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Criminal Liability for Illegal Crypto Asset Investments in Indonesia

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Abstract. The development of digital technology has driven the growth of crypto-asset-based investments in Indonesia, but it has also opened up opportunities for illegal investments that risk consumer harm and disrupt economic stability. This study aims to analyze the criminal liability of perpetrators of illegal crypto-asset investments and its impact on consumer protection and national economic security. Using a normative juridical method with a statutory and conceptual approach, this study examines regulations such as the Criminal Code, the Electronic Information and Transactions Law (UU ITE), the Consumer Protection and Protection Law (UU P2SK), as well as regulations from the Commodity Futures Trading Regulatory Agency (Bappebti) and the Financial Services Authority (OJK). The results of the study indicate that legal protection for crypto-asset consumers remains weak, particularly in the case of illegal tokens such as ASIXV2 and EDCCash, which are traded without official authorization. Ineffective law enforcement is influenced by weak inter-agency coordination, a lack of technical competence among officials, and the absence of specific laws comprehensively regulating digital assets. Criminal liability theories such as strict liability and vicarious liability are relevant for application to individual and corporate perpetrators of crime. Furthermore, regulatory ambiguity and light sanctions reduce the deterrent effect and encourage violations. This study recommends the establishment of a Digital Asset Law, strengthening inter-institutional coordination, and enhancing digital literacy and oversight to ensure legal certainty and protect the public from the risks of illegal crypto investments.

Keywords: consumer protection; crypto assets; criminal liability; crypto regulation; digital law; economic security; illegal investments

INTRODUCTION

The development of digital technology has driven the growth of online investments, including cryptocurrencies, which have become a popular digital asset due to their potential for profit. While this advancement offers convenience, it also presents serious challenges, such as the rise of illegal investments exploiting legal loopholes, particularly in crypto assets not officially registered with Bappebti (Commodity Futures Trading Regulatory Agency), such as ASIXV2. This raises concerns regarding consumer protection and economic stability. Although regulations related to crypto asset trading have been established through several Bappebti regulations and related laws, their implementation is still considered weak. Many illegal crypto assets continue to be traded through official platforms, reflecting a legal vacuum and weak oversight. This study aims to examine criminal liability for perpetrators of illegal crypto asset investments and its impact on consumer protection and economic security. The goal is to provide academic, theoretical, and practical contributions, particularly in the areas of criminal law, consumer protection, and the development of digital technology regulations.

Several previous studies have shown that:

Illegal investments such as EDCCash contain elements of fraud and uncertainty (gharar) which violate Islamic law and positive law.

Criminal law enforcement against perpetrators of illegal crypto investments includes sanctions based on the Criminal Code and the ITE Law.

Regulation of unregistered assets such as ASIXV2 does not provide sufficient legal protection for consumers.

Manipulative practices such as pump and dump do not yet have strict sanctions even though they are prohibited.

National laws do not yet regulate in detail the responsibilities of crypto asset business actors for consumer losses.

Cryptocurrency is recognized as a commodity, not a means of payment, and can only be traded under the supervision of Bappebti.

Thus, this research is important to evaluate the effectiveness of laws in addressing illegal crypto investments and encourage stronger legal protection for consumers.

LITERATURE REVIEW

The concepts underlying this study include criminal law, illegal investment, crypto assets, consumer protection, and economic security. Criminal law regulates and sanctions criminal acts with the aim of maintaining order and protecting society. In the context of illegal crypto-based investment, criminal law is crucial in addressing various violations such as fraud and money laundering, which can harm consumers and disrupt national economic stability. Meanwhile, illegal investment refers to investment activities conducted without official permission from regulatory bodies such as the Financial Services Authority (OJK) or the Commodity Futures Trading Regulatory Agency (Bappebti). This type of investment often offers high returns without a clear legal basis, potentially causing significant losses to the public and posing systemic risks to the economy.

Furthermore, crypto assets, or cryptocurrencies, are digital currencies that operate through blockchain technology. While these assets attract investors due to their potential for significant returns, they also carry high risks because they are not tied to formal financial institutions, making them vulnerable to misuse in illegal investment schemes. Therefore, strict regulation and oversight are needed to protect investors from fraud. In this regard, consumer protection is crucial to ensure consumers' rights to transparent information, ease of complaint processing, and protection from fraudulent practices. Without adequate protection, consumers are highly vulnerable to becoming victims, and public trust in the digital ecosystem could erode.

