trading Regulatory Agency Regulation No. 5 of 2019 on the Technical Provisions for Organizing the Physical Crypto Asset Market on Futures Exchanges. This law covers various aspects such as the procedures for buying and selling Bitcoin, the requirements for establishing a physical market for digital assets or exchanges, and dispute resolution. The legal protection for Bitcoin transactions encompasses various aspects such as privacy, the validity of the parties involved, the purpose of the transaction, and the obligations of the parties involved. (Wisnu Wardhana & Taruno Muryanto, 2019)

Reviewing crypto assets as digital assets that can be traded on futures exchanges proves that these crypto assets have high economic value and are of interest to the public. There are several parties involved in buying and selling crypto assets, namely:

1. Physical traders of crypto assets, namely parties who have obtained approval from the Head of CoFTRA to carry out transaction activities related to crypto assets, both on their behalf and/or facilitating crypto asset customers;
2. Crypto asset customers, namely parties who use the services of physical crypto asset traders to buy or sell crypto assets that are traded on the physical crypto asset market;
3. The crypto asset storage manager is a party that has obtained approval from the head of Bappebti to manage crypto asset storage areas to store, maintain, supervise, and/or transfer crypto assets.

Cryptocurrency is a digital currency system that operates similarly to traditional currency, enabling users to make virtual payments for business transactions. In development of cryptocurrency, it is a substitute currency that makes it easier for people to do online transactions; even cryptocurrency has been used as a virtual payment. (Galih Priambodo, 2021). A number of countries facilitate cryptocurrency to make daily payments and recognized it as a legal asset. For example, Japan is known for being one of the most supportive countries in Asia when it comes to cryptocurrencies. Bitcoin and other digital currencies are recognized as a form of legal tender and asset. The regulation of cryptocurrency in Japan falls under the jurisdiction of the Financial Services Agency, which has the authority to control the Yen currency. The Japanese Payment Services Act provides legal norms for payment services and fully recognizes crypto assets as a legitimate method of payment. Therefore, there are no limitations on owning, trading cryptocurrencies and Fiduciary Guaranteeing (Cointelegraph, 2022). In Singapore, trading and ownership of cryptocurrency are legitimate under national laws. The country is famous for initiatives to advance blockchain technology and creative applications of cryptocurrencies for practical purposes. Companies wishing to join in the cryptocurrency activities must satisfy the licensing requirements specified under the Payment Services Act 2019. To obtain a license, companies must apply to the Monetary Authority of Singapore, have their headquarter in Singapore, and adhere to rules of Anti-Money Laundering and Counter-Financing Terrorism (Cointelegraph, 2022). Canada is a crypto-friendly country and even are considered a budget by the Canada Revenue Agency for tax purposes. This is the first nation to approve funds of exchanging and trading bitcoin, several of which are now traded on the Toronto Stock Exchange. Crypto exchanges are legally determined as money service businesses under the Proceeds of Crime and Terrorist Financing Act.

 Transactions for buying and selling virtual currency on exchanges are similar to buying and selling shares. The difference is the ease of registering to become a member or member of an exchange because this finally buys and sells virtual currency to get a lot of members in a reasonably short time. With the entry of so many members, the volume of transactions will also increase, eventually increasing drastically with a value reaching billions of US dollars (https://www.blockchain.com/id/stats). Another difference is that stock exchanges have clear legal basis and protection, while bitcoin exchanges are sometimes not bound by law at all (Wisnu Wardhana & Taruno Muryanto, 2019)

**C.2. Crypto Assets in Vietnam**

To foster the development of a legal framework for managing virtual assets, cryptocurrencies, and electronic currency in Vietnam, Prime Minister Phuc signed a decree in August 2017. This allows the government to tax cryptocurrency businesses, generate revenue from the sector, and regulate the growth, acceptance, and use of cryptocurrencies as acceptable forms of payment in Vietnam. However, the quickly growing crypto asset sector is being abused by scammers who play, leading to the collapse of the sector. Investors lose money, even low-income players who engage in gambling because they harbor lofty expectations. As a result, the State Bank of Vietnam, or SBV, declared on 30 October 2017, that utilizing cryptocurrencies in Vietnam as a means of payment would not be regarded as a legitimate form of money. Since then, the SBV has released a number of laws to make sure that the Vietnamese economy does not once again adopt cryptocurrencies as a means of payment. Most recently, SBV last week issued a directive to representative offices of foreign banks, payment intermediary service providers, and bank card issuing organizations on the restriction of cryptocurrency transactions. The language of suspicion used in this order conceals cryptocurrency and associates them with crimes like money laundering and supporting terrorism. It cautions pertinent entities to examine, keep track of, and closely examine all transactions to make sure that they are stopped if they appear to include illicit behavior, including cryptocurrency. Like Covid-19 before it, it is an initiative that descends from the highest levels of government to the general public (Jacob, 2021).

