

## Confiscation of Assets Laundered through Cryptocurrency Transactions in Indonesia: A Regulatory Framework

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**Abstract.** The newly emerged method of Money Laundering (ML) is to purchase cryptocurrency. The anonymity of cryptocurrency makes it difficult to identify perpetrators for the purpose of asset confiscation. Unfortunately, Indonesia does not have the law on asset confiscation. This research analyses the legislation on asset confiscation in case of ML through cryptocurrency transactions in Indonesia and the extent of the Asset Confiscation Bill in covering asset confiscation from ML through cryptocurrency transactions. This doctrinal legal research uses both statutory and conceptual approaches to address the proposed legal issues. The results of this study indicate that the regulation of asset confiscation in the Money Laundering Act in Indonesia still places the criminal confiscation to certain goods as an additional punishment that must be imposed along with the primary punishment, making it difficult to reach the asset confiscation of ML through cryptocurrency transactions. Furthermore, the concept of following the money in the Asset Confiscation Bill reaches the nominee mode. Asset confiscation is carried out without criminal conviction by proving that the assets were indeed derived from criminal proceedings, which is sufficient for submitting an application for asset confiscation. The Bill does not address the problem when the arrangement uses the DEX model as the issue lies in the technical execution. Hence, specific regulations and procedural law are needed to confiscate assets that have been laundered through cryptocurrency transactions as well as to synergise the dynamics between the law enforcement and the suspect in order to successfully confiscate the said assets.

**Keywords:** Asset Forfeiture, Cryptocurrency, Legislation, Money Laundering.

**Abstrak.** Metode baru Pencucian Uang (ML) adalah membeli cryptocurrency. Anonimitas cryptocurrency membuat sulit untuk mengidentifikasi pelaku penyitaan aset. Sayangnya, Indonesia tidak memiliki undang-undang penyitaan aset. Penelitian ini menganalisis peraturan perundang-undangan penyitaan aset ML melalui cryptocurrency di Indonesia dan sejauh mana RUU Perampasan Aset dalam mencakup penyitaan aset dari ML melalui cryptocurrency. Penelitian hukum doktrinal ini menggunakan pendekatan hukum dan konseptual untuk mengatasi masalah hukum yang diusulkan. Hasil penelitian ini menunjukkan bahwa pengaturan penyitaan aset dalam Undang-Undang Tindak Pidana Pencucian Uang di Indonesia masih menempatkan penyitaan pidana terhadap barang-barang tertentu sebagai hukuman tambahan yang harus dijatuhkan bersamaan dengan hukuman utama, sehingga sulit untuk mencapai penyitaan aset ML melalui Cryptocurrency. Selanjutnya, konsep follow the money dalam RUU Perampasan Aset mencapai mode nominee. Penyitaan harta dilakukan tanpa pemidanaan pidana dengan membuktikan bahwa harta kekayaan tersebut berasal dari hasil tindak pidana, yang cukup untuk mengajukan permohonan penyitaan harta benda. Bill tidak menjawab masalah ketika penempatan menggunakan model DEX karena masalahnya ada pada eksekusi teknis. Oleh karena itu, peraturan khusus dan hukum acara diperlukan untuk menyita aset yang dicuci uang melalui cryptocurrency.

**Kata kunci:** Perampasan Aset, Cryptocurrency, Legislasi, Pencucian Uang.

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## INTRODUCTION

This study focuses on the regulatory framework of the confiscation of assets that have been laundered through cryptocurrency transactions in Indonesia. This study bears a crucial discussion considering the development of the modern era and the current digitalisation of every aspect of human life have made financial technology (known as fintech) increasingly more advance in providing convenience for people in performing their financial transactions. Since the end of 2020, cryptocurrency has become the center of public discussion.<sup>1</sup> Cryptocurrency is a form of digital money, created with a sophisticated cryptography technology.<sup>2</sup> It is different from a traditional transaction wherein the bank takes an intermediary role, there is no middleman in a cryptocurrency transaction. Cryptocurrency is designed as a peer-to-peer platform and decentralized through a blockchain network which makes it free from the authority of any country's financial institution.<sup>3</sup> Simply put, blockchain is a public digital ledger that has the ability to ensure the enforcement of every transaction that takes place within the blockchain system. The management and publication of cryptocurrency is done collectively by the network.<sup>4</sup> Furthermore, cryptocurrency has several functions that can be utilised by its users, it can be used as a medium of exchange, as a unit of accounts, and as a store of values.<sup>5</sup>

The use of cryptocurrency as a medium of exchange, in fact, has been legally prohibited in various countries. China, Bangladesh, and Qatar, for instances, have officially prescribed their entire financial institutions from being involved in cryptocurrency transactions, knowing the potential risk of money laundering which

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<sup>1</sup> An Pham Ngoc Nguyen et al., "The Cryptocurrency Market in Transition before and after COVID-19: An Opportunity for Investors?," *Entropy* 24, no. 9 (September 1, 2022), <https://doi.org/10.3390/e24091317>.

<sup>2</sup> Muhammad Farrukh Shahzad et al., "Cryptocurrency Awareness, Acceptance, and Adoption: The Role of Trust as a Cornerstone," *Humanities and Social Sciences Communications* 11, no. 1 (December 1, 2024), <https://doi.org/10.1057/s41599-023-02528-7>.

<sup>3</sup> Emily Fletcher, Charles Larkin, and Shaen Corbet, "Countering Money Laundering and Terrorist Financing: A Case for Bitcoin Regulation," 2023, <https://ssrn.com/abstract=4674925>.

<sup>4</sup> Jiaqi Liang, Linjing Li, and Daniel Zeng, "Evolutionary Dynamics of Cryptocurrency Transaction Networks: An Empirical Study," *PLoS ONE* 13, no. 8 (July 1, 2019), <https://doi.org/10.1371/journal.pone.0202202>.

<sup>5</sup> I Gusti Kade Budhi, *Bitcoin: Potensi Tindak Kejahatan Dan Pertanggungjawaban Pidana* (Depok: Rajawali Press, 2021).

complicates the money laundering eradication efforts.<sup>6</sup> In Indonesia, the regulation that addresses of the legality of cryptocurrency is not crystal clear. On one hand, The Bank of Indonesia has firmly forbidden the use of cryptocurrency as a medium of exchange.<sup>9</sup> However, on the other hand, the trading of cryptocurrency is legalised as per the Bappebti Regulation Number 5 of 2019 on the Technical Provisions on Organising the Physical Market for Crypto Assets in Future Exchange.

