

Law Enforcement in the Crime of Crypto Asset Fraud

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Abstract

Economic development is designed to address the opportunities and needs created in economic activity. Developments in the real sector always open up opportunities for the development of the financial sector. The most dominant financial sector is the banking sector and the capital market which is one of the sources of financing for development as well as a means for improving people's welfare. The state is very important for the capital market, the development of the capital market which is a vehicle for investment and a vehicle for financing at the same time. The opportunity in question is virtual money which then began to become a phenomenon in society since the emergence of crypto currencies (cryptocurrency) as a manifestation of technological developments in e-commerce. Every time there is a good opportunity, there is also a gap in the presence of a criminal act, including activities that use digital-based crypto. The crime in question is a criminal act of fraud which clearly violates the existing law and how it is enforced. In addition to fraud, another problem is how the legal umbrella for crypto assets in Indonesia needs to be discussed in the discussion. After discussing the existing problems, of course, have a conclusion that explains briefly but completely. This research has various approaches with normative juridical research methods.

Keywords

law enforcement; crime of crypto; asset fraud



I. Introduction

Economic development is designed to address the opportunities and needs created in economic activity. Developments in the real sector always open up opportunities for the development of the financial sector. The most dominant financial sector is the banking sector and the capital market which is one of the sources of financing for development as well as a means to improve the welfare of the community. The state is very important for the capital market, the development of the capital market which is a vehicle for investment and a vehicle for financing at the same time. Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired. In addition, development is also very dependent on the availability of natural resource wealth. The availability of natural resources is one of the keys to economic growth in an area. (Shah, M. et al. 2020)

Virtual money then began to become a phenomenon in society since the emergence of cryptocurrencies as a manifestation of technological developments in e-commerce activities. Cryptocurrency is a series of cryptographic codes which is formed in such a way that it can be stored on a computer device and can be transferred such as electronic mail and it is possible to use it as a means of payment in a commercial transaction. To date,

there are 100 types of cryptocurrencies, including Ripples, RonPaulCoin, Litecoin, Ethereum, and Bitcoin. Among all these cryptocurrencies.

As a legal basis that crypto is one of the tools to transact like a legitimate currency can be seen in (PBI) Number 18/40/PBI/2016 Year 2016 concerning the Implementation of Payment Transaction Processing, it is explained that what is meant by virtual currency is digital money issued by parties other than monetary authorities obtained by mining, purchasing, or transferring gifts, including Bitcoin, BlackCoin, Dash, Dogecoin, Litecoin, Namecoin, Nxt, Peercoin, Primecoin, Ripple, and Ven. Not included in the definition of virtual currency is electronic money. Then, the definition of money according to Article 1 number 2 of Law Number 7 of 2011 concerning Currency is a legal tender.

The problem that arises from crypto is the absence of a regulation or law that specifically regulates which is a reproach for committing a criminal act, if we look at the many news related to crypto, almost all of them are frauds. Because Indonesia itself is related to criminal acts of fraud, which are specifically related to crypto, still uses the Criminal Code and uses the ITE Law as the basis for a crime committed in the virtual field. Therefore, as a writer, you are interested in discussing cryptocurrencies in terms of fraud

II. Research Method

This research is normative legal research with a normative juridical approach. This research on law enforcement in the criminal act of crypto asset fraud uses a statutory approach and a conceptual approach. Philipus M. Hadjon and Tatiek Sri Djatmiati argue that in the civil law system, the first approach is a statute approach and to explain the norm it must be accompanied by a conceptual approach because the norm is basically a series of concepts, therefore the problem approach in this paper using the statute approach method first, namely the approach to a problem by first identifying the provisions of the legislation related to the subject matter studied. The conceptual approach method is used to support the statute approach, which is an approach that is carried out by reviewing the literature and the opinions of scholars as an analytical tool to provide enlightenment on the legal issues to be discussed.

