

# Virtual Currency: Criminal Governance Dilemmas and Countermeasures for Money-laundering Crime

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**Abstract.** Based on the increasing number of virtual currency money laundering cases year by year, it can be observed that traditional money laundering methods are no longer sufficient to address the evolving money laundering practices associated with a large volume of accounts engaged in upstream criminal activities. The current society urgently needs effective governance strategies to combat virtual currency money laundering. By examining the concept and characteristics of virtual currency, as well as the criminal composition, types, and forms of offenses associated with money laundering, it becomes clear that there are several challenges in judicial determination, supervision, and evidence collection related to virtual currency money laundering, as well as other criminal governance dilemmas. To address these challenges, it is essential to implement prevention and control measures that improve the normative mechanism and regulatory system of virtual currency money laundering, optimize the means of evidence collection, and target the entire chain of criminal activity, with a particular focus on cracking down on upstream crimes. These measures can play a vital role in effectively curbing the occurrence of virtual currency money laundering.

**Keywords:** Cybercrime, Virtual Currency, Money-laundering Crime.

## 1. Introduction

On 15 September 2021, the People's Bank of China and 10 other departments jointly issued the Circular on Further Preventing and Disposing of the Risks of Virtual Currency Trading Speculation (the Notice). The Notice pointed out that criminal activities involving virtual currencies would be vigorously combated and that the Ministry of Public Security would carry out in-depth "special actions to combat money-laundering offenses" to severely tackle the criminal activity of money laundering through the use of virtual currencies in accordance with the law. During a press conference of the Ministry of Public Security on 14 January 2022, Inspector Kong Changqing highlighted that the Ministry of Public Security had cracked 259 cases related to virtual currency money laundering, seized virtual currencies worth more than 11 billion yuan, and made significant breakthroughs in the fight against virtual currency money laundering [1]. On 14 April of the same year, Liu Zhongyi, Director of the Criminal Investigation Bureau of the Ministry of Public Security, spoke at a press conference regarding the progress in combating and managing telecommunication network fraud, which was held by the State Council Information Office. He stated that current fraudsters are utilizing three-party and four-party payments, operating platforms, digital currencies, trade hedging and other methods to constantly alter money-laundering techniques, allowing for quick and covert money transfers. This makes it difficult for public security agencies to pursue the recovery of stolen funds. The traditional methods of three-party payment and public account money laundering have seen a significant reduction in usage, with a large number of cases involving the use of operating platforms combined with digital currency for money laundering, particularly with the most serious impact being seen in the use of USDT [2]. With the rapid development of Internet finance, the form of money laundering crimes is constantly evolving, presenting a more covert trend overall. This change has posed greater challenges in combating such crime. The purpose of this paper is to analysis the dilemma faced in addressing virtual currency money laundering within the framework of criminal governance. By elucidating the nature and characteristics of virtual currency from various perspectives, this paper aims to propose relevant countermeasures and recommendations for governing virtual currency money laundering crimes.



## **2. Overview of Virtual Currency Money-laundering**

### **2.1. Concept and Characteristics of Virtual Currencies**

The current theoretical and practical circles have not yet provided a clear definition of the scope of virtual currencies, especially regarding the definition between virtual currencies and digital currencies, cryptocurrencies, and other related concepts. Currently, there are three schools of thought regarding the definition of virtual currency. The first is the currency theory, which posits that virtual currency is a form of legal tender that may be recognized in China in the future [3]. The second is the virtual exchange tool theory, which defines virtual currency as a type of game currency with limited application [4]. The third is the electronic currency theory, which describes virtual currency as a form of digital representation of money [5]. However, these explanations differ significantly from the definition of virtual currency in contemporary practice. According to the relevant regulations, virtual currencies do not have the same legal status as legal tender. Virtual currencies such as bitcoin, Ether, and USTD, which possess the characteristics of not being issued by a monetary authority, utilizing cryptography and distributed ledger or similar technologies, and existing solely in a digital form, are not recognized as legal tender and should not be circulated or used as currency in the market. While the Circular specifically mentions bitcoin, Ether, and USTD as virtual currencies, it does not encompass virtual currencies like in-game coins and tokens within its regulatory scope. Nevertheless, virtual currencies share the following characteristics: firstly, they lack legal status as they are not considered official currency. Secondly, they offer anonymity by employing encryption methods to safeguard transaction information. Third, they operate in a decentralized manner, often utilizing blockchain technology without requiring national authorization. Fourth, they provide convenience by facilitating cross-border transactions at a much faster pace compared to traditional legal tender transactions.