In 2021, the Attorney General's Office of Indonesia has determined three suspects in the corruption case of PT Asabri, they are identified as Benny Tjokrosaputro, Heru HidClause, and Jimmy Sutopo, who had allegedly covered up their crimes through purchase of bitcoins.<sup>7</sup> The investigators at the Attorney General's Office have revealed that the three suspects of the PT Asabri corruption case had cashed out bitcoins into Rupiahs since they were determined as suspects. In 2022, in the fraud case of Binomo binary option which involed Indra Kesuma, also known as Indra Kenz, the Indonesian Police (*Ditipideksus Bareskrim Polri*) has revealed Indra Kenz's ownership of 58 million Rupiahs worth of crypto assets.<sup>8</sup> That crypto asset is allegedly originated from a money laundering flow of funds. Moreover, in the money laundering case of Rafael Alun, who used to be an employee at the Directorate General of Taxation of the Indonesian Ministry of Finance, it was revealed that Rafael had transacted some of the laundered money to purchase crypto assets in the from of bitcoin.<sup>9</sup>

According to the 2021 report of the typology research results conducted by the Indonesian Financial Transaction Reports and Analysis Centre (PPATK), a new *modus operandi* in committing money laundering has been discovered, which is by

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<sup>6</sup> Global Legal Research Directorate staff and Law Library of Congress, "Regulation of Cryptocurrency Around the World," 2018, <http://www.law.gov>.

<sup>7</sup> Ferry Sandi, "Tersangka Asabri Diduga Cuci Uang di Bitcoin, Ini Modusnya," <https://www.cnbcindonesia.com/tech/20210421123611-37-239558/tersangka-asabri-diduga-cuci-uang-di-bitcoin-ini-modusnya>, 2021.

<sup>8</sup> Laila Afifa, "Indonesian Police Seize US\$4.64mn Assets in Binomo Binary Scam Case," In 2022, in the fraud case of Binomo binary option which involed Indra Kesuma, also known as Indra Kenz, the Indonesian Police (*Ditipideksus Bareskrim Polri*) revealed Indra Kenz's ownership of 58 million Rupiah worth of crypto assets, May 9, 2022.

<sup>9</sup> Editorial Team CNBC Indonesia, "Rafael Cuci Uang Miliaran Pakai Bitcoin, Ini Kata PPATK," <https://www.cnbcindonesia.com/news/20230512113504-4-436827/rafael-cuci-uang-miliaran-pakai-bitcoin-ini-kata-ppatk>, May 12, 2023.

purchasing crypto assets by using illicit money.<sup>10</sup> Unfortunately, the Indonesian law enforcement is yet to be fully aware of this particular *modus operandi*, therefore rendering the tracking of the crime to be more challenging.<sup>11</sup> The anonymity and pseudonym nature of cryptocurrency transactions hinder the suspects identification process in order to confiscate their illicit assets resulted from money laundering. This is due to the confiscation mechanism of such assets remains a criminal based confiscation which only allows asset confiscation to be executed if a suspect has been identified. Therefore, the question on how the Indonesian positive law will resolve this criminal act of money laundering through cryptocurrency needs to be addressed and studied to test the preparedness of the Indonesian law.

On the other hand, Indonesia currently has no asset confiscation law. The only asset confiscation mechanism that exists to this date refers to the Law Number 8 of 2010 on the Prevention and Eradication of the Crime of Money Laundering (the Money Laundry Act). The Money Laundry Act prioritises imprisonment rather than asset confiscation, as well as the possibility of substitute punishment if the defendant is unable to turn in their illicit assets. These two points render the Money Laundering Act ineffective.<sup>12</sup> The government along with the House of Representatives (DPR) are currently formulating the Asset Confiscation Bill based on civil confiscation or known as non-conviction based (NCB) confiscation. It is done so along with the formulation of the said Bill, it is also necessary to conduct further research whether the Bill will be able to confiscate illicit assets that have been laundered through cryptocurrency transactions. The illicit asset of white-collar crime is the heart of such crime, thus, to break the chain of crime, a proper asset confiscation mechanism is needed.

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<sup>10</sup> Muh Afdal Yanuar, "Risiko Dan Posibilitas Penyalahgunaan Aset Kripto Dalam Kejahatan Pencucian Uang (Risks and Possibilities of Misuse of Crypto Assets in Money Laundering Crimes)," *Majalah Hukum Nasional* 52, no. 2 (2022), <https://doi.org/10.33331/mhn.v52i2.170>.

<sup>11</sup> Pusat Pelaporan dan Analisis Transaksi Keuangan, "Tipologi Pencucian Uang," 2019, <http://www.ppatk.go.id>.

<sup>12</sup> Widiya Yusmar and Nella Sumika Putri, "Perampasan Aset Sebagai Upaya Pemberantasan Tindak Pidana Pencucian Uang Dengan Predicate Crime Tindak Pidana Narkotika," *Jurnal Ilmiah Galu Justisi* 9, no. 2 (2021), <https://doi.org/http://dx.doi.org/10.25157/justisi.v9i2.5581>.

Several studies on both cryptocurrency transactions and the crimes of money laundering were conducted, including the thesis written by Gufron Hanafi regarding the prospects for criminalisation policy for the use of cryptocurrency. The result of the said thesis mentioned that one of the criminal offenses that could potentially arise from using cryptocurrencies is in the form of criminal acts of money laundering. By using the justification theories for criminalisation, namely liberal and individualistic theories in this study, it is indicated that the criminalisation of the use of cryptocurrencies is highly prospective. Another research conducted by Chad Albrecht *et al*, that aimed to not only examine the process of money laundering but also the response of government agencies towards the new form of currency (cryptocurrency). However, there is no study that comprehensively analyses the present and the future asset confiscation arrangements. That being said, this research aims to analyse two legal issues, which are: to what extent the Indonesia's Asset Confiscation Act covers the confiscation of assets from money laundering through digital currency; and how does the asset confiscation bill work in confiscating assets laundered assets through cryptocurrency transactions.