As stated by Lisa Prodent, cryptocurrencies are intangible and pose a challenge to state authorities, such as state-run banks, as they have no control over the crypto system. The government is also highly concerned about the risk of speculation and manipulation, which could greatly impact the national economy. Due to the swift fluctuations of virtual currencies and widespread lack of understanding, the legislative process has been reactive, leading to legal gaps globally. These legal loopholes, however, are dangerous and to minimize losses from cryptocurrencies, Vietnam must take action (Prodent, 2021).

Cryptocurrencies are not mentioned in Vietnamese legislation as legal money or recognized as foreign assets or currencies. Bitcoin and other cryptocurrencies are specifically listed by the State Bank of Vietnam as being forbidden for use in trade. According to that, Article 105 of the Civil Code 2015 has not determined that cryptocurrencies are a type of asset. Specifically, according to Circular 5747/NHNN-PC of the State Bank of Vietnam, Bitcoin and other similar virtual currencies are not legal monetary and are not a legally recognized means of payment in Vietnam under current regulations on currency and banking. Acts of issuing, supplying, or using illegal means of payment are punishable with fines ranging from VND 150 million to VND 200 million (approximately from US$ 6,2500 to US$8,330) under Law on Handling of Administrative Violations, or face criminal liability for violating provisions on banking activities and other activities related to banking under Article 206 of the Criminal Code of 2015 (To, 2020)Although it is currently tolerated, holding, trading, and investing in cryptocurrencies are neither illegal nor legal.

A $100 million fund was announced in March 2022 by Bit World Investments Limited's cryptocurrency exchange AEX Exchange to help Vietnam's blockchain ecosystem (Chi & City, 2022). In June 2022, the Vietnam Blockchain Association teamed up with Binance, the top cryptocurrency exchange globally, to work on the research and implementation of blockchain technology and the development of human resources through training (Newswire & Association, 2022). Vietnam tops The 2021 Global Crypto Adoption Index by Chain Analysis, showing a remarkably high level of usage by individuals in the country (Chainalysis, 2021).

Vietnam is leveraging blockchain technology in various industries. One such application is the National Qualifications Archive system, which records and verifies data in the agriculture industry, from seed planting to processing. Additionally, the Ministry of Education and Training has mandated all provincial universities, academic education and training departments to store and secure all Vietnamese diplomas and certificates in this blockchain system. With the Covid Pass, individuals can securely store their COVID-19 test results, personal information, data on SARS-CoV-2 viral analysis, and certifications in a secure mobile app that protects against tampering. Techcom Securities also plans to utilize blockchain technology and smart contracts for bond transactions (The Tan, n.d.). However, the most significant use case of blockchain technology is crypto tokens.

Since blockchain is a new technology, it is challenging for the average person to comprehend technically. Blockchain is already employed in e-government services, such as the National Qualifications Archive system, which stores and secures all Vietnamese diplomas and certificates. There are no legal issues with the technology in Vietnam. Legal concerns arise in Vietnam only when this technology is used to produce a distinct kind of crypto coin (Nhat Quang et al., 2022). The non-recognition of the legal value of cryptocurrencies in Vietnam impedes the implementation and execution of smart contracts. The core components of smart contracts are encrypted, with payments made through the encrypted currency instead of cash. Although the Law on Electronic Transactions 2005 implicitly recognizes the legal value of smart contracts through the definition of automatic electronic transactions in Clause 7, Article 4. This is further guided under Decree No. 52/2013/ND-CP implemented by Government on electronic commerce, which acknowledges the binding and execution of contracts through an automatic information system with equivalent value to traditional contracts. However, the fact shows that the contractual parties fail to engage in any smart contracts due to the non-acceptance of cryptocurrency transactions under national laws (Ly, 2022).