### **2.2. Components of the Offense of Virtual Currency Money-laundering**

Currently, virtual currency money-laundering is emerging as a new methods of committing money-laundering crimes. However, its nature is simply a new variation of traditional money-laundering crimes and not a distinct offense in and of itself. Therefore, the elements of virtual currency money-laundering are largely similar to those of traditional money-laundering offenses. According to article 191 of the Criminal Law of the People's Republic of China (the Criminal Law) and article 2 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Specific Application of Law in the Trial of Criminal Cases of Money Laundering and Other Criminal Cases (the Judicial Interpretation) on the offence of money-laundering, the subject matter of the offense of money-laundering is generally broad and can include any person who is at least 16 years old and possesses criminal capacity, as well as legal entities. The subjective aspect of the offence of money-laundering is characterized by direct intent, whereby the perpetrator seeks to disguise or conceal the source and nature of the illegal proceeds from the predicate offence, as well as the proceeds derived therefrom. The object of the offense of money-laundering includes maintaining the integrity of the financial system and ensuring the stability social and economic management. The objective aspect of the offence is evident in the act of laundering money with the intention of disguising or concealing the illicit proceeds from the predicate offense, as well as the source and nature of the resulting proceeds [6].

### **2.3. Classification and Common Forms of Virtual Currency Money-laundering**

The offense of virtual currency money-laundering can be broadly categorized into two types based on different predicate offenses. One involves directly using virtual currency as the object of the "crime", acquiring it illegally, and then laundering it through multiple layers. However, this type of "crime" does not align with the seven recognized types of predicate offenses and does not fundamentally constitute the crime of money-laundering. The other type involves converting illicit proceeds from predicate offenses into virtual currency, which is then laundered through virtual

currency transactions [7]. At present, there are several common forms of virtual currency money laundering: first, money laundering through the organization of specialized personnel to purchase virtual currencies on behalf of money laundering; second, money laundering through the medium of stable currencies such as TEDA coins and other money laundering runs; third, money laundering through the sale and purchase of virtual currencies directly in the black market or on the darknet; fourth, money laundering through the utilization of blockchain technological means, such as NFTs (non-homogenous tokens), DeFi (decentralized finance), and chain mixing [8].

### **3. The Dilemma of Criminal Governance of Virtual Currency Money-Laundering**

#### **3.1. Difficulties in Judicial Determination of Virtual Currency Money-laundering**

Whether the act of laundering virtual currency constitutes the offence of money-laundering under the Criminal Law mainly takes into account the following factors. Firstly, it considers whether the predicate offenses for the act of laundering virtual currency are the seven predicate offenses stipulated in the offence of money-laundering. In judicial practice, it is observed that virtual currency money laundering may involve predicate offenses beyond the seven offenses specified in the criminal law. Some instances of virtual currency money laundering behavior do not meet the predicate offence provisions for money laundering, which may result in the exemption from penalties for money laundering offenses during the trial process [9]. Secondly, at present, there is not a specific judicial interpretation regarding virtual currency money-laundering behavior. Typically, Article 191 of the Criminal Law is referenced, specifically item 5 which addresses disguising or concealing the source and nature of criminal proceeds through other means. Additionally, Article 2, subparagraph 7 of the Judicial Interpretation is considered, focusing on individuals who assist in transferring or converting criminal proceeds using methods not covered in the preceding paragraph. Both the criminal law and judicial interpretations lack clear guidelines on the elements of virtual currency-related money-laundering activities. As a result, the identification and prosecution of such offenses involving virtual currencies remain somewhat ambiguous for judicial authorities.

#### **3.2. Inadequate Regulation of Virtual Currency Trading by the Judiciary**

Due to the strong anonymity of virtual currencies themselves, it is more difficult for the state to regulate the trading of virtual currencies [10]. Because of the high degree of use of virtual currencies and blockchain technology, it is difficult for the judicial authorities in practice to detect, directly through the relevant monitoring means, the use of virtual currencies by the perpetrators of money-laundering offenses, and it is often the case that the upstream crimes can only be retrospectively traced back to the new type of money-laundering offenses. In addition, the highly hidden and decentralized nature of virtual currency trading platforms makes it difficult for judicial authorities to effectively regulate virtual currency money laundering through traditional technical means [11].

