



## The urgency of regulating crypto asset confiscation against criminal acts in Indonesia

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### Abstract

The development of world civilization today towards modernization is very complex. This brings about changes in every aspect of human life. Crime is also growing including cybercrime, money laundering, and corruption and so on, this has consequences as well as developments in the means of crime. If in the past crime assets were concentrated on money and assets, now the flow of funds from crime is also flowed to cryptocurrency assets. Crypto assets are included in *intangible* assets, namely intangible assets, but have value. Because it has value, the asset should be confiscated in accordance with Article 39 Paragraph 1 of the Code of Criminal Procedure and Article 1 point 16 of the Code of Criminal Procedure, namely Confiscation is a series of actions of the Investigator to take over and or keep under his control movable or immovable objects, tangible or intangible for evidentiary purposes in investigation, prosecution and trial. The interesting thing is that currently Indonesia does not have a special regulation regarding the confiscation of crypto assets and still relies on conventional confiscation arrangements, namely physical objects, both movable and immovable. In the Indonesian Criminal Procedure Law, there are confiscations regarding Tangible Objects and Intangible Objects. There is a regulatory loophole that has not been filled so far when it comes to crypto assets. How the seizure is carried out, what kind of seizure it looks like, what qualifications must be possessed by law enforcement officials to make a seizure, what the retention period will be, what the execution will be like after the *inkracht van gewijsde* verdict, how to put the assets during the investigation and trial. These problems have not been answered by existing regulations, so according to the author, it is appropriate for the state to present these regulations for the creation of justice, certainty and legal expediency.

**Keywords:** Crypto assets, confiscation, regulation, procedural law, tangible objects, intangibles, justice, legal certainty, legal expediency

### Introduction

The dynamics of crime today are increasingly developing following the pace of technological and economic progress. Likewise with the mode of white collar crime (*white collar crime*). Including one of them in the crime of corruption. Corruption actors, in addition to committing their crimes, also want to protect the property or proceeds of crimes they commit, which can be crypto assets. The crypto asset referred to here is the proceeds of crime, so that it can be confiscated by the state as a form of recovery, so that state financial losses arising from the actions of the convict can be recovered immediately.

The purpose of law is the realization of the Principle of Expediency that accompanies the Principle of Justice and the Principle of Legal Certainty. With no technical regulations on the seizure of crypto assets has been regulated, there is a potential loss of the Legal Expediency Principle for the seizure of crypto assets. We know that the assets used are often confiscated for the state. One form of expropriation is by auction. Crypto assets have a very volatile value, therefore special treatment is needed to maximize state income obtained from the execution of crypto asset auctions, and however, at this time there are no special technical arrangements for this. Due to incomplete arrangements regarding confiscation to execution of crypto assets, law enforcement officials will find it difficult to confiscate and in the end state financial recovery does not materialize and the public will not benefit from the seizure of assets carried out, because auctions are carried out not on time when crypto assets increase in value.

One of the purposes of confiscation is to avoid the repetition of criminal acts because the instrument or tool has been controlled by the state. At the present time, crypto assets have been commonly used as a tool to store the proceeds of crime, so the seizure must be able to be done by the state. Unfortunately, until now there are still incomplete regulations governing the technical seizure, even

### Discussion

#### 1. Crypto Asset Regulation in Indonesia

In general, the existence of crypto assets is still a dilemma and puts the Government in a difficult position to control it. On the one hand, the Government cannot reach the core of its system because it is *blockchain* and decentralized, so what the Government can do is regulate only the way it trades, whether legal or not legal. Many countries prohibit the use of bitcoin and all types of transactions, but some allow it. Indonesia itself prohibits crypto assets from being used as a medium of exchange because it violates Law Number 7 of 2011 concerning Currency, which though crypto assets are a new type of criminal goods, which are completely different from conventional goods that have been confiscated so far. Special methods are needed to deal with this

### Research Method

This research is normative legal research with a prescriptive nature and uses secondary data consisting of primary legal source and secondary legal materials, analyzed using qualitative techniques and deduction methods. The approach

method used is legislation by analyzing rules and regulations related to these legal issues, as well as looking at several cases that are relevant to the issues, and a conceptual approach that departs from various views and doctrines that have developed in the study of law. Researchers to find ideas that reveal legal understanding, legal concepts, and legal principles that are relevant to the issue latest states that Rupiah must be used in every transaction that has the purpose of payment, settlement of other obligations that must be fulfilled with money and / or other financial transactions. This is also confirmed by the Bank which states that bitcoin and other virtual currencies are not legal currencies or means of payment in Indonesia and urges the public to be careful of all risks arising from the ownership of *bitcoin* or other virtual currencies

