



Money Laundering Criminal Liability Through Crypto Asset Exchange in Indonesia

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Abstract. Cryptocurrency users, including those utilizing Bitcoin, Litecoin, Dogecoin, and others, are increasingly prevalent in Indonesia. Since the Rupiah is the only legal currency in Indonesia, cryptocurrencies cannot be used as a means of payment or exchange in financial transactions within the country. However, cryptocurrencies are considered investments when incorporated into commodities, becoming crypto assets that can be used as digital investment assets. This research employs normative legal research to explore legal principles and norms to address legal questions. If someone exchanges assets obtained from criminal activities for crypto assets, thinking they are legitimate, and if the money in these crypto assets is derived from criminal proceeds, such actions constitute money laundering (ML). This process involves purchasing crypto assets with illicit gains, exchanging Rupiah for cryptocurrency, or converting Rupiah into cryptocurrency. While cryptocurrency is recognized as a legal digital commodity for investment purposes in Indonesia, it becomes illegal when misused by individuals seeking to legitimize wealth obtained illegally. Converting illegally acquired wealth into cryptocurrency to deceive the government and make the transaction appear lawful may result in legal consequences

Keywords: Money Laundering Criminal, Crypto Asset, Indonesia

1. INTRODUCTION

Investment discussions in Indonesia have recently become a multi-faceted topic, covering stocks, trading, mutual funds, gold, bonds, property, long-term investments, and more. Investment refers to putting money or other valuable assets into an organization or entity to generate a profit over time. However, many investments in Indonesia have led to abuses. The rise of bold, fraudulent investment schemes has negatively impacted the investment landscape, often due to the public's lack of understanding about investment. This enables perpetrators to create the illusion of quick profits from small investments.

The digitization of financial transactions has introduced digital currencies, including cryptocurrencies. Cryptocurrencies, created through cryptographic and blockchain systems, operate on decentralized networks, enabling users to conduct transactions without third-party oversight. Popular cryptocurrencies include Bitcoin, Litecoin, and Dogecoin. However, since the Rupiah is the legal currency in Indonesia, cryptocurrencies cannot be used as a means of payment or exchange in financial transactions. Instead, they are considered investments when used as collateral, thus becoming crypto assets for digital investment purposes. **Peraturan** Number 99 of 2018 (referred to as Permendag No. 99/2018) regulates cryptocurrency assets as commodities, while Law Number 5 of 2019 (referred to as Peraturan Bappebti No. 5/2019) governs the trading of commodities on the futures exchange.

While Indonesians are increasingly investing in cryptocurrencies, such investments can lead to criminal offenses. Indonesia has encountered issues with cryptocurrency-related crimes, including money laundering. Law No. 8/2010 addresses money laundering, with cryptocurrencies becoming a new tool to conceal and disguise assets derived from criminal activities. For example, in 2021, Helru Hidayat was implicated in a criminal conspiracy related to manipulating the share price of PT Asabri. Money laundering is the act of hiding or disguising the origin of money or assets obtained through criminal activity, converting them into assets that appear to be legitimately acquired.

Article 2 of Law No. 15 of 2002 lists the criminal offenses that can lead to money laundering, including corruption, embezzlement, smuggling, banking violations, narcotics trafficking, human trafficking, weapons trafficking, kidnapping, terrorism, theft, and fraud. Chaikin defines money laundering as "the process by which one conceals or disguises the true nature, source, disposition, movement, or ownership of money for any reason." In her book *White Collar Crime: Cases and Materials*, Pamela H. Bucy describes money laundering as "the concealment of the existence or illegal source of illicit funds in such a manner that the funds will appear legitimate if discovered."

In connection with the above, cryptocurrencies are increasingly being used by criminals to hide assets suspected of being obtained through illegal activities. The anonymity of cryptocurrency transactions and the challenges faced by law enforcement in tracking these transactions complicate efforts to prevent and prosecute such crimes. This research aims to examine the criminal liability for money laundering through cryptocurrencies in Indonesia

2. LITERATURE REVIEW

This research employs normative legal methods to identify legal principles and norms to address legal questions. To resolve legal issues, normative legal research is applied. The findings of this research provide solutions to the identified problems. Three approaches are used in this study: the statutory approach, the conceptual approach, and the case law approach

3. METHODS

The methods section outlines the steps taken to conduct the study and provides a brief justification for the chosen research methods. It should include enough detail for readers to assess the appropriateness of the methods and the reliability and validity of the findings. Furthermore, the information should allow experienced researchers to replicate the study

4. RESULTS

According to Article 1 of Law No. 25 of 2003, which amended Law No. 15 of 2002 on Money Laundering Crimes, money laundering involves actions such as investing, transferring, paying, spending, donating, entrusting, carrying assets abroad, or exchanging assets that are known or reasonably suspected to be the proceeds of a criminal offense, with the intent to conceal or disguise the origin of these assets to make them appear legitimate.