#### **3.3. Difficulty of Evidence in Detecting Virtual Currency Money-laundering**

Due to the decentralized nature of virtual currencies, buying and selling transactions of virtual currencies often take place through decentralized trading platforms and centralized exchanges located overseas. These activities typically occur outside mainland China, posing significant challenges for public security authorities when it comes to investigating and collecting evidence related to virtual currency money-laundering. The difficulty in conducting effective investigative and evidence-gathering activities is further compounded by the inherently distributed nature of blockchain technology, which involves transaction records documented across the internet. Confirming the facts of virtual currency money-laundering offenses often requires cross-comparison studies of data from multiple sources. As a result, judicial authorities currently lack effective technical means for investigating and collecting evidence of virtual currency money-laundering offenses, making it challenging to trace the capital flow and specific amounts involved in such cases [12].

## **4. Prevention and Control Countermeasures to Address Virtual Currency Money-laundering**

### **4.1. Improving Regulatory Mechanisms for Virtual Currency Money-laundering Offenses**

There is currently a significant ambiguity in the legal determination of whether the criminal act of money laundering, committed by unlawful elements through blockchain technology and using virtual currencies, constitutes a crime. In order to achieve the purpose of criminal law in protecting legal interests and preventing crime, there is an urgent need to introduce relevant provisions regulating the offence of money-laundering of virtual currencies. First, not all of the current money-laundering activities using virtual currencies fall under the seven predicate offenses set out in article 191 of the Criminal Code. With the development of Internet technology, a wider variety of proceeds of offenses and crimes need to be laundered, and it would be manifestly unfair if criminal penalties are still imposed on the specific seven predicate offenses while other predicate offenses, such as the malicious laundering of tax evasion parties, are not punished. The fight against money-laundering offenses can only be better achieved by deleting the qualification of predicate offenses provided for in article 191 of the Penal Code, which is more in line with the general expectations of the population with regard to legislation. Secondly, since the current judicial authorities have not given a clear definition of the concept of virtual currencies, if only in accordance with the provisions of the Circular, the use of other virtual currencies, such as NTFs, DeFi tokens, and in-game coins, to engage in money-laundering will not constitute the offence of money-laundering of virtual currencies. However, in fact, these actions should constitute the offence of money-laundering. If the above forms of money laundering do not constitute an offence, it would be manifestly unfair to perpetrators of money laundering using virtual currencies such as Bitcoin, Ethereum and Tether [13]. Judicial authorities should make clear norms on virtual currencies by issuing explanatory documents, thereby facilitating the identification of the offence of money laundering in virtual currencies. Additionally, considering virtual currency money laundering as a new type of crime, the legislature needs to contemplate the necessary to establishing additional special offenses to regulate it. With the ongoing development of the Internet age, a plethora of offenses related to virtual currencies are bound to emerge in the future legal process due to the continuous advancement of such currencies. The introduction of the offence of 'using virtual currencies to aid in the commission of crimes' in future criminal law will not only promote the lawful trial of such acts by judicial bodies but also enhance efforts in combating the use of virtual currencies by criminals, serving as a valuable deterrent for public education.

### **4.2. Improving the Regulatory Regime for Virtual Currency Money-laundering**

The Notice indicates that the State currently has a negative attitude towards the trading of virtual currencies and the use of virtual currencies for money-laundering offenses. However, at present, the National People's Congress and its Standing Committee, the Supreme People's Court, the Supreme People's Procuratorate, and other organs have not yet provided further explanations and norms on the criminal offence of money laundering involving virtual currencies. There is an urgent need to clarify the definition of virtual currency and the identification of virtual currency money laundering at the institutional level [14]. This paper argues that the Supreme People's Court and the Supreme People's Procuratorate should define virtual currencies and clearly regulate the determination of money laundering involving virtual currencies by issuing guiding cases. As there are loopholes in national regulation related to virtual currency money laundering, this paper suggests that there is an urgent need to establish a specialized cross-sectoral law enforcement cooperation agency to take action against this offence and strengthen the regulation of virtual currencies using technical means. For example, introducing specialized personnel who are proficient in virtual currency trading and blockchain technology to regulate virtual currency trading.