Therefore, the Government has made a number of arrangements regarding crypto assets in Indonesia, including:

- Law Number 4 of 2023 concerning Strengthening and Development of the Financial Sector;
- Law Number 10 of 2011 concerning Amendments to Law Number 32 of 1997 concerning Commodity Futures Trading;
- Minister of Trade Regulation Number 99 of 2018 concerning General Policy for the Implementation of Crypto Asset Futures Trading;

Furthermore, it is very important for the Government of Indonesia to implement preventive measures for crypto asset service providers, namely by establishing close cooperation with the private sector to produce a flexible regulatory framework related to virtual assets and starting to establish public-private partnerships to provide law enforcement officials to trace crypto assets.

Compliance from crypto asset service providers and capacity building of financial intelligence agencies and law enforcement officials in understanding different analytical approaches for each business model or type of crypto asset also needs to be implemented immediately.

## 2. Confiscation Arrangements in Indonesian Criminal Procedure Law

The definition of confiscation, formulated in Article 1 point 16 of the Code of Criminal Procedure, which reads

"Confiscation is a series of actions of an investigator to take over and or store under his control movable or immovable objects, tangible or intangible, for evidentiary purposes in investigation, prosecution, and trial.

Confiscation has its main purpose is for evidentiary purposes, both in the investigation stage and the trial / prosecution stage. This is necessary so that a case can be brought to light by the existence of these evidence. M Yahya Harahap argues that there are several categories of Confiscation types, namely:

- Ordinary Forfeiture
- Forfeiture in Necessary and Urgent Circumstances
- Confiscation in a State of Caught Hands
- Direct Forfeiture
- Indirect Forfeiture
- Confiscation of Letters or Other Mail

Confiscation of crypto assets is not something that is impossible for investigators to do, but must be accompanied by cooperation with *Virtual Assets Service Providers*,

Custodian Banks where virtual currency is exchanged or using *forensic analysis of Cryptoassets* through *Electronic Evidence* means. It is very important for the Investigator of the Original

Crime and Trafficking that the seizure has not been completed with the transfer process from the Cryptoasset Suspect *Wallet / suspect* to the Cryptoasset *Suspect Wallet* from Law Enforcement Officials. Therefore, law enforcement officials must have control over *the CryptoassetSuspect/suspect/nominee/affiliate/gatekeeper* Wallet. Crypto assets should soon be exchanged in rupiah currency and then put into a holding account given the volatility of the bitcoin exchange rate and the risks and costs associated with storing it.

To confiscate crypto assets, it is very important to secure crypto assets by gaining control of these crypto assets, then the investigating authority must have a crypto asset *wallet* to transfer crypto assets from criminal actors, Confiscation will only be effective if the investigation team together with *forensics* Crypto assets have control over the Bitcoin of the criminal offender. The security process is divided into several steps to obtain the private keys of criminal offenders as well as steps to import private keys and data belonging to criminal offenders.

One of the most important aspects is the Address of the crypto asset to be included in the Seizure Warrant and Minutes of Seizure. "A crypto asset address is a *hash / string* calculated from a private key using asymmetric cryptography.

The crypto asset address is used as the receipt address for the crypto asset. The number of

Crypto assets included in a crypto asset. The address is calculated based on all crypto asset transactions in which this address is involved. Due to the transparency of the system, crypto asset transactions for example can be seen from the *Bitcoinblockchain*. The address of the crypto asset is always displayed in alphanumeric form. A crypto asset address can be easily created by anyone by generating a new private key. The importance of entering the address of the crypto asset for the purposes of Proof at trial. The Public Prosecutor will determine the status of all evidence in the form of objects confiscated in the Amar Criminal Charge. In the description of Bitcoin Confiscation. Investigators and crypto asset forensics officers enter private *keys* into electronic evidence lists.