Article 1, Point 1 of Law No. 8/2010 defines money laundering as any action that meets the elements of a criminal offense under the provisions of this law. The specific aspects of the crime are outlined in:

Article 3 of Law No. 8/2010: "Any person who transfers, spends, pays, donates, entrusts, takes assets abroad, changes their form, exchanges them for currency or securities, or performs other acts on assets known or reasonably suspected to be the proceeds of criminal offenses as referred to in Article 2, paragraph (1), to conceal or disguise their origin, shall be punished for the crime of Money Laundering, with a maximum imprisonment of 20 years and a fine of up to Rp 10,000,000,000.00 (ten billion rupiah)."

Article 4 of Law No. 8/2010: "Any person who conceals or disguises the origin, source, location, allocation, transfer of rights, or ownership of assets known or reasonably suspected to be the proceeds of a criminal offense as referred to in Article 2, paragraph (1), shall be punished for the crime of Money Laundering, with a maximum imprisonment of 20 years and a fine of up to Rp 5,000,000,000.00 (five billion rupiah)."

Article 5 of Law No. 8/2010:

1. Any person who receives or controls the investment, transfer, payment, donation, entrustment, exchange, or use of assets known or reasonably suspected to be the proceeds of a criminal offense as referred to in Article 2, paragraph (1), shall be punished with a maximum imprisonment of 5 years and a fine of up to Rp 1,000,000,000.00 (one billion rupiah).
2. The provisions in paragraph (1) do not apply to reporting parties who perform their obligations as stipulated by this law.

There are three stages in the process of money laundering:

1. **Placement:**

Illegally obtained funds are moved from their source. This is often done to prevent law enforcement from identifying the origin of the illicit money. Common methods for placement include "smurfing," where funds are broken into smaller transactions to avoid detection.

2. Layering:

This involves creating multiple transactions to obscure the trail of the illicit funds. It may include converting money into physical assets such as real estate, jewelry, or other valuable items.

3. Integration:

At this stage, the illicit funds are reintroduced into the legal economy, often through false reports or legal activities, making the money appear legitimate. These funds are then used to further criminal activities or maintain illicit operations, such as drug trafficking or corruption.

To counter these tactics used by criminals and their accomplices to launder large sums of money through opaque transactions, governments must implement policies to prevent and eliminate money laundering. These policies may include strengthening the secrecy system of bank lending.

Cryptocurrency, known as a digital currency, is used as both a payment method and a form of currency exchange. Article 1 of Bappebti Regulation No. 99/2018 classifies cryptocurrency as a type of commodity. Article 1, Point 7 of Bappebti Regulation No. 5/2019 describes cryptocurrency as an "intangible commodity that is a digital asset, utilizing cryptography, a server network, and a distributed ledger to create new units, facilitate transactions, and secure transactions without third-party intervention."

The use of cryptocurrency for payments in Indonesia is prohibited. Article 34(a) of PBI No. 18/40/PBI/2016 states:

"It is prohibited to carry out payment transactions using virtual currencies."

Additionally, Article 21 of Law No. 7/2011 specifies:

1. The Rupiah must be used in:
 - a. Any transaction intended for payment;
 - b. Fulfillment of obligations that must be settled with money; and
 - c. Other financial transactions conducted within the territory of the Republic of Indonesia.
2. Exceptions to this requirement apply to:
 - a. Transactions related to the implementation of the national budget;
 - b. The issuance or disbursement of grants from within or outside the country;
 - c. The international trade transactions;
 - d. Bank deposits in foreign currencies; and
 - e. The foreign financing transactions.

