

# *The Legal Path of Managing the Crime of Money Laundering in Digital Currency*

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**Abstract:** The characteristics of decentralized anonymity of digital currency reduce today's financial crimes, especially the cost of money laundering crimes. Due to the relatively slow progress of Chinese research on digital currency, falling behind the current expansion trend of digital currency, there are many difficulties in governing digital currency crime. Therefore, the regulation of digital currency money laundering crime should start from the aspects of clarifying the legal attribute, introducing the standard judicial interpretation, and so on. The explosive growth of digital currency in 2017 has greatly reduced the cost of financial crimes of digital currency, seriously jeopardizing the economic order and people's property security. Money laundering of digital currency is particularly rampant. Therefore, legal means should be adopted to regulate the application of digital currency in life.

**Keywords:** digital currency, money laundering, sentencing norms

## 1. Introduction

Digital Currency is also called electronic currency. Digital currencies can be difficult to control and exist in cyberspace in a variety of ways. Most have some value and are not linked to fiat currencies, but the immobility of blockchain technology has given digital currencies high public credibility and has evolved into means of payment and settlement, which can be stored and transferred electronically. The emergence of digital currency undoubtedly brings a huge impact on the existing legal order of the monetary economy. Combined with the space that is difficult to reach in the judicial field such as the dark net, digital currency crimes begin to appear. Some people think that the emergence of digital currency is conducive to the protection of personal privacy, while others think that the emergence of digital currency will become a haven for money laundering crimes and tax evasion, which is likely to become more rampant if not controlled. The European Union, Japan, South Korea, China, and other countries have also researched digital currencies, but the relevant legislation is lagging.

With the increasingly mature and widespread application of blockchain technology, digital currency is also increasingly appearing in People's Daily transactions. However, due to its unique network attributes, such as decentralization and programmability, digital currency is more difficult to track and anonymous than traditional currency [1,2]. This feature greatly reduces the cost of money laundering, tax evasion, and other crimes. In September 2017, the People's Bank of China, the Ministry of Industry and Information Technology, the China Banking Regulatory Commission, the State Administration for Industry and Commerce, the China Securities Regulatory Commission,

and the China Insurance Regulatory Commission issued the Announcement on Preventing the Financing Risks of token Issuance. In the same year, various state departments issued various documents on virtual currency transactions and closed all domestic digital currency trading platforms. With the vast prospect of digital currency, China should closely follow the pace of changes in the era of financial technology, and improve relevant laws and regulations. Given the current level of digital currency, circulation is not high but looking at the foreign digital currency circulation to a certain extent, our country should not be fixed. Therefore, how to manage digital currency crime has become a problem to be solved urgently. Among them, the money laundering crime brought by the concealment of digital currency is even worse. It is understood that in 2021, Hunan Hengyang's virtual currency money laundering case involved up to 40 billion yuan.

With the continuous expansion of the scale of digital currency transactions, digital money laundering crimes grow barbarously. Bitcoin (BTC) is the first in the list of virtual currencies, with a total market value of about 163.703 billion dollars. On May 8, 2020, the price of Bitcoin exceeded 10,000 dollars [3]. The continuous growth and popularity of digital currency also make money laundering crimes a new development trend. In the past two years, digital currency money laundering crimes have become more frequent. In 2020, 108 such cases were decided, three times more than in 2019; In 2021, 147 such cases were decided, an increase of 36% over 2020 [4]. Cross-border criminal fund settlement, as well as dark web transactions, have gradually converged on digital currency, which has become a major tool for transnational money laundering crimes.

On December 5, 2013, Beijing time, the website of the People's Bank of China reported that to protect the property rights and interests of the public, safeguard the status of the legal currency of RMB, prevent money laundering risks, and maintain financial stability, The People's Bank of China, the Ministry of Industry and Information Technology, the China Banking Regulatory Commission, the China Securities Regulatory Commission, the China Insurance Regulatory Commission recently jointly issued the "People's Bank of China, the Ministry of Industry and Information Technology, the China Banking Regulatory Commission, the China Securities Regulatory Commission, the China Insurance Regulatory Commission on preventing Bitcoin risks Notice (Yinfa [2013] No. 289, hereinafter referred to as the "Notice"). The circular shows that the country is not entirely positive towards digital currency, which can be said to be more neutral and conservative. To prevent disruption of the existing economic order, China has shut down all domestic digital currency trading platforms but has not identified digital currency trading as an illegal act.