## 3. Criminal Cases Related to Crypto Assets

### a. Doni Salmanan's Case

That in the criminal case of A.N Doni Salmanan, money worth Rp.500,777,090 (five hundred million seven hundred seventy seven thousand Ninety rupiah) was confiscated in the rupiah assets of PT Indodax Nasional Indonesia A.N Doni M Taufik account based on the Determination of the Bale Bandung District Court Number 260 / Pen.Pid / 2022 / Pn.Blb dated March 11, 2022. In this case, Doni Salmanan was charged with Article 45a Paragraph 1 Jo Article 28 paragraph 1 of Law Number 11 of 2008 concerning ITE plus Law

Number 19 of 2019 concerning amendments to Law 11 of 2008. Article 3 and Article 4 of Law 8/2010 on TPPU.

### b. The Case of Indra Kesuma Als Indra Kenz

One of the criminal cases related to crypto assets is the case of Indra Kesuma aka Indra Kenz who is entangled in several

criminal suspects, namely fraud, online gambling, and money laundering. He was sentenced in the first degree, namely imprisonment for 10 (Ten) years, and a fine of Rp. 5,000,000,000 (five billion rupiah), provided that if the fine is not paid it is replaced by imprisonment, and at the kasas level he is still sentenced to the same prison sentence of 10 (ten) years. Indra Kenz's assets were also confiscated, with a total of Rp.57.2 billion. A number of seizures have previously been carried out by investigators, including the seizure of Indra Kenz's crypto assets.

### c. Rafael Alun's Case

Rafael Alun was charged with violating Article 12 B Juncto Article 18 of Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Tipikor as amended by Law Number 20 of 2001 Juncto Article 55 paragraph (1) 1st of the Juncto Criminal Code Article 64 paragraph (1) of the Criminal Code.

In addition, prosecutors also charged Rafael Alun with trafficking together with Ernie. In a period of 20 years, Rafael Alun allegedly laundered Rp 57.7 billion. In addition, this former tax official also allegedly received 2 million Singapore dollars or Rp 22.5 billion (exchange rate 11,276.63), and 937,000 US dollars or Rp 14.3 billion (exchange rate 15,321). In total, approximately Rp 94.5 billion. Then TPPU for the period 2003 to 2010 amounted to Rp 31.7 billion and TPPU for the period 2011 to 2023 amounted to Rp 26 billion, 2 million Singapore dollars, 937,000 US dollars. Until now, it is believed that Rafael Alun has crypto assets to launder his illicit money, but the KPK itself still has difficulty tracking these crypto assets.

### 4. Standards in Crypto Asset Forfeiture

In June 2014, UNODC published *the Basic Manual* on the detection and investigation of the laundering Of Crime Proceeds Using Virtual Currencies which aims to provide practical information for investigators, prosecutors in detecting, investigating, prosecuting and seizing money laundering assets using virtual currencies or crypto assets. in this *Basic Manual* there are several standards that must be done in confiscating crypto assets or virtual assets. The process of confiscating crypto assets and their instruments plays an important and effective role not only in terms of investigation but also in crime prevention and law administration.

Some things to note are legal procedures, namely international standard procedures, state regulations and institutional regulations, and jurisdictional issues.

Regarding the confiscation procedure, there are several guidelines that can be done, namely:

1. Initiating financial investigations, namely conducting financial investigations to identify and find out the movement of money in various criminal activities;
2. *Asset Tracing*, namely asset tracking for the preparation stage to help determine the object of freezing or confiscation, before the objects are confiscated;
3. *Taking Control Of Assets*, namely controlling all these assets after seizure by the competent and competent authority;
4. *Management Of Assets*, namely good governance of crypto assets and virtual currencies is needed from the investigation process to execution due to the nature of these assets and currencies that are intangible and highly volatile;

### Conclusion

That a complete understanding of crypto assets is needed so that in the future a complete regulation can be formed regarding crypto assets, ranging from the mechanism of tracing, confiscation to execution of these crypto assets. So that the state's handling of crypto assets can support law enforcement. This not only includes the fulfillment of legal principles, namely justice, expediency and legal certainty but must also be supported by qualified technical aspects, such as the availability of complete facilities and facilities, capable human resources. There have been many countries that regulate crypto confiscation specifically and completely, of course, Indonesia as one of the countries with a large economy in the world must be able to develop crypto regulations more advanced, so that the great potential of crypto assets can be utilized optimally for the progress of the country.

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