Finally, economic security is the stability of a country's financial system. Illegal investments in crypto assets can pose a serious threat, causing significant losses, eroding public trust, and damaging the reputation of the digital economy. Therefore, the active role of regulatory bodies such as Bappebti and the Financial Services Authority (OJK) is crucial to ensure the crypto asset market operates transparently, accountably, and in accordance with applicable regulations to maintain the sustainability and resilience of the national economy.

METHOD

This research employs a normative legal method, focusing on analyzing laws and regulations and legal principles relevant to the problem. Two main approaches are employed: a legislative approach, which examines various regulations such as the Consumer Protection Law, the Financial Services Authority (OJK) Law, the Electronic Information and Transactions (ITE) Law, and Bappebti regulations to analyze legal protection for consumers and enforcement against illegal crypto-asset-based investments; and a conceptual approach, used when adequate legal regulations are not yet available, by exploring legal concepts and theories such as consumer protection, justice, and economic security to formulate legal solutions to the challenges arising from illegal crypto-asset investments.

The sources of legal materials in this study consist of three types, namely primary legal materials (binding laws and regulations), secondary legal materials (books, journals, and expert opinions that support the understanding of primary materials), and tertiary legal materials (dictionaries and encyclopedias that provide complementary information). Data collection techniques are carried out through document research by reviewing legal literature and relevant official documents, while data analysis techniques are carried out qualitatively deductively, namely by reviewing existing legal theories and norms, then drawing conclusions based on the data obtained to answer the problems systematically.

Accountability for Crypto Asset Investments and Its Impact on Consumer Protection

Crypto assets are growing rapidly thanks to advances in digital technology, prompting the government to regulate them through Bappebti (Commodity Futures Trading Regulatory Agency) through Regulations No. 5 of 2019 and No. 4 of 2023. However, the circulation of illegal assets remains rampant, as seen in the cases of ASIXV2 and EDCCash, which are not officially registered, causing significant losses to the public. The transfer of crypto asset oversight to the Financial Services Authority (OJK) through Law No. 4 of 2023 aims to strengthen oversight and consumer protection. Despite existing regulations, legal protection remains weak due to the lack of specific legislation on digital assets. Consumer protection needs to be implemented preventively (through education and publicity regarding legal assets) and repressively (law enforcement against perpetrators).

Within the framework of criminal liability, a person can only be punished if proven guilty and legally responsible, in accordance with the principles of legality and fault. Elements such as unlawful acts, fault (dolus or culpa), and capacity for responsibility must be met. In addition, there are specific liability models such as strict liability (without the need for proof of fault) and vicarious liability (corporate liability for the actions of its subordinates). These concepts are highly relevant to cases of illegal crypto asset investment, both for individuals and companies. The application of strict liability allows perpetrators to be punished even if they claim ignorance of the rules, while vicarious liability ensnares legal entities that allow or participate in violations of the law. Legal experts such as Roeslan Saleh, Chairul Huda, and Moeljatno emphasize the importance of fault as a primary requirement for criminal liability and the need for fairness in imposing sanctions. Therefore, criminal law must be used progressively and fairly to address the risks of illegal crypto investment that harm consumers and endanger the national financial system.

The application of criminal liability theory in crypto investment cases in Indonesia emphasizes the importance of understanding the elements of the crime as stipulated in Article 378 of the Criminal Code and Article 28 paragraph (1) of the ITE Law. In cases such as ASIXV2 and EDCCash, perpetrators used false information and misleading investment schemes to deceive consumers. These actions fulfill the elements of an unlawful act (actus reus) and a fault (mens rea), particularly dolus directus, which is the direct intention to cause harm. In addition to individuals, liability must also be directed at corporate entities, considering that many perpetrators use pseudo-business entities as a means of committing crimes. Although Article 46 of the New Criminal Code regulates corporate liability, law enforcement officials still tend to focus on individuals, rather than the systemic structures that support these crimes. This is exacerbated by the lack of technical understanding of blockchain technology, smart contracts, and decentralized financial systems among officials, resulting in ineffective law enforcement.