**C.3. Legal Construction of Crypto Assets as Objects of Fiduciary Collateral**

Developing the law of objects in the digital era provides benefits and convenience in economic activities through electronic media. The principles of property law, among others, can be transferred, are absolute, droit de suite, and have economic value. Crypto assets are intangible objects as regulated in Article 499 of the Civil Code. Someone who buys crypto assets will have material rights as long as there is leverage in the ownership of crypto assets in electronic media, which is named the account after registration/registration. An account is data about a person or a person’s virtual identity in the digital world. This account implies the ownership of someone who has registered crypto assets. Several parties are involved in owning crypto assets: managers registered with CoFTRA, users, and service providers in digital media.

Crypto assets are included as commodities that can be traded on the physical market for crypto assets on futures exchanges, considered as physical markets carried out using electronic means facilitated by futures exchanges or electronic facilities owned by physical traders so that crypto assets can be traded. So crypto here is an intangible item which, when connected to article 503 of the Civil Code, states that there are items that have a body, and there are items that do not. But of course, in this case, creditors should be more careful because of the very high risk of crypto assets, such as price fluctuations and other risks.

Crypto investment is a digital asset providing excellent opportunities for Indonesia’s digital economy growth. Crypto assets include intangible assets in the form of digital coins that have high economic value. The material that may be transferred by buying and selling or used as collateral for credit, in this case, a fiduciary guarantee, due to an agreement is included in the category of intangible assets known as cryptocurrencies. According to the logic behind the legislation of fiduciary guarantees, burdened objects have a mechanism in place to award credit for items that will eventually be utilized as objects of fiduciary guarantees. The credit agreement begins with the parties’ agreement, as stipulated in Article 1320 of the Civil Code regarding the legal terms of the agreement, to charge the object as a fiduciary guarantee.

Regarding crypto assets as objects of fiduciary guarantees, credit agreements made peer-to-peer must fulfil the terms of the fiduciary guarantee agreement as stipulated in Law Number 42 of 1999 concerning Fiduciary Guarantees. The table below shows the legal construction of regulating crypto assets as objects of fiduciary guarantees in the future.