## **METHODOLOGY**

This doctrinal legal research method uses both statutory and case study approaches to address the proposed legal issues. The data used comprise of legal materials consisting of Law Number 8 of 2010 on the Prevention and Eradication of the Crime of Money Laundering (the Money Laundering Act), Law Number 8 of 1981 on the Criminal Procedure Code, and Law Number 10 of 2011 on Amendments to Law Number 32 of 1997 on Commodity Futures Trading. The mentioned legal materials were obtained through both literature and document studies and analysed using the descriptive-qualitative method.

## RESULTS AND DISCUSSION

### The Extent of Indonesia's Asset Confiscation Act in Addressing the Confiscation of Assets Laundered through Digital Currency

All financial service providers have similar risk of being used as a medium for money laundering, but the level of such risk in cryptocurrency realm is far higher.<sup>13</sup> First, this is due to the fact that cryptocurrency enables a non-physical, faster and easier transaction. Second, cryptocurrency is a complex financial technology and exists within the digital space which adds more complexity when it comes to solving criminal acts that happened within.<sup>14</sup> The Indonesian Financial Transaction Reports and Analysis Centre (PPATK) stated that there are at least two *modus operandi* of money laundering in the financial technology industry and cryptocurrency: identity theft (stealing the victim's personal information) and identity fraud (using that stolen identity for criminal purposes).<sup>15</sup> According to the data obtained from a research conducted by the Asia Pacific Group (APG) in 2020 entitled Money Laundering Typology Research Report Based on Court Decisions on Money Laundering Criminal Cases issued by PPATK, the use of virtual currency or cryptocurrency is considered as another *modus operandi* in the money laundering crime typology.<sup>16</sup>

In Indonesia, there is a few money laundering cases that successfully used cyptocurrency as the means to cover up the source of the illicit assets, such as the Indra Kenz case, PT Asabri case, and the Rafael Alun case. The Law Number 8 of 2010 on the Prevention and Eradication of the Crime of Money Laundering (the Money Laundry Act) can be applied to a suspect who commits money laundering crime through cryptocurrency transaction which is considered as an active money laundering suspect with the intention to cover up their illicit assets, pursuant to

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<sup>13</sup> Shah Pathik, "How Money Laundering Is Messing up the World of Cryptocurrency," <https://amluae.com/how-money-laundering-is-messing-up-the-world-of-cryptocurrency/>, 2024.

<sup>14</sup> Dasih Irma et al., "The Future of Cryptocurrency Legality in Indonesia," *Journal of Economics and Business Letters* 1, no. 1 (2021), <https://doi.org/10.32479/ijefi.11347>.

<sup>15</sup> Amalia Syauket, Jantarda Mauli Hutagalung, and Muhammad Andi Prastio, "Fintech Dan Bitcoin Modus Pencuci Uang Hasil Korupsi," *Krtha Bhayangkara* 17, no. 1 (March 14, 2023), p.33, <https://doi.org/10.31599/krtha.v17i1.1970>.

<sup>16</sup> Pusat Pelaporan dan Analisis Transaksi Keuangan, "Tipologi Pencucian Uang."

article 3 and 4 of the Money Laundry Act. Meanwhile, a passive money laundering suspect can be charged with article 5 which emphasises on individuals who enjoy such illicit assets and who are complicit in covering the source of the assets. The objective element (*actus reus*) can be identified based on the suspect's action in the placement, layering, and integration process. Subsequently, the subjective element (*mens rea*) can be observed from the individual's action that is deemed to have known or fall under the suspicion of intentionally covering up their illicit assets.<sup>17</sup>

Looking at the aforementioned cases, it is safe to argue that when a money laundering crime occurs through cryptocurrency transaction, it is certain that the illicit money will firstly go through a cryptocurrency exchange company. This is because a cryptocurrency exchange company facilitates the trade of crypto assets, as well as an entry gate for the transactions of purchasing or selling such assets, which is conducted by the money laundering suspect. A Cryptocurrency exchange company is company that facilitates the purchasing and selling of assets with *fiat* money or other crypto currencies.<sup>18</sup>

The Commodity Futures Trading Regulatory Agency (Bappebti) Regulation Number 8 of 2021 on the Guidelines for Organizing Physical Market Trading of Crypto Assets in Futures Exchange legalised the use of cryptocurrency as an intangible commodity in a digital form, that uses cryptography, information technology network, and a distributed ledger in order to control the production of new units, to verify transactions, and to secure transactions without external intervention.<sup>19</sup> Therefore, it can be stated that cryptocurrency, pursuant to Indonesian law, is a digital asset.<sup>20</sup> This is certainly different from the cryptocurrency laws in other regions such as

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<sup>17</sup> Syauket, Hutagalung, and Prastio, "Fintech Dan Bitcoin Modus Pencuci Uang Hasil Korupsi."

<sup>18</sup> Basit Barry, "Urgensi Perlindungan Hukum Perusahaan Exchanger Cryptocurrency Terhadap Aliran Transaksi Dari Pengguna Anonim Wallet Decentralize Exchange," *COMSERVA Indonesian Journal of Community Services and Development* 2, no. 11 (March 27, 2023): 2620–44, <https://doi.org/10.59141/comserva.v2i11.650>.

<sup>19</sup> Bappebti Republik Indonesia, "Article 1 Paragraph (7) Peraturan Badan Pengawas Perdagangan Berjangka Komoditi (Bappebti) Nomor 8 Tahun 2021 Tentang Pedoman Penyelenggaraan Perdagangan Pasar Fisik Aset Kripto (Crypto Asset) Di Bursa Berjangka" (n.d.).

<sup>20</sup> Muhammad Al Ikhwan Bintarto, "Cryptocurrency as a Digital Property in Indonesian Law Perspective," *Jurnal Penegakan Hukum Dan Keadilan* 3, no. 2 (September 30, 2022), <https://doi.org/10.18196/jphk.v3i2.15134>.