### **4.3. Optimizing Means of Evidence Collection for Virtual Currency Money-laundering Offenses**

Virtual currencies themselves possess characteristics of decentralization and anonymity. When it comes to evidence collection, traditional means are clearly at a disadvantage, and it is imperative for public security agencies to optimize their evidence collection methods. This paper argues that, firstly, public security authorities should enlist specialized personnel. Given that virtual currency money laundering takes place on the Internet, traditional legal practitioners often lack a deep understanding of Internet technology, making it challenging to comprehend the investigation methods and evidence related to blockchain money laundering from a professional standpoint. Therefore, there is a necessity for the public security team to recruit more professionals with backgrounds in Internet technology, blockchain technology, software engineering, and similar fields. Secondly, public security authorities can establish an early warning monitoring system for virtual currency money laundering to prevent such activities. By studying the patterns of virtual currency money laundering transactions, particularly monitoring the flow of funds, information and networks in virtual currency transactions, public security organs can create an early warning and monitoring mechanism to combat virtual currency money laundering offenses [15]. Furthermore, a comprehensive electronic evidence system, especially an electronic data preservation system, should be established to preserve the authenticity and integrity of information related to virtual currency transactions to the maximum extent possible. Only the establishment of a sound system can effectively guard against the use of Internet technology by unscrupulous elements to modify and destroy evidence. Finally, the use of meta-universe, big data and artificial intelligence technology and other means to analysis the evidence chain and data, sorting out and summarizing the common patterns and trends of virtual currency money laundering, to provide legitimate and effective safeguards for the investigation and collection of evidence [12].

### **4.4. Fighting Crime Along the Entire Chain and Increasing Efforts to Combat Predicate Offenses**

Virtual currency money-laundering is highly dependent on the occurrence of predicate offenses, without which there would be no need to launder the proceeds. In other words, as soon as the predicate offence disappears, the incidence of money-laundering offenses will inevitably show a precipitous decline. If the predicate offence for the crime of virtual currency money laundering disappears, then virtual currency money laundering will be significantly reduced, but this does not mean that the act of virtual currency trading itself is not illegal. For the time being, if the judicial authorities only combat money laundering this downstream crime is obviously very difficult to produce results, only to the whole chain of crime are given a strong blow, it is possible to reduce the occurrence of virtual currency money laundering offenses [16]. At present, public security agencies are conducting special crackdown actions to target drug-related crimes, organized crimes involving triads, terrorist activities, smuggling, corruption and bribery, disruption of financial management order, and financial fraud. By focusing on these upstream crimes, the occurrence of virtual currency money laundering crimes can be effectively inhibited.

## **5. Conclusion**

As virtual currency money-laundering is a new form of money-laundering offense, it is evident that current judicial provisions are inadequate. The emergence of new methods often presents new challenges. During the judicial determination process, issues related to the nature of the predicate offense and the clarity of the relevant judicial interpretations have arisen. In the process of criminal governance of virtual currency money-laundering, the judiciary's supervision of virtual currencies is not in place or even absent, and the anonymity of virtual currencies also leads to the fact that the judiciary does not yet have effective means of supervision. Virtual currency investigations and evidence collection also face huge problems, due to the decentralized nature of virtual currencies, the transaction process is likely to be out of the country, and public security organs have greater difficulties in investigating and obtaining evidence using Internet technology. Based on the above

problems, this paper proposes to improve the norms of virtual currency money laundering, and suggests that the legislation should be expanded for the upstream offenses of virtual currencies, the definition of virtual currencies should be clarified, and the provisions of the Criminal Law should be set up to combat the use of virtual currencies to help the crime. Improve the regulatory regime for virtual currencies by clarifying the definition of virtual currencies and establishing an effective regulatory early warning system. Optimizing the means of evidence collection, through the introduction of technical personnel, monitoring the flow of funds, information and networks, improving the electronic evidence system, and using Internet technology to analysis and realize the collection of evidence for the crime of money-laundering of virtual currencies. The whole chain of combating crime, virtual currency money laundering as a downstream crime, in order to put an end to the need to strengthen the fight against upstream crimes.

This paper presents the above governance recommendations to address the challenges of virtual currency laundering, aiming to assist legislators in promptly enhancing relevant regulations. By doing so, the judiciary can more effectively combat virtual currency money laundering offenses and help prevent their occurrence. However, with the continual advancement of blockchain technology and the rapid international growth of virtual currencies, the volume of virtual currency transactions is consistently increasing. In the face of these developments, China's efforts to combat virtual currency money laundering will become increasingly challenging, necessitating the adoption of new strategies for prevention and control to effectively deter criminal activities.

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