## 2. Digital Currency Dilemma

Digital currency is a valuable existence existing in cyberspace. It has many attributes and characteristics. It not only has real economic value but also exists in cyberspace and is not regulated by government functional departments. Its complex attributes make the country in the face of this special "currency" when the jurisdiction of various departments appears vague. At present, the central bank is responsible for the special digital currency administration in China. In addition, the China Insurance Regulatory Commission, China Securities Regulatory Commission, and other agencies exercise the authority to regulate the circulation of digital currencies. It can be seen that there is no special law enforcement agency to control digital currency crimes, but more by the instructions issued by different organ committees to supervise digital currency trading activities. In 2013, the Central Bank, the Ministry of Industry and Information Technology, the China Banking Regulatory Commission, the China Securities Regulatory Commission, and the China Insurance Regulatory Commission jointly issued a Notice on Preventing Bitcoin Risks. On September 24, 2021, the Central Bank and other ministries issued the Notice on Further Preventing and Disposing of Risks of Virtual Currency Transaction Speculation, which identified virtual currency-related business activities as illegal financial activities but did not discuss whether it was illegal for

individuals or units to hold virtual currency. Therefore, at present, we can only adopt all measures to ban digital currency and treat the symptoms, but not the root cause. Relevant departments as stipulated in the above notice will be investigated for criminal responsibility by the law for carrying out related illegal financial activities that constitute crimes. What does the relevant department refer to? If criminal responsibility is investigated according to law, the legislation of digital currency in China is in a big vacuum, and how to investigate according to law? Therefore, the governance of digital currency crime, represented by digital currency money laundering crime, has fallen into the dilemma of mixed government management functions.

The conviction of digital currency money laundering is varied in judicial practice. For example, scholars who advocate the theory of information data believe that it constitutes the crime of helping information network criminal activities. For example, the People's Court of Liling City, Hunan Province made criminal judgment (2021) No. 479 of Xiang0281. However, scholars who advocate digital currency virtual goods believe that this behavior cannot be identified as a crime. In 2020, Qu XX, knowing that Zhao needs to launder money through USDT, transacted to buy digital currency on a digital currency trading platform after receiving the fraudulent money, then transferred Teda currency to Zhao's account, and only recovered 5,000 yuan of his illegal income. But the commission of 7,000 Teda was not included in the illegal income, so the prosecution did not investigate Zhao's criminal responsibility [5]. In the same case of money laundering with digital currency, different courts have made completely different verdicts.

### **3. Loophole in the Dilemma II Sentencing Rule**

#### **3.1. Sentencing Difficulties**

Not only is it difficult to get a conviction, but even if digital money laundering is a crime, sentencing is difficult. As far as China is concerned, there are no sentencing rules for virtual currency crimes, and it is not clear how to punish the crime of money laundering with digital currency in the current judicial practice. In the previous case of money laundering with Teda coins committed by Wen Zhao, if 7,000 Teda coins in his account were to be recovered and included in the involved amount, how much of the 7,000 Teda coins should be converted into RMB and how much digital currency should be taken as the sentencing standard? The degree of legal interest infringed by the 7,000 Teda is equivalent to how much legal tender is. If the price of the digital currency rises and falls during the trial, when should the value be used as the standard for sentencing?

#### **3.2. The Cause of the Current Dilemma**

The government is confused about the governance functions of digital currency. At present, like most digital currency crimes in China, money laundering crimes against digital currency are mostly controlled by various regulatory agencies, including the China Securities Regulatory Commission, the China Banking Regulatory Commission, and the local government's financial authorities. In the case of digital currency money laundering crimes, unclear responsibilities often occur. For example, the relevant departments stipulated in the Notice should coordinate to solve the problems. Including the People's Bank of China and Cyberspace Administration of the CPC Central Committee, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Industry and Information Technology, the Ministry of Public Security, the State Administration for Market Regulation, the Banking and Insurance Regulatory Commission, the Securities Regulatory Commission, the State Administration of Foreign Exchange and other departments. Thus, it can be seen that the scope of departments involved has far exceeded the scope of traditional money laundering crimes, which will make the command system of combating digital money laundering