Latin America which legalised crypto as a medium of exchange similar to money.<sup>21</sup> In Indonesia, however, cryptocurrency is merely acknowledged as an investment instrument traded in futures exchange.<sup>22</sup> In order to legally operate in Indonesia, Cryptocurrency Exchange companies are required to obtain a permit and also to comply with the regulations issued by Bappebti as stated in article 1 section (8) of the Regulation Number 8 of 2021 on the Guidelines for Organizing Physical Market Trading of Crypto Assets in Futures Exchange that reads “physical crypto asset trader is a party that has been approved by the head of Bappebti to conduct transactions related to crypto assets either in their own name, or on behalf of a crypto asset customer.” In this regulation, the term physical crypto asset trader refers to cryptocurrency exchange companies.

The placement step is done by purchasing crypto asset through a cryptocurrency exchange company. That asset is then deposited in a digital wallet or commonly known as simply ‘wallet’.<sup>23</sup> Similar to the abovementioned cases, when a suspect purchased crypto assets through a cryptocurrency exchange company with the intention to deceive the law enforcement, that suspect would use another person’s identity (nominee) as a means to disguise the suspect’s ownership over the illicit assets. Pursuant to the fourth recommendation issued by the Financial Action Task Force (FATF) on the confiscation and temporary measure in money laundering, the confiscation of assets from money laundering is a measure where:

*“... Such measure should include the authority to: (a) identify, trace and evaluate property that is subject to confiscation; (b) carry out provisional measure, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; (c) take steps that will prevent or void action that prejudice the country’s ability to freeze or seize or recover property that is subject to confiscation; and (d) take any appropriate investigative measures.”<sup>24</sup>*

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<sup>21</sup> Chainalysis Team, “Latin America: Venezuela and Argentina Stand Out as Examples of Crypto’s Unique Utility,” <https://www.chainalysis.com/blog/latin-america-cryptocurrency-adoption/>, October 11, 2023.

<sup>22</sup> Lewiandy, “Crypto Asset Trends In Indonesia: New Challenges To Indonesian Regulations,” *Era Hukum* 20, no. 1 (2022), p.21.

<sup>23</sup> dima and sidelnikov, “Applying IFRS Accounting by Holders of Crypto Assets,” 2021, [https://assets.ey.com/content/dam/ey-sites/ey-com/en\\_gl/topics/ifrs/ey-apply-ifrs-crypto-assets-update-october2021.pdf?download](https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/ifrs/ey-apply-ifrs-crypto-assets-update-october2021.pdf?download).

<sup>24</sup> *Financial Action Task Force, International Standards on Combating Money Laundering and The Financing of Terrorism & Proloferation the FATF Recommendation*, Paris, 2012-2023, hlm. 12

The confiscation of assets derived from criminal proceeds will eventually end in asset recovery in accordance with the fourth recommendation of the Financial Action Task Force (FATF), wherein the steps consist of the tracking, securing, and asset confiscation mechanism.<sup>25</sup> As recommended by the FATF, the confiscation of asset derived from money laundering through cryptocurrency transaction that occurs in Indonesia enables the enforcement of such confiscation which is then described on the following table:

**Table 1.**

**The Enforcement of Confiscation of Assets Derived from Money Laundering through Cryptocurrency Transactions in Accordance with the Recommendation of FATF**

<b>Suspect</b>	<b>Asset Tracking</b>	<b>Securing of Asset</b>	<b>Asset Confiscation</b>
PT Asabri Case	Asset tracking was conducted by investigating the director with the initials OAD from PT Indodax which is a marketplace for crypto assets in order to trace the flow of funds of money laundering crimes through cryptocurrency transactions.	Securing of asset has not been conducted due to difficulties in the tracking.	Confiscation of the bitcoin asset has not been conducted due to difficulties in the tracking.

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<sup>25</sup> Syahrizal Syakur, "Perlindungan Hukum Korban Fintech Robot Trading Melalui Perampasan Aset Pelakunya", *Majalah Hukum Nasional*, Volume 52 Nomor 2 Tahun 2022, hlm. 234-237

<p>Indra Kenz Case</p>	<p>Asset tracing was conducted by investigators and assisted by PPATK which inquired a cryptocurrency exchange company, PT Indodax, to identify wallet owners in its platform and their flow of funds in the cryptocurrency realm.</p>	<p>In securing the cryptocurrency asset in the form of Bitcoins, Indra Kenz's wallet was blocked by the cryptocurrency exchange company, PT Indodax, upon notification by PPATK.<sup>29</sup></p>	<p>The asset confiscation used in this case was the criminal confiscation, where in Indra Kenz's cryptocurrency in his wallet in Indodax was confiscated. Based on the decision of the Tangerang District Court Number: 1240/Pid.Sus/2022/PN. Tng that an amount of 214.311.103 Rupiah (two hundred fourteen million three hundred eleven thousand and one hundred three) in the Indodax account of Indra Kenz was confiscated by the state.<sup>30</sup></p>
<p>Rafael Alun Case</p>	<p>Thus far, the Indonesian Corruption Eradication Commission (KPK) remains having difficulties in tracking Rafael Alun's cryptocurrency assets.</p>	<p>Securing of asset has not been conducted due to difficulties in the tracking.</p>	<p>Asset confiscation has not been conducted as KPK remains troubled in tracking the assets of Rafael Alun.</p>

Source: taken from various electronic sources

Based on Table 1 above, the tracking and securing of assets involved PT Indodax as the reporting party. PT Indodax is a cryptocurrency exchange company or a physical crypto asset trader that has been approved by Bappebti to operate and has centralised exchange (CEX) company model.<sup>26</sup> CEX has similarities with the centralised system banking, which means that in order to connect crypto asset buyer and seller, a central company is required to act as a third party who stores the asset

<sup>26</sup> CNBC Indonesia, "Cek Aplikasi Kripto Untuk Pemula Di Indonesia," <https://www.cnbcindonesia.com/market/20231006190351-17-478632/cek-aplikasi-kripto-untuk-pemula-di-indonesia>, October 3, 2023.

and organises the exchange.<sup>27</sup> CEX uses a trusted third party which supervise daily operation and handle transactions. Aside from facilitating the sell and purchase of crypto assets, this model usually provides a crypto asset storage facility in a form called the Custodial Wallet.<sup>28</sup> Custodial Wallet is a crypto asset storage wallet service offered by a centralised service such as the CEX model. When an individual purchases assets from a Cryptocurrency Exchange with the CEX model, they indirectly entrusts their private key including the asset to the platform of that Exchange company.