III. Result and Discussion

3.1 Elements of the Crime of Crypto Asset Fraud

Crime can be identified by the emergence of harm, which then results in the birth of criminal liability or criminal liability. A criminal act does not stand alone, it only means when there is criminal responsibility, this means that the perpetrator of a crime that causes harm does not automatically have to be punished, but there must be criminal responsibility. Based on the theory of criminal law, a person is considered to have committed a criminal act if he fulfills the actus reus (deed) and mens rea (responsibility) so that he can be considered a criminal. Accountability in criminal law can be interpreted as criminal liability, in Dutch toerekenbaarheid, in English criminal responsibility or criminal liability.

An explanation of criminal responsibility in the developing criminal law doctrine, one of which is described by Simons who states that criminal liability is born because there is a human act that is contrary to the law (wederrechtelijke), the act is carried out by someone who can be accounted for (toerekeningsvatbaar), and that person can be blamed. Accountability for a person in criminal law is by passing on an objective reproach (verwijtbaarheid) against an act that is declared a crime based on the applicable criminal

law, and subjectively to the maker who complies with the requirements to be penalized for the act.

The Criminal Code does not clearly state the system of criminal responsibility adopted. Several articles in the Criminal Code often mention errors in the form of intentional or negligence, but unfortunately the meaning of intentional error or negligence is not explained by the law. there is no further explanation regarding intentional errors or negligence, but based on the doctrine and opinions of legal experts regarding the articles in the Criminal Code it can be concluded that in these articles contain elements of intentional errors or negligence which must be proven by the court, so that to prosecute perpetrators who commit criminal acts,

Criminal liability in relation to cryptocurrency fraud is very important because cryptocurrencies are also a type of investment. Digital currency is believed to have a high value because its circulation is still high, but this value also has a very high risk of falling because the digital world is very risky. . Although cryptocurrence is a type of investment with high risk, this does not make people afraid to invest, even in 2021 cryptocurrence investments with bitcoin currency will become popular in Indonesia. since the Bitcoin boom, one by one people in Indonesia began to become miners to trading. Because of his interest, the price of Bitcoin soared, from initially millions of rupiah to hundreds of millions of rupiah.

The Indonesian government then compiled several rules to accommodate crypto asset trading interests as well as a guide and clarity for the public regarding the presence of virtual currency, namely through the policy of the Minister of Trade of the Republic of Indonesia Number 99 of 2019 concerning General Policy for the Implementation of Crypto Asset Futures Trading which in essence stipulates that “Assets Crypto (crypto assets) are designated as Commodities that can be used as Futures Contract Subjects traded on the Futures Exchange”, as specified in Article 1. Further arrangements are also regulated by the Commodity Futures Trading Supervisory Agency in the rules of CoFTRA Number 3 of 2019 and BAPPEBTI Number 5 of 2019. This shows that crypto asset trading in Indonesia is officially recognized as only a commodity asset and will then be monitored by BAPPEBTI (Commodity Futures Trading Supervisory Agency) regarding which platforms are allowed to sell crypto assets.

Cryptocurrency is a digital currency that is built using blockchain technology so that any data in the user environment of the cryptocurrency system will be connected to each other. This technology does not require a third party as an intermediary. In addition, users are not required to use real identities, thus providing an opportunity for users to use fake identities to carry out fraudulent modes. In addition to these modes, various cryptocurrencies fraud modes appear including:

1. Free Gift

To attract early crypto players, scammers will usually lure free coin prizes. Fraudsters will usually ask for personal data from the victim.

2. Imitate others

Impersonating other people here is an impostor pretending to imitate someone else. Usually they will use fake accounts by copying social media profiles of influencers in the crypto world.

2. Fake Crypto Exchange

When the price of Bitcoin goes up, usually these fake crypto exchanges offer Bitcoin prices that are far from the market price, making people think they will make a profit.

3. Phishing

Phishing is the most common way to deceive someone. A fraudster will create a fake website or fake email and pretend to be someone or a party to that organization. Usually fraudsters will fake a crypto exchange website or wallet. Fraudsters usually report that the victim's account has been compromised/suspected to be problematic so the fraudster asks the victim to enter sensitive data such as passwords or seed phrases from the wallet. After the victim enters the data, the fraudster can take Bitcoin or other crypto assets that the victim has.