crimes not flexible enough. The different information provided by various financial management departments on the case will affect the authenticity of the investigation, and thus affect the people's court's conviction and sentencing. At the same time, excessive restrictions on digital currency-related business activities at the present stage will strangle the development of domestic digital currency finance, and to a certain extent will increase the cost of digital currency money laundering crimes in the future. Therefore, at present, there are too many cross-functions among various government departments in the governance of digital currency money laundering crimes. Under the background of digital currency with no clear legal attribute, each department is endowed with vague management functions (for example, in the investigation process of some cases, digital currency is considered to be a kind of security, so the CSRC often needs to manage it). As a result, the governance efficiency is reduced. Therefore, a special and unified organization is needed to supervise digital currency.

### **3.3. The Reason Why Crime and Non-crime Are Difficult to Distinguish**

The reason is that the judges in the above cases made different judgments on the legal attribute of digital currency. The reason why it is difficult to judge the legal attribute of digital currency is that digital currency is not issued by any country's government, so it does not have any legal status. But its anonymity, immutable and increasingly developed encryption means to make it the most secure currency and another legal currency conversion, to have realistic economic value. But because it has no government endorsement, it obviously cannot be identified as a legal currency. In essence, digital currency is a piece of data with credibility and can be traded. Therefore, digital currency should be considered a commodity in law. The digital currency has different legal attributes in different countries. In the case of "HashFast Administrator v. MarcLowe" in the United States [6], Bitcoin was regarded as a commodity rather than a currency with floating value, and our country also maintained a negative attitude to the status of currency of digital currency. Whether digital currency can be identified as a kind of property? In Article 266 [Scope of private property] of the Civil Code of the People's Republic of China, the private person has the ownership of his legal immovable property and chattel such as income, house, daily necessities, production tools, and raw materials [7]. At present, China's judicial determination is that digital currency does not belong to the above property. However, there are other provisions. Where the law in Article 127 provides for the protection of data and network virtual property, such provisions shall prevail. The provisions on virtual Property in the Law of the People's Republic of China on the Protection of Virtual Property (hereinafter referred to as the Law on the Protection of Virtual Property) promulgated in mid-2007 Article 2 Virtual property referred to in this Law is also called "network property". It refers to the account (ID) of Internet users and online game players in online games and the accumulated "money", "equipment", "pets" and other "property" [8]. Therefore, the country has not clearly defined the legal attributes of digital currency, so it is difficult to realize the identification of money laundering crimes.

## **4. The Academic Controversy on the Legal Attribute of Digital Currency**

### **4.1. Current Academic Views**

Commodity theory: Digital currency exists in cyberspace, and it has certain functions to meet consumer demand, it is identified as a commodity. In the Announcement on Preventing the Financing Risks of Token Issuance issued by China in 2013, digital currency was identified as a kind of virtual commodity. Then the problem comes if simply identifying digital currency as a kind of virtual commodity, just like q coin or virtual property identified in the Law of Virtual Property

Protection, does not apply to the funds and assets stipulated in the traditional money laundering crime, then the money laundering of virtual currency will hardly be identified as a crime [9].

**Currency:** Because digital currency has the function of payment and settlement in fact, and has the property of general equivalent, some scholars believe that digital currency can be regarded as a non-traditional currency or quasi-currency, so that it can indeed interpret the expansion of digital currency in the assets stipulated in Article 191 of the Criminal Law to be convicted. But this will lead to a bigger problem, which is equivalent to the forced recognition of the legal compensation of digital currency. The existence of a decentralized currency outside the control of the government could threaten the survival of fiat currencies with untold consequences.

**Securities** say that because digital currencies have no value in themselves, they assume a creditable creditability that exists throughout cyberspace due to their special nature, making them a form of virtual asset bearer. As a kind of security, some scholars also define digital currency as a special security. However, there is no obligation on the part of any upstream issuer of the security, so it is not appropriate to criminalize the digital currency as a security under the relevant laws [10].