According to the positive law in Indonesia, CEX company is categorised as a reporting party that has the obligation to provide information regarding to the sell and purchase transactions of crypto assets that take place within its platform to the investigators and PPATK. Article 17 of the Indonesian Money Laundering Act states that the role of a reporting party includes financial service providers, one of which is companies that operate in futures commodity trading. This category creates an obligation for a company to provide and disclose access to its entire documents to Bappebti in order to supervise with the right examine them, including transaction reports.<sup>29</sup> It is mandatory for CEX companies to make a report related to its transaction history. This particular report enables early identification of transaction flow and the identity of the wallet owner. Moreover, identification is possible because CEX companies are obligated to implement the Anti-Money Laundering System (AML) as compliance to article 27 section (1) of the Bappebti Regulation Number 8 of 2021. The law grants the investigators with the authority to trace by obtaining information and data related to the transaction of illicit assets derived from criminal proceedings. This authority is regulated in article 72 of the Money Laundering Act.<sup>30</sup>

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<sup>27</sup> U.S Department of the Treasury, “Crypto-Assets: Implications for Consumers, Investors, and Businesses,” 2022.

<sup>28</sup> Yuxi Chen, Pedro Gurrola-Pérez, and Kaitao Lin, “A Review of Crypto-Trading Infrastructure Exchanges’ Engagement with Crypto Market Functioning & Development,” 2023, [www.world-exchanges.org](http://www.world-exchanges.org).

<sup>29</sup> Bappebti, “Aset Kripto,” 2020, [https://bappebti.go.id/resources/docs/brosur\\_leaflet\\_2001\\_01\\_09\\_o26ulbsq.pdf](https://bappebti.go.id/resources/docs/brosur_leaflet_2001_01_09_o26ulbsq.pdf).

<sup>30</sup> Pemerintah Republik Indonesia, “Article 71 Law Number 8 of 2010 Concerning Eradication and Prevention of the Crime of Money Laundering” (n.d.).

Some CEX companies have implemented the Know Your Customer (KYC) principle in order to enforce the AML.<sup>31</sup> The implementation of KYC is conducted by requesting their customers to verify themselves with their personal identification when signing up for an account in the CEX platform. The KYC principle forces companies to know and possess database of their customers.<sup>32</sup> Therefore, with this very principle, it enables the identification of wallet owners in the Cryptocurrency Exchange companies. Subsequently, tracing illicit assets derived from criminal proceedings is possible as mentioned in Douglas Tjokrosetio's book entitled "The Complete Guide to Blockchain" which explains that, conceptually, the transaction of cryptocurrency within the blockchain network is immutable, transparent in nature, and traceable so it is easy to trace, even down to the latest flow of funds in the blockchain.

*"Immutability means that the data that has been recorded in the blockchain is permanent and cannot be changed. Transparent in nature means that all the data and information is visible to all nodes from start to end. Traceable means the footprints of all digital assets can be retraced back to its origin."*<sup>33</sup>

Investigators are given the authority by the law to force the reporting party to postpone, block, and confiscate a suspect's crypto asset in their wallet pursuant to the Money Laundering Act. The authority of the investigators to force the reporting party for postponement and confiscation is stated in article 70 and 71. Moreover, the authority to confiscate assets derived from criminal proceedings is also stated in article 39 of the Law Number 8 of 1981 on the Criminal Procedure Code (KUHAP). In securing the assets that have been laundered through cryptocurrency transactions, investigators are allowed by the law to order the CEX companies to confiscate assets due to its position as the reporting party under the Money Laundering Act. Based on the Indonesian law, Article 39 of the Indonesian Criminal Code (KUHP) states that the types of assets that can be confiscated comprise of: assets owned by a person

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<sup>31</sup> Ahmad Khozi, "The Urgency of Electronic Know Your Customer (e-KYC): How Electronic Customer Identification Works to Prevent Money Laundering in The Fintech Industry," *Diponegoro Law Review*, vol. 07, 2022, <https://ejournal.undip.ac.id/index.php/dlr/article/download/34447/21476>.

<sup>32</sup> Pieter Pauwels, "A Solution Concept for KYC without Knowing Your Customer, Leveraging Self-Sovereign Identity and Zero-Knowledge Proofs," 2021, <https://eprint.iacr.org/2021/907.pdf>.

<sup>33</sup> Douglas Tjokrosetio, *The Complete Guide to Blockchain: Panduan Mudah Dan Lengkap Untuk Pemula* (Jakarta: PT Tempo Inti Media, 2022).

obtained through illegal activities; assets that can be imposed on a confiscation decision based on matters determined by the law; and assets of convicted persons that have been confiscated.<sup>34</sup>

Cryptocurrency in Indonesia is legally categorised as an intangible commodity, this is regulated in article 1 number (6) of Bappebti Regulation Number 8 of 2021 on the Guidelines for Organizing Physical Market Trading of Crypto Assets in Futures Exchange, which states that crypto asset is an intangible commodity in a digital form, that uses cryptography, information technology network, and a distributed ledger to manage the production of new units, to verify transactions, and to secure transactions without external interference. Meanwhile, the term commodity is defines as all items, services, rights other interests, and any derivatives of commodities that can be traded and be a subject to futures contract, sharia derivative contract, and/or other derivative contract.<sup>35</sup> In summary, the legality of cryptocurrency in Indonesia falls within the categorisation as an intangible object or an intangible digital asset. If cryptocurrency is used a medium to launder money obtained through illicit affairs and then converted into cryptocurrency, pursuant to Article 39 of the Indonesian Criminal Code, that cryptocurrency asset is considered as an item that can be confiscated. The confiscation of that crypto asset can be executed after a criminal conviction has been issued where the connection between the crypto asset and the illicit proceeds has been proven.<sup>36</sup> Furthermore, the definition of object according to the Indonesian Civil Code is an item that can be divided into tangible and intangible ones. Cryptocurrency, in this context, is an intangible object in a form of a digital commodity.

The legal concept of asset confiscation in the Indonesian criminal law is considered as an additional punishment given by a judge to be imposed along with the primary punishment. Thus, it is not possible to impose merely the additional punishment

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<sup>34</sup> Pemerintah Republik Indonesia, "Article 39 Indonesian Criminal Code" (n.d.).