4. Fake coins

With the rise of alternative crypto coins or so-called alt-coins, there are also many scams in the name of new coins. Crypto scams with alt-coins usually invite investors to invest in new coins before being listed on an exchange or sell new coins at a discount. Usually these new coins also do what is called a pump and dump, where fraudsters usually already have a lot of coins before attracting new investors, they will also hire freelance writers to report these coins in the mass media and independently.

Protection of property is one of the legal interests. The right to property is a right that is protected by law, even the constitution. One form of crime against property that is prohibited and threatened with crime is the crime of fraud. This is regulated in Chapter XXV of Book II of the Criminal Code (KUHP), where the crime of fraud is principally regulated in Article 378.

Article 378 of the Criminal Code

"Anyone who with the intention of unlawfully benefiting himself or others, by using a false name or false dignity, by deceit, or a series of lies, moves another person to hand over something to him, or to give a debt or write off a debt, is threatened because fraud with a maximum imprisonment of four years."

The criminal act of fraud in the principal form regulated in Article 378 of the Indonesian Criminal Code (KUHP) consists of the following elements:

- a. Subjective Elements: 1) With a bad intention or met het oogmerk in this case; 2) To benefit oneself or others in this case seek profit by taking advantage of the conditions of community needs; 3) Unlawfully or *wederrechtelijk* in this case with actions that are against the law or without the permission of the owner concerned.
- b. Objective Elements: 1) Whoever in this case is the perpetrator; 2) Motivate another person so that the other person: (a) Delivers an object, (b) Enters into a debt agreement, (c) Eliminates a debt, 3) By using: (a) A false name; (b) False position; (c) Deception; (d) A series of lies.

This article shows that the perpetrators of fraud have the intention to benefit themselves and or others, which means that the type of intent is intentional. In this case, the judge does not require to prove who has suffered a loss, it is enough to prove the existence of that intention.

The element "unlawfully" is included as an element of the article, which means that this element must be proven so that the perpetrator can be subject to this article. Against the law here by Andi Hamzah explain that the perpetrator does not have the right to enjoy these benefits. The element of benefiting oneself or others against the law can also be interpreted that the benefits obtained and the method of obtaining these benefits are contrary to propriety in social interaction.

Regarding the means of fraud, van Bemmelen stated that the legislators provided limitations, namely: a. Using a fake name, or b. Using false dignity, c. Trick, d. A series of lies. In line with van Bemmelen, R. Soesilo stated that the acts of persuasion carried out by fraudsters used: a. False name or false circumstances or b. Intellect (guile) or c. False words.

The act of persuasion is essentially aimed at moving the victim to hand over something to the perpetrator, whose victim will not give up the intended object if the victim knows the real situation. This element of "moving" means that the perpetrator wants the person who is being cheated to be moved to hand over something to him. If the act of deception and/or a series of lies does not make the other person hand over something, then this article cannot be applied.

Lamintang explained that this fake name must be the name of a person, it could be a name that is not the name of the perpetrator himself, or a name that no one uses, or the name of the perpetrator himself but is not known to the public followed by deception, for example in the case of cryptocurrency fraud fraudsters use accounts fake by copying social media profiles of influencers. While false dignity or false circumstances or false nature does not have to be in the form of a position, rank or an official job, where the perpetrator claims to have certain rights, for example in the case of cryptocurrency fraud the fraudster creates a fake website or fake email and pretends to be someone or parties from the organization so that they can have sensitive data such as passwords or seed phrases from the victim's account wallet. Regarding deception, for example, giving promises or explaining prospective conditions that will be obtained by the victim, with a series of lies told, for example in the case of cryptocurrency fraud, the fraudster attracts early crypto players by luring the prize of free coins and will ask for personal data from the victim. . False words are false words or words that are contrary to the truth, while a series of false words is a series of words that are interwoven in such a way, so that these words have a relationship with one another and can give the impression as if as if one word justifies the other words, when in fact they are not in accordance with the truth.