If cryptocurrency assets continue to be used as a form of payment in Indonesia, criminal sanctions would apply under Article 33, paragraph (1) of Law No. 7/2011, which states:

"Anyone who fails to use Rupiah for:

- a. Any transaction with the purpose of payment;
- b. Settling obligations that must be fulfilled with money;
- c. Other financial transactions as outlined in Article 21, paragraph (1), shall be subject to a maximum imprisonment of 1 (one) year and a maximum fine of Rp 200,000,000.00 (two hundred million Rupiah)."

When cryptocurrencies are viewed as futures collateral, Bappebti deems them inappropriate for futures exchanges because they lack a valid reference or underlying asset. A valid reference refers to a price derivative applied to an established asset, which cryptocurrencies do not have due to their independent collector system and support network. Consequently, cryptocurrencies are prohibited as investment instruments in the form of collateral traded on futures exchanges. Although cryptocurrencies offer significant investment opportunities, a ban could potentially reduce investment value in the country. The discussion in this article will focus on cryptocurrencies as an investment instrument (referred to as "cryptocurrency assets").

Money laundering involves assets derived from criminal activities or offenses, as outlined in Article 2 of Law No. 8/2010. Cryptocurrencies are often used to facilitate money laundering, where illicit funds are transferred or invested in cryptocurrencies obtained through criminal activities. These funds are then used in financial transactions or invested in legitimate businesses, thereby concealing the illegal origin of the assets.

Regulation of Money Laundering through Cryptocurrency Assets

Money laundering through cryptocurrencies constitutes a criminal offense under applicable laws and regulations. When these laws are violated, the individual responsible may be subject to sanctions.

The first notable case of money laundering (ML) through cryptocurrencies occurred in 2021 with PT Asabri. Helru Hidayat (HH), one of the perpetrators, collaborated with PT Asabri's investment director to manipulate the share price of PT Asabri for personal profit. After profiting from the manipulated share value, HH purchased Bitcoin through Indodax to launder the illicit money. In case No. 30/Pid.Sus-TPK/2020/PN Jkt.Pst, HH was found guilty of money laundering.

Another case involves Indra Kelnz (IK), who branded himself as an affiliate trader for the Binomo platform, encouraging the public to invest in cryptocurrencies through misleading

videos. After drawing attention through a series of courses on how to profit from Binomo, IK defrauded his students, resulting in significant financial losses. Despite this, IK continued to profit from his Binomo affiliation and was found guilty in Appeal Decision No. 117/Pid.Sus/2022/PT.BTN for money laundering, with the case involving cryptocurrency.

Both HH and IK can be charged with money laundering under Article 3 of Law No. 8/2010, as their actions involved converting illicit assets into cryptocurrency to disguise the true source. HH also committed the crime of corruption under Article 2, paragraph (1) of Law No. 31/1999, which states: "Anyone who unlawfully enriches themselves or another, or engages in collusion that harms state finances, shall be sentenced to life imprisonment or a minimum of 4 (four) years' imprisonment and a maximum of 20 (twenty) years, along with a fine of between Rp 200,000,000.00 (two hundred million Rupiah) and Rp 1,000,000,000.00 (one billion Rupiah)."

Money laundering using cryptocurrency is also addressed under Article 3 of Law No. 8/2010, where HH used assets derived from corruption to convert them into cryptocurrency, thereby concealing the illicit source. Similarly, IK's case involved money obtained through fraud and false information under Article 28, paragraph (1) of Law No. 11/2008, with penalties stated in Article 45, paragraph (1) of the same law, which stipulates: "Anyone who meets the elements outlined in Article 28, paragraph (1) or (2), shall be punished with a maximum imprisonment of 6 (six) years and a fine of up to Rp 1,000,000,000.00 (one billion Rupiah)."

Both HH and IK had the same motive of converting illicit assets into cryptocurrency to disguise their origins. If money derived from criminal activity is invested in cryptocurrency, it constitutes money laundering. This is done by exchanging Rupiah for cryptocurrency or using illicit funds to invest in cryptocurrency.

If someone commits money laundering through cryptocurrency assets, they may be punished under Article 3 of Law No. 8/2010, with a maximum prison sentence of 20 years and a fine of up to Rp 10,000,000,000.00 (ten billion Rupiah). Additionally, Article 7 of Law No. 8/2010 provides for further criminal liability for those involved in money laundering through cryptocurrencies in cases of collusion. Other offenses under Articles 4 and 5 of Law No. 8/2010 may also apply if the elements of money laundering are met.