<sup>35</sup> Pemerintah Republik Indonesia, "Article 1 Paragraph (1) Law of the Republic of Indonesia Number 10 of 2011 Concerning Amendments to Law Number 32 of 1997 Concerning Commodity Futures Trading" (n.d.).

<sup>36</sup> Tiara Putri and Dwi Nurfauziah Ahmad, "Inadequate Cryptocurrency and Money Laundering Regulations in Indonesia (Comparative Law of US and Germany)," *Yustisia Jurnal Hukum* 12, no. 2 (2023): 129–52, <https://doi.org/10.20961/yustisia>.

without the primary punishment. This additional punishment is regulated in article 10 point (b) of the Indonesian Criminal Code, which can be in the form of revocation of certain rights, the confiscation of certain assets, and/or the announcement of the judge's decision. Normatively, based on the cases that have been explained and analysed, the regulation of asset confiscation in Indonesian has indirectly regulated crimes of money laundering that uses cryptocurrency transaction. This is possible because CEX companies, who act as the reporting parties, have the ability to provide information for the law enforcement officers regarding the identity of the wallet owner, wallet transaction flow, as well as the authority to secure and confiscate crypto assets. In Indonesia, the majority of the legal CEX companies are CEX model.

This CEX model helps the confiscation of illicit asset because of the implementation of the AML regulation and the KYC principle that is applied towards the customers. The crypto assets exchange service providers and wallet storage such as the CEX companies are the gate keepers in identifying the entities that will purchase or sell the crypto assets. CEX companies are the key in the enforcement of confiscation of assets derived from money laundering crimes through cryptocurrency transactions.<sup>37</sup> Asset tracing, securing, and confiscation require the full cooperation of the CEX companies. This is because the concept of transaction in CEX company with the CEX model takes the role of a trusted third party (TTP) or an intermediary between a buyer and seller of crypto assets, which makes these companies having the authority to supervise and manage their customers' accounts and custodial wallets because they have access to their private keys. The reason that makes it difficult to confiscate illicit assets is the fact that suspects usually use false identity (other people's identity or nominee) when signing up for an account in a CEX company, whilst the victim whose identity was stolen was not fully aware of the crime, thus making it difficult to confiscate the illicit asset in question. This is considered as an obstacle because the confiscation of illicit asset is categorized as an

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<sup>37</sup> Valentina Covolo, "The EU Response to Criminal Misuse of Cryptocurrencies The Young, Already Outdated 5th Anti-Money Laundering Directive," *University of Luxembourg Law Working Paper*, no. 2019-015 (2019), <https://doi.org/https://dx.doi.org/10.2139/ssrn.3503535>.

additional punishment, where Indonesia has yet to have a law that specifically allows asset confiscation without requiring a criminal conviction.

In this context, there two models of CEX company, Centralized Exchange (CEX) and Decentralised Exchange (DEX).<sup>38</sup> CEX companies with DEX model are different with those with CEX model. The difference lies on the nature of CEX companies with DEX model which is a purely decentralized peer-to-peer by using the smart contract technology in providing a facility for crypto assets transactions.<sup>39</sup> In DEX model of CEX companies, the cryptocurrency exchange that was built by the company provides a facility for trading without taking possession of the users' private keys and also without requiring user's identity verification.<sup>40</sup> The DEX model proposes the peer-to-peer transaction concept which does not involve a third party as an administrator and intermediary for such transaction.<sup>41</sup> The role of a third party in validating the transaction depends on the smart contract technology in facilitating the crypto trading.

Smart contract is contract that has been programmed by using computer codes in blockchain, thus it does not require the existence of a third party.<sup>42</sup> A research conducted by Dan Lin, Jiajing Wu, Qishuang Fu, Yunmei Yu, Kaixin Lin, Zinbin Zheng, and Shuo Yang, indicates that the DEX model is more likely to escape law enforcement investigations because of its peer-to-peer system that allows users to trade or exchange cryptocurrencies without the involvement of a third party, therefore giving more freedom for criminals to launder their money.<sup>43</sup> Due to its purely decentralised nature, companies in this model are not required to adhere to the standard AML rule and the KYC principle. In this model, only the wallet owner

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<sup>38</sup> Angelo Aspris et al., "Decentralized Exchanges: The 'Wild West' of Cryptocurrency Trading," *International Review of Financial Analysis* 77 (October 2021): 101845, <https://doi.org/10.1016/j.irfa.2021.101845>.

<sup>39</sup> Aspris et al.

<sup>40</sup> Yaya J Fanusie, "Financial Authorities Confront Two Cryptocurrency Ecosystems," *Global Governance to Combat Illicit Financial Flows: Measurement, Evaluation, Innovation*, 2018, <https://www.jstor.org/stable/resrep21429.8>.

<sup>41</sup> Disha Lagadamane Dinesha et al., "Decentralized Token Exchanges in Blockchain Enabled Interconnected Smart Microgrids," *TechRxiv*, 2023, <https://doi.org/10.36227/techrxiv.21896064.v1>.

<sup>42</sup> Tian Mao and Junhua Chen, "Smart Contract in Blockchain," 2023, 868–75, [https://doi.org/10.2991/978-94-6463-030-5\\_86](https://doi.org/10.2991/978-94-6463-030-5_86).

<sup>43</sup> Dan Lin et al., "Towards Understanding Crypto Money Laundering in Web3 Through the Lenses of Ethereum Heists," *SIGMETRICS* 23 (May 24, 2023), <http://arxiv.org/abs/2305.14748>.

can access the private key without any guardianship of a third party as a trusted third party.

In regards to enforcement, the success of tracing, securing and confiscation of crypto assets will depend on whether the identity of suspect is known and the ability to access the private key of the wallet. The law enforcement institutions will be deemed successful in confiscating the assets if the private keys are held by a bank or a CEX company that complies with the state regulations, the AML rules and KYC principle. However, if the private key is only in the suspect's possession, then one way to obtain the private key depends on the suspect's cooperation. For instance, the *Fishing Rod* case in Ireland, wherein a defendant hid his 45 million euros worth of crypto assets in a fishing rod box that the defendant threw away while in custody. In this case, the digital wallet was confiscated without its private key, making the assets unobtainable.