In addition to the provisions in the Criminal Code, transactions using crypto assets (crypto assets) in the commodity futures exchange can be interpreted as a sale and purchase agreement using electronic means in the form of computers or electronic media, so that the regulation is also subject to Law Number 11 of 2008 concerning Information and Electronic Transactions. (IT Law). As Article 17 Paragraph 1 of the ITE Law states that "Organization of Electronic Transactions can be carried out in the public or private sphere.". Therefore, based on the ITE Law, crypto asset transactions are included in online transactions that are legalized under the law so that the agreement has a relationship and legal consequences for those who make it.

Losses for customers in trading crypto assets caused by cybercrime are also regulated in UUITE. But unfortunately for cryptocurrencies fraud there is no specific setting. This can be seen from the absence of the use of the phrase "fraud" in its articles. However, there is a regulation regarding the prohibition of spreading fake news that results in consumer losses, namely in Article 28 paragraph (1), which is very thick with the dimensions of fraud and consumer protection.

Article 28 paragraph (1) of the ITE Law regulates: "Everyone intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions." The criminal threat is contained in Article 45A paragraph (1) Amendment to the ITE Law: "Everyone who intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

The essence of the actions prohibited in Article 28 paragraph (1) are: Deliberately and without rights; - spreading false and misleading news; and - resulting in consumer losses in electronic transactions. The article does not use the proposition "fraud". From the discussion of the draft of the ITE Bill, both at work meetings and hearings held by the

Indonesian House of Representatives, most of them discussed protection from fraud but the context was more for customers, lottery prizes, credit card fraud, and multi-level marketing fraud. Indeed, at the lay level, this rule is closely related to hoaxes.

In this case it can be seen because the proposition used in Article 28 paragraph (1) of the ITE Law is "fake and misleading news". Fake news can be interpreted as news whose contents are not in accordance with the real truth. Then the phrase "spread" means conveying (fake news) to the general public, in this case through the media of telematics convergence. Then the phrase "misleading" relates to fake news being spread, which can deceive people. The deceptive nature of the content of fake news that is spread misleading the public, causing constitutive consequences in the form of consumer losses in electronic transactions.

In addition, this article is closely related to consumer protection. The protection provided by this article is only for the loser who has a position as a consumer. On a contrario basis, if the person experiencing the loss does not have a position as a consumer or is outside the producer-consumer relationship, this article cannot be applied. Actually there is no direct relationship between UU ITE and Law no. 8 of 1999 concerning Consumer Protection (Consumer Protection Law). The Consumer Protection Law further regulates obligations and prohibitions for business actors in order to protect consumer rights. Prohibitions and criminal threats regulated in the Consumer Protection Law are not directly related to fraud. However, if the business actor does not fulfill his "administrative" obligations and violates the prohibition,

Returning to the ITE Law, it is not explained why the legislators did not use the "fraud" proposition in Article 28 paragraph (1). Whereas in the Academic Paper of the ITE Bill it is clearly stated the urgency and sensitivity of legislators to fraud using electronic information media and/or electronic documents. However, the Academic Paper of the ITE Bill further limits that crimes in electronic commerce (e-commerce) are only online auction fraud, online tiered marketing fraud, and credit card fraud. But unfortunately, even in the initial draft of the bill there was no mention of the fraud. This related regulation has just emerged as stated in the ITE Law in the final draft of the bill, which uses the phrase "fake and misleading news that results in consumer losses in electronic transactions". The existence of "consumer loss" as a result of the act is an absolute requirement for the fulfillment of the elements of this article. Regarding the conditions for consumer losses, it is different when compared to Article 378 of the Criminal Code, Article 378 of the Criminal Code requires that the intent of the act is to benefit the perpetrator or another person.