Consumer protection in crypto investment is a crucial aspect that has not been optimally implemented. Based on Philipus M. Hadjon's legal protection theory and the principles of Law No. 8 of 1999, consumers have the right to accurate information, transaction security, and compensation for losses. However, in reality, many investors suffer losses due to false information, a lack of transparency, and the difficulty of tracking anonymous, digitally operating perpetrators. The effectiveness of this protection is greatly influenced by five factors, according to Soerjono Soekanto: legal substance, law enforcement officials, supporting facilities, public participation, and legal culture. Currently, all five aspects remain weak. Crypto regulations are not yet fully firm and adaptive, officials lack technical competence, digital infrastructure is limited, public legal literacy is low, and the legal culture tends to be permissive towards the risks of illegal investment.

Cases like ASIXV2 demonstrate the failure of preventive and repressive protections. Although the token is not listed as a legal asset by Bappebti, it remains openly traded, and when losses occur, there

is no compensation or strict sanctions for perpetrators. Complaint mechanisms are also not yet integrated and difficult for the public to access. Furthermore, the theory of criminal liability suggests that perpetrators knowingly spread false information and even engage in technical manipulation. However, due to regulations not yet synchronized with the Criminal Code and the Electronic Information and Transactions Law, many perpetrators escape criminal punishment. This ineffectiveness of the legal system is exacerbated by suboptimal coordination between supervisory and law enforcement agencies. A legal vacuum (rechtsvacuum) has also emerged due to the transition of supervision from Bappebti to the Financial Services Authority (OJK), which has not been accompanied by implementing regulations.

From a legal certainty perspective, the theory put forward by Radbruch, Utrecht, and Sudikno Mertokusumo emphasizes that laws must be clear, written, enforceable, and provide a sense of security to the public. However, in the context of crypto asset trading in Indonesia, these principles have not been effectively implemented. Regulatory ambiguity and weak enforcement create room for violations and undermine public trust in the law. Compared with other countries such as Singapore and the United States, which have strict and comprehensive crypto regulatory systems, Indonesia still lags behind in terms of legal certainty and protection. Therefore, regulatory reforms that adapt to developments in financial technology, the establishment of a dedicated digital law enforcement unit, public education, and strengthened inter-agency coordination are needed to ensure effective and equitable legal protection for crypto consumers in Indonesia.

Legal Consequences for Illegal Crypto Asset Investments Regarding Economic Security

Economic security depends on investor confidence, financial system stability, and market integrity. Crypto assets, while popular, are highly volatile and prone to misuse for crimes such as money laundering and fraud. The FTX collapse is a clear example of the systemic impact of illegal practices, which have a ripple effect on the global crypto market and the macroeconomy. This highlights the need for strict regulation and active oversight of crypto activities.

From a legal perspective, the Criminal Code (KUHP), the Electronic Information and Transactions Law (UU ITE), and the Sexual and Sexual Assault (P2SK) Law provide the legal basis for punishing perpetrators of illegal investment, both individuals and legal entities. However, the effectiveness of punishment in providing a deterrent effect remains low due to weak enforcement, complex evidence, and lenient sanctions. To address this, the Economic Analysis of Law approach emphasizes the importance of efficiency in law enforcement, meaning that the law must make violations more costly than beneficial. Unfortunately, in Indonesia, the low probability of being caught and lenient sanctions continue to incentivize perpetrators to violate the law.

High digital law enforcement costs, coupled with weak early detection and coordination between institutions, make the system inefficient. Proposed solutions include the use of automated administrative sanctions, self-reporting systems, and direct blocking of illegal assets by authorities such as Bappebti and the Financial Services Authority (OJK). Comparisons with Singapore demonstrate that responsive, firm, and digital regulations can significantly curb illegal practices. Therefore, reform of Indonesia's crypto legal system is needed to make it more adaptive, preventative, efficient, and provide a real deterrent effect, while still providing proportional consumer protection.