#### **4.2. Why There Are Loopholes in the Sentencing Rules**

Due to the special nature of the digital currency, the price of digital currency will rise and fall over time, leading to frequent changes in its value. If the simple standard of measuring the degree of infringement of legal interest is biased based on the fixed amount of digital currency. In addition, there are many kinds of digital currency, which makes it more difficult for judicial personnel to impose punishment. At present, digital currency is not regarded as legal currency, and it is not recognized as having settlement ability. Therefore, it is not possible to accurately determine the amount involved in the upstream crimes, so it is difficult to determine the seriousness of the amount involved. According to the sentencing standard stipulated in Article 191 of the Criminal Law, the scale of the fine is based on the amount of money laundering. In addition, there are various types of digital currencies, and the exchange rate between each digital currency and legal currency is also different. It is difficult to determine how much Bitcoin and Teda coins are converted into the amount involved in the case.

#### **5. Regulation Approaches of Digital Currency Money Laundering Crimes**

DC/EP is an important digital currency project currently studied in China. As a digital currency protected by sovereignty, it is very different from the traditional network digital currency. This is also reflected in its legal attributes. From the current point of view, one of the major characteristics of a decentralized digital currency such as Bitcoin is that its value fluctuates greatly. It is more similar to a virtual asset without a value basis, while DC/EP has legal compensation, which makes DC/EP a digital currency in the real sense. Because of the emergence of DC/EP, the national issue and transaction of digital currency become more and more empty, so it is necessary to further legislative operations to solve the root problem of digital currency money laundering crime -- the source of transactions is not identified, that is the so-called decentralization. The national can further nationalize the digital currency trading platform. Form legal governance of digital currency money laundering crimes.

Secondly, from the judicial level of regulation. The value of digital currency in the crime of money laundering has different fluctuations in different periods, and the price of different currencies is also different. However, no matter what digital currency in the previous discussion can be converted into legal digital currency so that the legal digital currency only needs to be identified as the amount of money involved in the project. So the question to be solved is what time standard of value should be used to determine the amount of money involved in the sentencing. Is it the time

of the crime or the time of the trial? The author here believes that the time of the crime should prevail. At the time of the crime, the value of a digital currency is what the defendant can expect subjectively, while at the trial, due to price fluctuations, the amount involved in the trial is greater or smaller than the amount involved at the time of the crime. This change cannot be controlled by the subjective will of the defendant. From an objective point of view, the criminal acts committed by the defendant, The degree of legal interest infringed was the actual amount at that time, and the subsequent price changes were not caused by the criminal acts carried out by the defendant. To sum up, the standard for determining the amount involved in digital currency should be based on the time of the crime. Here the author believes that relevant judicial interpretation should be issued: the income stipulated in Article 191 of the Criminal Law includes digital currency. If the proceeds of a crime are non-legal digital currency, the proceeds of a crime shall be converted into RMB after conversion according to the exchange rate of legal digital currency at the time of the crime and shall be sentenced. If the proceeds of the crime are concealed and the resulting proceeds are worth more than 3000 yuan to 10,000 yuan, criminal prosecution shall be carried out; If the total value reaches 100,000 yuan, the circumstances are serious and the offender shall be sentenced to fixed-term imprisonment of three to seven years. So the digital currency money laundering crime sentencing can be compatible with the traditional money laundering crime measurement standards.

## 6. Conclusion

From the legislative level, to break the deadlock of money laundering crimes of digital currency, a clear legal attribute should be given to digital currency. That is to say, different types of digital currency can be given different legal attributes, legal digital currency will be identified as a currency, while non-legal digital currency will be identified as a controlled commodity. Relevant laws and regulations will be introduced to stipulate that: If there is no legal permission for a citizen's account or an account controlled by a citizen to hold non-legal currency, the non-legal digital currency will be converted into the legal digital currency of equal value, and all major digital currency trading platforms can only exchange legal digital currency with legal currency. Non-legal digital currency can only be converted into legal digital currency after being converted into legal digital currency. In addition, because the special functions of the digital currency trading platform should nationalize the digital currency trading platform and place it under the jurisdiction of the central bank, the non-legal digital currency will be stored in the accounts of major trading platforms and central banks just like gold. In this way, the digital currency involved in the money laundering of digital currency can be converted into the DC/EP issued by the central bank, no matter the non-legal digital currency or the legal digital currency of other countries. Since the legal digital currency is also a kind of legal currency, the money laundering of digital currency can be identified as a crime.

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