The formulation of the offense between Article 28 paragraph (1) of the ITE Law jo. Article 45A paragraph (1) Amendments to the ITE Law and Article 378 of the Criminal Code are both material offenses, but there are differences in the consequences required for the fulfillment of the imposition of the article. The proposition used in Article 28 paragraph (1) of the ITE Law is not 'fraud' as Article 378 of the Criminal Code qualifies for criminal acts which it prohibits, but uses the proposition 'fake news'. Even this proposition is not explained in more detail in the ITE Law. The legislators view this term as a general term to understand. In the Criminal Code, the proposition 'fake news' is used in Article 390 of the Criminal Code.

Article 390 of the Criminal Code

"Anyone with the intention of benefiting himself or others, against his rights, broadcasts false news to increase or decrease the price of necessities, funds and securities, shall be punished by a maximum imprisonment of two years and eight months. "

The criminal provisions related to fraud as regulated in the Criminal Code and the ITE Law intersect, but also create a duality of regulation and handling. Criminal law policy is both a science and an art which ultimately has the practical aim of making the formulation of positive legal regulations possible, and to provide guidance, not only to legislators but also to courts, who apply the law as well as to the organizers. or implementing court decisions. Furthermore, Sudarto emphasized that criminal law policy means holding elections to achieve the best results of criminal legislation in the sense of fulfilling the requirements of justice and efficiency.

3.2. Commodity protection of crypto asset trading in Indonesia

The development of the industrial revolution 4.0 has given birth to a financial product with a digital dimension, until now there are at least 3 types of digital money that are often used in Indonesia. First, digital money based on the value of fiat or physical money. This first type is a form of digitization of the total value of the customer's or user's money. Authorization is still with the bank because it is connected to the user's account. This digital currency is limited to a transfer vehicle, with a fixed value basis using rupiah as the currency authorized by the government. This type is used as AMPK (Card-Based Payment Instrument) which includes payments via ATM, credit cards, debit cards, and similar cards. Second, digital money stored in a digital wallet which is a stored value or prepaid card. This second type of digital money does not require authority from banks and various products such as ATM cards so that transactions can be carried out directly. Several types of digital wallets are commonly known in E-money and the like such as Gopay. The digital wallet is stored in Indomaret, Alfamart cards and applications installed on mobile phones. This type is generally known as e-money or electronic money which in Indonesia has been used as a supporter of the National Non-Cash Movement. Third, digital money which in its use no longer requires intermediaries. Transactions can occur between users and do not need to be known by other parties. The transaction is recorded in the network database.

Cryptocurrency can be said to be a digital asset designed to be used as a cryptographic-based exchange medium through encryption algorithms for securing financial transactions, controlling additional new units, as well as validating and verifying asset transfer activities. Cryptography is a branch of mixed science based on mathematical calculations, computer and mathematicians discover the potential of cryptography and utilize it for social economic activities, especially in buying and selling transactions and as a cryptocurrency-based digital currency. Crypto currency is digital money that is designed using the security of cryptographic technology, this makes crypto money difficult to forge and has absolute privacy advantages, its use scheme does not require an intermediary as a third party from the institution or institution, so that the owner can manage and manage it independently , and transactions that can be executed instantly and across countries.

A digital asset is an item or object contained in an electronic system that has a value that can be owned and controlled by a legal entity or individual. Digital assets are a form of development of the concept of assets which were initially only limited to the real world but developed into the cyber world. Digital assets are assets or objects whose ownership is recorded digitally which is controlled directly by the owner. Bitcoin is a digital asset, where bitcoin is a collection of electronic data or documents contained in an electronic system and has economic value, which can be used and owned by legal entities or individuals. This is the basis for Bitcoin users to make it not only as a means of payment but as an asset for investment. The function and use of Bitcoin as a digital asset can be used to carry out activities in the cyber world ranging from sending money or remittances,

investing or electronic trading quickly, comfortably, without the difficulties of using a cryptographic system.

Cryptocurrencies in Indonesia have not been recognized as legal tender since the promulgation of several regulations from Bank Indonesia which prohibit the operation of payment instrument systems using cryptocurrencies, including PBI 18/40/PBI/2016 concerning the Implementation of Payment Transaction Processing. Although in this regulation the terminology of virtual currency is used in the article to define digital money, the definition of virtual currency clearly mentions several examples such as Bitcoin, Dash, Dogecoin, Litecoin and Ripple which are known as crypto money that is quite popular.