Indonesia can learn valuable lessons from the legal approaches of several countries in regulating crypto assets. The United States employs a "regulation through enforcement" approach through agencies like the SEC and CFTC, which frequently take firm action against non-compliant crypto industry players, despite criticism for their lack of regulatory clarity. Singapore adopts a proactive approach with regulations that support innovation while still protecting consumers, particularly through the Payment Services Act 2019 and the MAS regulatory sandbox. Meanwhile, Japan is known for its strict regulations and strong focus on consumer protection. The Financial Services Authority of Japan (FSA) requires crypto exchanges to store a significant portion of customer funds in cold wallets and implements high security standards. These three approaches provide guidance for Indonesia in strengthening its regulatory framework.

With the shift of crypto asset oversight from Bappebti (Commodity Futures Trading Regulatory Agency) to the Financial Services Authority (OJK) under Government Regulation No. 49 of 2024,

Indonesia has begun to establish a more comprehensive regulatory framework. The OJK responded to this challenge by issuing POJK No. 27 of 2024 and SE OJK No. 20 of 2024, as well as launching the 2024–2028 IAKD Roadmap to encourage safe innovation in the digital finance sector. Initiatives such as the 2025 Crypto Literacy Month (BLK) were also launched to increase public understanding of the potential, benefits, and risks of crypto assets. Indonesia is now geared towards becoming a hub for crypto innovation in Southeast Asia, but still faces challenges such as inter-institutional policy harmonization and increased supervisory capacity.

To strengthen the national crypto legal system, there are three main recommendations. First, the establishment of a comprehensive Digital Asset Law is urgent, as current regulations are fragmented and unable to comprehensively regulate all aspects of digital asset trading. This law is crucial to provide legal certainty, clear asset classification, reporting mechanisms, consumer protection, and legitimacy for swift law enforcement action. Second, synergy between the Financial Services Authority (OJK), Bappebti (Commodity Futures Trading Regulatory Agency), PPATK (Financial Transaction Reports and Analysis Center), and the Indonesian National Police (Polri) must be strengthened through a digital coordination system and real-time data exchange. The establishment of a national digital asset task force is also recommended to more effectively prosecute illegal entities. Third, improving public literacy and digital oversight is crucial, given that Indonesians remain vulnerable to fraud due to their low understanding of financial technology. Public education through digital campaigns and collaboration with social media platforms, along with the use of technologies such as machine learning and NLP, will help automatically detect and block illegal content.

The legal and economic impacts of illegal crypto-asset investments are significant. Policy misalignment between state institutions creates legal loopholes that criminals exploit. Uncontrolled crypto-investment risks price bubbles, cyberattacks, and disruptions to the national payment system. Furthermore, the lack of consumer protection causes significant losses for retail investors and undermines public trust in digital technology. Legally, existing regulations fail to provide an effective redress mechanism, resulting in victims of fraudulent investments such as Ponzi schemes and crypto multi-level marketing schemes often failing to obtain justice. Therefore, a comprehensive legal approach is needed through the establishment of a Digital Asset Law, increased inter-agency coordination, and enhanced digital education and oversight. These steps are expected to create a legal system that is firm, adaptive, and responsive to technological developments and societal needs.

CONCLUSION

Based on the analysis of the legal issues arising from illegal crypto-asset-based investment practices in Indonesia, several conclusions can be drawn that simultaneously address the research questions formulated in this study. First, criminal liability for perpetrators of illegal crypto-asset investment in Indonesia still faces several challenges, both in terms of legal substance and implementation. Although regulations related to crypto-asset trading have been regulated by the Commodity Futures Trading Regulatory Agency (Bappebti) and several laws and regulations, such as the Criminal Code, the ITE Law, and the P2SK Law, implementation in the field remains suboptimal. In this context, consumer protection has not been fully realized, particularly in the case of assets not officially listed by Bappebti, such as ASIXV2. This indicates that legal loopholes persist, creating uncertainty for both market players and consumers. Second, in terms of legal consequences for perpetrators, illegal crypto-asset investment practices have significant potential to disrupt national economic stability. Systemic risks arising from unsupervised asset trading have the potential to cause massive losses to the wider community. In some cases, perpetrators who run illegal investments are potentially subject to criminal sanctions under articles in the Criminal Code and the Electronic Information and Transactions Law, including fraud and the dissemination of false information. However, the effectiveness of these sanctions remains questionable, given that many perpetrators fail to receive a deterrent effect and are even likely to repeat their crimes using different schemes. Therefore, from an Economic Analysis of Law perspective, lax law enforcement can actually create greater economic losses for the state and society.

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