When reporting findings, it is essential to present data as concisely as possible, while ensuring sufficient detail for the reader to understand the analysis process and results. The use of tables and figures can clarify findings and allow for a concise presentation detached from the main body of the text

5. CONCLUSION

Cryptocurrency is recognized as a legitimate and legal digital asset for investment purposes in Indonesia. However, its misuse by unscrupulous individuals can render it illegal. For instance, in the IK and HH cases, illicitly obtained wealth was converted into cryptocurrencies to deceive authorities and make the transactions appear legitimate. Such actions are classified as money laundering crimes.

Cryptocurrencies derived from money laundering (ML) are considered illicit assets when deposited or invested. If an individual engages in money laundering by depositing or investing the proceeds of crime into cryptocurrencies, they can face severe penalties, including a prison sentence of up to 20 years and a maximum fine of Rp 10,000,000,000.00 (ten billion Rupiah).

To minimize the misuse of cryptocurrencies by individuals with malicious intent, it is essential for the government to enhance its monitoring and regulatory efforts. Strengthening public awareness and education about the legal use of cryptocurrencies, as well as the severe consequences of misuse, should be prioritized. International cooperation is crucial in effectively combating cryptocurrency-related crimes. Finally, continuous policy development and updates are necessary to address technological advancements and emerging threats within the cryptocurrency landscape.

6. REFERENCES

- Aniqolh, I., & Mahyani, A. (2023). Pertanggungjawaban pidana bagi pelaku money laundering berkedok investasi melalui trading. *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, 3(1), 270–284.
- Ellelanora, F. N. (2011). Tindak pidana pencucian uang. *Jurnal Hukum Unissula*, 26(2), 12331.
- Fraser, D. (1992). *Lawyers, guns, and money: Economics and ideology on the money trail. The money trail: Confiscation of proceeds of crime, money laundering and cash transaction reporting*.
- Hakim, J. F. R., & Nurwinardi, N. (2023). Menggagas sistem penyitaan aset kripto dalam hukum acara pidana Indonesia. *Amanna Gappa*, 108–128.
- Hans, P. J., & Syailendra, M. R. (2023). Penegakan hukum terhadap pelaku penipuan investasi melalui platform aplikasi ilegal. *Jurnal Inovasi Global*, 1(2), 38–43.
- CNBC Indonesia. (2021, April 20). Saat cuci uang di bitcoin jadi modus baru korupsi Asabri. Retrieved April 6, 2024, from <https://www.cnbcindonesia.com/tech/20210420232119-37-239412/saat-cuci-uang-di-bitcoin-jadi-modus-baru-korupsi-asabri>
- Pierson, P. B. (1992). *White collar criminal: Cases and materials*. West Publishing Co.
- Prodjodikoro, W. (1989). *Asas-asas hukum pidana di Indonesia*.

- Purwati, A. (2020). *Metode penelitian hukum teori & praktik*.
- Puspasari, S. (2020). Perlindungan hukum bagi investor pada transaksi aset kripto dalam bursa berjangka komoditi. *Jurist-Diction*, 3(1), 303.
- Sari, A. M., Mandiana, S., & Paula, P. (2024). Analisa pertanggungjawaban pidana atas penggunaan aset kripto sebagai sarana tindak pidana pencucian uang. *Aliansi: Jurnal Hukum, Pendidikan, dan Sosial Humaniora*, 1(2), 115–126.
- Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik.
- Undang-Undang Nomor 25 Tahun 2003 tentang Perubahan atas Undang-Undang Nomor 15 Tahun 2002 tentang Tindak Pidana Pencucian Uang.
- Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.
- Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang.
- Widodo, I. G., & Elfindi, J. (2014). *Cepat & mudah memahami hukum pidana*. Kencana Pranada Media Group.
- Yanuar, M. A. (2022). Risiko dan potensi penyalahgunaan aset kripto dalam kejahatan pencucian uang. *Majalah Hukum Nasional*, 52(2), 169–188.
- Yuda, B. P., Yolserwan, Y., & Afrizal, R. (2023). Analisis yuridis pertanggungjawaban tindak pidana pencucian uang melalui aset kripto di Indonesia. *Lareh Law Review*, 1(1), 17–33.