The cryptocurrency exchange DEX model does not require the user's identity to create a wallet address, and also does not have strict regulation that requires companies to keep special documentation of their user's identity, to limit the number of accounts that can be created by users, and to objectively manage all transactions.<sup>44</sup> If a company is not functioning as a gatekeeper in supervising and managing user transactions, it will be difficult to identify the suspect's wallet. Without the suspect's identification, it will likewise be difficult to confiscate the illicit assets, as it requires a criminal conviction against the perpetrator and their assets which must be seized before they are confiscated.

CEX companies with DEX model do not have access to users' private keys, making the security and confiscation effort merely limited to finding the wallet address and its public key without being able to confiscate the crypto assets in the wallet. This is because CEX companies with DEX model usually do not provide storage facilities in the form of wallets, so users usually use Non-Custodial Wallets separate from the exchange platform. Non-Custodial Wallets are crypto asset storage wallets with

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<sup>44</sup> Valeriia Dyntu and Oleh Dykyi, "Cryptocurrency In The System Of Money Laundering," *Baltic Journal of Economic Studies* 4, no. 5 (February 11, 2019), <https://doi.org/10.30525/2256-0742/2018-4-5-75-81>.

private key that is completely controlled by the owner. The consequence of this is that the wallet platform or the CEX company do not have access to their user's wallet because they do not have the private key. Similar to the *Fishing Rod* case, without obtaining the private key, the confiscation itself cannot be carried out, where the private key is only held by the suspect. Without knowing the private key, a prosecutor cannot transfer the crypto assets from a Non-Custodial Wallet into their control. Therefore, the confiscation of assets depends on the private key.

### **The Aset Forfeiture Bill in Consifscating Assets Laundered through Cryptocurrency Transactions**

To handle the confiscation of assets derived from criminal proceedings, based on the government's initiative, the House of Representatives of the Republic of Indonesia (DPR RI) has prepared a Bill on Asset Confiscation. The said Bill specifically uses the Civil Confiscation or Non-Conviction Based (NCB) method of asset confiscation. The said confiscation uses a civil-based mechanism by filing a lawsuit against assets derived from criminal proceedings or confiscation of assets *in rem*. Asset confiscation in this Bill is a coercive effort carried out by the state to take over control and/or ownership of illicit assets based on a legally binding court decision without being dependent on a criminal conviction.<sup>45</sup> This Bill introduces the concept of confiscation of assets without criminally penalising the suspect. According to Yunus Husein, this Bill is expected to confiscate all assets suspected of being part of criminal proceedings as well as other assets used as a means of committing criminal acts.

The articles contained in this Bill have provided the definition of assets as stated in Article 1 section (1) of the Asset Confiscation Bill, which states that assets are all movable or immovable objects, both tangible and intangible, and have economic value. Article 1 section (2) of the Asset Confisfcation Bill explains that the assets that can be confiscated are assets related to criminal acts or criminal assets. More

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<sup>45</sup> Pemerintah Republik Indonesia, "Article 1 Number (3) Draft Law on Asset Forfeiture Bill" (n.d.).

specifically, it also explains in regards to which assets that can be confiscated as regulated in Article 5 of the Asset Confiscation Bill:<sup>46</sup>

*“Criminal Assets that can be confiscated under this Law includes: a) Assets derived from criminal proceeds or assets obtained directly or indirectly from criminal acts including those that have been donated or converted into personal, other people or corporation assets, whether in the form of capital, income or other economic benefits obtained from that assets. b) Assets that are known or reasonably suspected to be used or have been used to commit a criminal act; c) Other assets that legally belong to the suspect as a replacement for assets that have been confiscated by the state; or d) Assets that are discovered that are known or reasonably suspected to have been derived from criminal proceeds.” Apart from the assets explained above, other assets that can be confiscated under this Law includes: a) Assets that are disproportionate to income or disproportionate to the source of additional wealth which origin cannot be proven and are suspected to be related to the criminal assets obtained since the enactment of this Law; and b) Assets which have been seized from the proceeds of criminal acts or used to commit criminal acts”.*

The confiscation of assets as regulated in this Bill can be executed if the suspect or defendant passed away, run away, permanently ill, his whereabouts are unknown; or if the defendant is acquitted of all legal charges.<sup>47</sup> Subsequently, asset confiscation can also be executed on assets where the criminal case cannot be tried; or the defendant has been found guilty by a court but later it is discovered that there are assets that have not been confiscated.<sup>48</sup> Referring to the FATF recommendation and correlating it with the Asset Forfeiture Bill, this Bill consists of matters as shown in the following table:

**Table 2.**  
**FATF Recommendation on Asset Confiscation in the Asset Confiscation Bill**

Phase	Article	Description
Asset Tracking	Article 8 - Article 11	In tracking the assets of money laundering crimes, investigators are given the authority to request documents from every person, government agency or other related agency such as non-ministerial institutions, state/regional owned enterprises, or financial/banking institutions
		In securing assets, this Bill contains provisions for blocking and confiscating. In safeguarding assets,

<sup>46</sup> Pemerintah Republik Indonesia, “Article 5 Draft Law on Asset Forfeiture Bill” (n.d.).

<sup>47</sup> Pemerintah Republik Indonesia, “Article 7 paragraph (1) Draft Law on Asset Forfeiture Bill” (n.d.).

<sup>48</sup> Pemerintah Republik Indonesia, “Article 7 paragraph (2) Draft Law on Asset Forfeiture Bill” (n.d.).

Securing of Asset	Article 12 - Article 20	investigators are given the authority to block authorised institutions, including financial service providers, both banks and non-banks, national defense agencies, or audit institutions based on permission from the local district court. When carrying out a confiscation based on the permission of the local district court, the investigator has the authority to do confiscation towards person who owns or controls the illicit assets
Asset Confiscation	Article 24 - Article 32	If the request to confiscate is approved, then it is required by law to return the assets to the rightful owner.