Other rules can also be seen in PBI 19/12/PBI/2017 concerning the Implementation of Financial Technology. In its provisions, Bank Indonesia reiterates that virtual currency is prohibited from being used by financial technology providers (Article 8 paragraph 2). In addition to being required to use rupiah, financial providers are required to "apply the principles of anti-money laundering and prevention of terrorism financing" (Article 8 paragraph 1 point e). Regulation of money or own currency in Indonesia is still guided by Law Number 7 of 2011 concerning Currency. The regulation regarding the currency has been considered as a symbol of the sovereignty of the State which must be respected and proud of by all Indonesian citizens. So that it is considered a legal tender in Indonesia. Article 2 paragraph (1) of Law Number 7 of 2011 concerning Currency stipulates that the Currency of the Unitary State of the Republic of Indonesia is Rupiah.

With the increasing popularity of the use of Cryptocurrencies, the Minister of Trade responded to this by issuing a regulation for the sake of legal protection for the community in terms of legal certainty for crypto digital money. This ministry then issued a Minister of Trade Regulation Number 99 of 2018 concerning General Policy for the Implementation of Crypto Asset Futures Trading (Crypto Assets), so that in this regulation crypto digital money is referred to as a commodity that can be used as the subject of a tradable futures contract. Other regulations are also regulated based on the provisions of Article 1 number 7 of the Regulation of the Commodity Futures Trading Supervisory Agency (Perbappebti) Number 5 of 2019 concerning Technical Provisions for the Implementation of the Physical Market of Crypto Assets on the Futures Exchange, namely "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". One of the principles that must be considered in regulating crypto assets can be seen in Article 2 paragraph (1) letter c of the CoFTRA Number 5 of 2019 concerning Technical Provisions for the Implementation of the Physical Market for Crypto Assets on the Futures Exchange, which in this regulation applies the principle of legal certainty.

IV. Conclusion

Basically the crime of fraud is regulated in the Criminal Code (KUHP), namely in article 378 which reads "Anyone with the intent to benefit themselves or others unlawfully, by using a false name or false dignity, by deceit or a series of lies, inducing another person to hand over something to him, or to give a debt or write off a debt, is punishable by fraud with a maximum imprisonment of four years." If it is associated with fraud in ITE-based crypto assets, then in this case it can be seen because the proposition used in Article 28 paragraph (1) of the ITE Law is "fake and misleading news". Fake news can be interpreted as news whose contents are not in accordance with the real truth. Then the phrase "spread" means conveying (fake news) to the general public, in this case through the media of

telematics convergence. Then the phrase “misleading” relates to fake news being spread, which can deceive people. The deceptive nature of the content of fake news that is spread misleading the public, causing constitutive consequences in the form of consumer losses in electronic transactions.

The entry of Crypto trade in Indonesia opens up excellent economic growth opportunities in Indonesia. By relying on this Crypto as a form of transaction tool, it is expected to support economic growth based on digitalization, but there is no clarity regarding legal protection. Cryptocurrencies in Indonesia have not been recognized as legal tender since the promulgation of several regulations from Bank Indonesia which prohibit the operation of payment instrument systems using cryptocurrencies, including PBI 18/40/PBI/2016 concerning the Implementation of Payment Transaction Processing. Although in these rules the virtual currency terminology is used in the article to define digital money, the definition of virtual currency clearly mentions several examples such as Bitcoin, Dash, Dogecoin, Litecoin and Ripple are known to be quite popular cryptocurrencies. With the increasing popularity of the use of Cryptocurrencies, the Minister of Trade responded to this by issuing a regulation for the sake of legal protection for the community in terms of legal certainty for crypto digital money. This ministry then issued a Minister of Trade Regulation Number 99 of 2018 concerning General Policy for the Implementation of Crypto Asset Futures Trading (Crypto Assets), so that in this regulation crypto digital money is referred to as a commodity that can be used as the subject of a tradable futures contract.

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