Table.1.1. Legal Construction of Crypto Assets as Fiduciary Guarantee Objects

|  |  |  |
| --- | --- | --- |
| No | The substance of the Fiduciary Guarantee Law | Crypto Assets as Fiduciary Guarantee Objects |
| 1 | Legal basis:Article 1, paragraph 1, the act of handing over ownership rights to an object through trust is referred to as fiduciary, as the object being transferred is under the control of the owner. | Legal basis:Regulation of the Commodity Futures Trading Regulatory Agency Number 5 of 2019 concerning Technical Provisions for Organizing a Physical Crypto Asset Market on Futures Exchanges.* Crypto assets, if they are to be used as fiduciary collateral objects, then according to fiduciary theory, the delivery is in trust, the object transferred is still in the control of the owner of the object (crypto asset), documents of ownership of the submitted crypto asset;
* Crypto assets are movable objects that are intangible, abstract objects but have economic value.
* Owners of crypto assets have been registered as members who have been provided the form of an electronic contract for bitcoin transactions registered on websites such as the Indodax website;
* Proof of ownership of crypto assets submitted in the form of documents in either hard copy or softcopy form issued by the Depository Manager as proof of ownership (Article 1 point 11 of the Commodity Trade Supervisory Agency Regulation Number 13 of 2022 concerning Amendments to BAPPEBTI Regulation Number 8 of 2021 concerning Guidelines for Organizing Crypto Asset Physical Market Trading on Futures Exchanges;
* A wallet is a medium used to store Crypto Assets in the form of coins or tokens (Article 1 number 13 CoFTRA Regulation Number 13 of 2022)
* The Crypto Asset List Assessment Team, as regulated in Article 5, paragraph 2, consists of: a. CoFTRA; b. Association in the field of Crypto Asset trading; and c. Business actors in the field of Crypto Asset Physical Market Trading who have been registered with CoFTRA assess the crypto assets that will be used as collateral.
* Lending banks cooperate with Bappebti regarding credit financing with crypto asset guarantees.
 |
| 2 | Fiduciary guarantee object credit agreement:- requirements for a valid credit agreement (Article 1320 of the Civil Code); made by the Debtor and Creditor parties can be made privately- fiduciary guarantee credit agreement(Objects of guarantees for movable objects, both tangible and intangible) are drawn up with a notarial deed | A credit agreement in which crypto assets are used as fiduciary collateral objects is carried out between the Bank as the holder of the fiduciary guarantee and the owner of the crypto asset as the fiduciary guarantee provider (Debtor), made through a network or media wallet. |
| 2 | The parties:- Fiduciary givers, namely individuals/corporations/object owners (Article 1 paragraph 5)- Fiduciary recipients are individuals/corporations as fiduciary guarantee holders. | Parties: Giver and Recipient can be individuals and corporations/banks. |
| 3 | Article 1, paragraph 11 paragraph: objects burdened with fiduciary guarantees must be registered—online registration (PP Number 15 of 2015). | Fiduciary Guarantee Registration with crypto asset collateral objects through the Supervisory Agency, in this case, CoFTRA. |
| 4 | The mechanism of granting credit with a fiduciary guarantee objects, there are several stages:The granting stage, the stage of providing fiduciary guarantees with a notarial deed, the registration stage, issuing a fiduciary certificate | The mechanism for granting credit with fiduciary collateral objects where crypto assets are collateral objects, there are several stages:1. The stage of giving between the debtor and the creditor, through the network or CoFTRA,
2. Registration stage through online CoFTRA, a fiduciary guarantee certificate is issued,
3. In this case, after going through the process from CoFTRA, the Notary makes a notarial deed of fiduciary guarantee, then registers it online, at the Ministry of Law and Human Rights issues a fiduciary guarantee certificate.
 |
| 5 | Fiduciary Guarantee Certificate: Copy of Fiduciary Register Book Article 14 paragraph 1 “For the sake of Justice Based on the One and Only God” has executive powers. | Fiduciary Guarantee Certificate: Copy of Fiduciary Register Book Article 14 paragraph 1 “For the sake of Justice Based on the One and Only God” has executive powers. |
| 6 | The contents of the Guarantees Deed in Article 6 must be included:- The date the fiduciary deed was made- The identity of the recipient and fiduciary holder- Main agreement data guaranteed by fiduciary- Description of objects that are the object of fiduciary guarantees- Guarantee value- The value of objects that are the object of fiduciary guarantees. | The contents of the Guarantees Deed in Article 6 must be included:- The date the fiduciary deed was made- The identity of the recipient and fiduciary holder- Main agreement data guaranteed by fiduciary- Description of objects that are the object of fiduciary guarantees- Guarantee value- The value of objects that are the object of fiduciary guarantees. |
| 7 | Fiduciary Guarantee Execution Article 29, if the debtor defaults, then the object burdened by the fiduciary guarantee object can be executed utilizing executorial title, underhand selling, or sale by auction. | Fiduciary Guarantee Execution Article 29, if the debtor defaults, then the object burdened by the fiduciary guarantee object can be executed utilizing executorial title, underhand selling, or sale by auction.If the credit is bad, the execution of fiduciary guarantees objects with crypto assets as fiduciary guarantees are done through CoFTRA. |
| 8 | Execution of Fiduciary Guarantee objects after Constitutional Court Decision Number 188/PUU-XVII/2019Constitutional Court Decision Number 71/PUU-XIX/2021 | Suppose there is an agreement between the Creditor and the Debtor, regarding the debtor’s default. In that case, the execution mechanism can be executed at CoFTRA as Supervisor of Futures Trading, including crypto assets. |

Source: Secondary data processed by researchers, 2023.

See table 1.1. mentioned above, shows that actually by following the provisions outlined in Law 42 of 1999 related to fiduciary guarantees, as well as CoFTRA Regulation as the governing body for crypto assets, as well as Law 11 of 2008 on Information and Electronic Transactions and Government Regulation 82 of 2012 on the implementation of electronic systems and transactions, crypto assets can serve as objects for fiduciary guarantees in accordance with Consumer Protection Law 8 of 1999.

1. **Closing**

Business development in the digital era allows many ways to facilitate profitable economic activities. Cryptocurrency is a digital asset that can be traded on the Futures Exchange. CoFTRA is the agency that oversees the implementation of crypto assets. Parties involved in using crypto assets are a structure built in the process of ownership of crypto assets. Based on the theory of object law, crypto assets as intangible objects can be transferred due to sale and purchase agreements or guarantee agreements.

The legal construction of regulating crypto assets as objects of fiduciary guarantees departs from the understanding that crypto assets are virtual currency circulating on the internet network. As a virtual currency, crypto assets have economic value and can be used as collateral objects, in this case, fiduciary guarantees. With several stages or mechanisms for granting credit with crypto asset collateral objects, in legal substance, it refers to Fiduciary Guarantee rules, CoFTRA rules, Law Number 11 of 2008 concerning Information and Electronic Transactions, as well as Law No. 8 of 1999. These provisions must synergize to provide protection and legal certainty for the parties involved in the credit agreement by making crypto sets an object of fiduciary security.

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