Source: Processed by the authors

In confiscating assets derived from money laundering through cryptocurrency transactions, this particular Bill can simplify the enforcement of asset confiscation. In this Bill, by simply proving that the crypto assets are derived from criminal proceeding, it is sufficient to submit a request for asset confiscation to court. The mechanism to submit a request for asset confiscation is stipulated in Article 24 of the Asset Confiscation Bill:

*“The application for asset confiscation is submitted in writing by the State Attorney to the District Court which has the authority to examine, hear and decide on the request for asset confiscation along with the application file. The application as intended is signed by the State Attorney, containing: a) name and position of State Attorney; b) place, day and date of confiscation; c) name and type of Asset; d) weight, size, and/or quantity according to Asset type; e) the identity of the person who owns or controls the confiscated assets, if the person is known; f) reasons and legal basis for submitting a request for asset confiscation; and g) evidence and other supporting documents. In the event that there are objections, these objections are included in the application for asset confiscation”.*

The request for asset confiscation can be conducted by merley including the matters as regulated above. This shows that the paradigm formulated in this Bill is to apply the “follow the money” concept. The concept of “follow the money” in asset confiscation is relevant when applied to money laundering cases where the identity of the suspect is difficult to be determined.<sup>49</sup> This is due to the main objective of the “follow the money” concept is to break the chain of crime by seizing the assets rather

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<sup>49</sup> Lily Solichul Mukminah and Otto Yudianto, “The Importance of Regulating Non-Conviction Based Asset Forfeiture in Corruption Cases in Indonesia,” *IBLAM Law Review* 3, no. 1 (2023), p.35, <https://doi.org/10.52249>.

than punishing the suspect. Thus, this Bill is the solution that may assist the law enforcement officials in confiscating assets. The *modus operandi* that is often used by suspects is to hide their identity or use the identity of another person (nominee) to create an account on the CEX platform. Meanwhile, the contents of this Bill do not require disclosure of the suspect's identity in order to confiscate assets. Therefore, it is sufficient to just prove that the crypto assets are assets derived from criminal proceeds.

Confiscation of assets through cryptocurrency will place the cryptocurrency company in charge of managing crypto asset purchase transactions. To prove that crypto assets originate or have a flow of funds from criminal assets, investigators can request information regarding transaction flows, as well as wallets containing crypto assets from CEX companies. The investigator's authority is likewise regulated in Article 8 Paragraph (3) of the Asset Confiscation Bill, stating that "In carrying out a search, the investigator has the authority to request documents from every person, government agency or other related agency." Whether or not the asset confiscation will be successful will depend on the private key. This means that even though the Bill adheres to the "follow the money" concept, the crypto assets cannot be confiscated if the private key cannot be accessed. To obtain a private key in order to access a wallet requires the private key holder to cooperate. This private key is usually owned by the CEX company or wallet owner.

There are two models of CEX companies, namely Centralised Exchange (CEX) and Decentralised Exchange (DEX). The problems occur if the act of money laundering through cryptocurrency transaction is carried out using a DEX model of CEX company as the private key will remain in the possession of the suspect only and not the CEX company. It is an entirely different matter when the act of money laundering is committed through the CEX model. Crypto asset confiscation is possible because of its centralised nature in which private keys are stored in CEX-style companies and their obligation to implement AML rules within. However, confiscation of assets will be difficult if the private key is controlled by the user alone. Even if the Bill with the "follow the money" approach is enacted, asset

confiscation would remain difficult in obtaining the private key. Therefore, even though prosecutors can prove that crypto assets originate from a crime, the success of asset confiscation would still depend on the key of the suspect's private wallet. The solution lies on the cooperation between law enforcement officers and the suspect in order to obtain the key of the private wallet. On the other hand, the Asset Confiscation Bill is designed to confiscate assets without the need to convict the suspect or to know the suspect's identity. The Asset Confiscation Bill also does not specifically regulate asset confiscation if the suspect uses a DEX-style cryptocurrency exchange company, in terms of asset tracing, securing of asset and asset confiscation. In formulating laws on crypto asset confiscation, a decentralised approach should be considered.

In reality, the challenges posed by the application of AML rules in the physical crypto asset market are not exactly related to substantive criminal law.<sup>60</sup> These challenges are mainly related to the enforcement of measures designed to prevent and detect money laundering.<sup>50</sup> Apart from finding a solution, law enforcement officials must work together with blockchain technology experts who have the same goal of minimising illegal finance in the digital currency system. Governments and industrial experts should explore together how cryptocurrency exchange platforms can be leveraged to support AML objectives.

## CONCLUSION

The regulation on the confiscation of assets laundered through cryptocurrency transactions in Indonesia remains unable to address the asset confiscation derived from money laundering crimes through cryptocurrency transaction due to the following matters; (a) the asset confiscation mechanism still uses the criminal-based asset confiscation method. Thus, without a criminal decision against the perpetrator, additional punishment in the form of confiscation of assets resulting from money laundering crimes cannot be carried out; and (b) the asset confiscation in the existing

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<sup>50</sup> Covolo, "The EU Response to Criminal Misuse of Cryptocurrencies The Young, Already Outdated 5th Anti-Money Laundering Directive."

regulations have not been able to resolve the problem when suspects named a nominee and utilised the DEX-style Cryptocurrency Exchanges at the placement stage. This difficulty is caused by the lack of, if no control in DEX model over the private key of the wallet. In fact, the success of asset confiscation is determined solely by obtaining the private key of the wallet.

The Asset Confiscation Bill adopts the 'Follow the Money' approach, which means that asset confiscation is carried out without criminal conviction by proving that the assets derived from criminal proceedings, which is sufficient for submitting an application for asset confiscation. This concept reaches the nominee mode because it does not require identification of the suspect. However, the success of the confiscation depends on the private key of the suspect's wallet. This Asset Confiscation Bill does not answer the problem when placement uses the DEX model because the problem lies in the technical execution. This technical problem occurs because the DEX model does not control the private key of the suspect's wallet.

This study proposes several recommendations. First, specific regulations are needed regarding confiscation of asset laundered through cryptocurrency transaction and regulations on CEX. Second, a specific procedural law is needed regarding the cooperation between the law enforcement and the suspect in order to successfully confiscate the asset. Last, a cooperation with blockchain technology experts and cryptography experts is needed in formulating the relevant law and in enforcing confiscation of asset laundered through cryptocurrency transaction.

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## **COMPETING INTEREST**

There is no conflict of interest in the publication of this article.

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