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Criminal Law Characterization of Virtual Currency in the Crime of Illegally Taking Deposits from the Public: Challenges and Solutions

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Abstract

This paper explores the primary questions regarding whether virtual currency can be interpreted as "funds" in the crime of illegally taking deposit from the public. The analysis identifies a current dilemma of interpretation. An expansive interpretation would contravene the principle of legality and would result in creating a tendency toward overbroad offenses; while a strict adherence to the ordinary meaning would preclude the classification of the absorption of virtual currency as the illegal appropriation of funds, and thus would undermine the regulatory purpose of the statute. Thus, this paper provides for a typological analytical framework. First, payment and settlement–oriented virtual currencies, which possess quasi-monetary characteristics, can be recognized as "funds." Second, although mainstream cryptocurrencies can be considered as a disguised form of deposit-taking through a functionalist interpretation. Third, value-deficient virtual currencies lack the nature of funds and should not be subsumed under this offense, instead, they may be regulated under other criminal charges. On this basis, and in light of two distinct behavioral patterns, the paper advances differentiated solutions. It argues that, while adhering to the principle of legality, a typologically restrictive approach should be employed to achieve greater precision in criminal law intervention, thereby providing a reference for criminal justice in the era of digital finance.

Keywords

virtual currency, illegal absorption of public deposits, typological interpretation

1. Introduction

The rapid development of blockchain technology has led to the exploitation of virtual currencies, which are anonymous and easy to circulate cross-border. The illegal absorption of public deposits is one of the most common crimes, showing both a high incidence and some representativeness [1].

Against this backdrop, since 2013 the People's Bank of China and other authorities have issued a series of regulatory policies. In February 2026, eight departments jointly released another notice, further affirming the legal characterization of virtual currency as a "virtual commodity." In judicial practice, however, conduct involving the absorption of virtual currency is commonly punished under the offense of illegal absorption of public deposits. In the case of Lin Mou bao and others, for example, the defendants set up an investment platform and promised high returns in exchange for virtual currencies like Bitcoin and Ethereum, which were worth more than RMB 15 million. The court found them guilty of illegally taking public deposits. In the instance of Ding Mou zhong and others, the court also decided that making your own virtual currency to raise money was a crime.

These cases suggest that judicial practice has, in effect, brought the absorption of virtual currency within the scope of this crime. Nevertheless, the rationale behind such rulings frequently fails to explain why virtual currency should qualify as public deposits. At the policy level, being defined as virtual commodity, virtual currency sits uneasily with the statutory notion of deposits under this offense. This divergence may lead to both excessive application and potential deficiencies in punishment, illustrating the urgency for a more systematic, typology-oriented approach.

1.1 Typical Models of Conduct Involving the Absorption of Virtual Currency

In practice, there are many different methods through which virtual currencies can be obtained, which often involves relatively complex transaction structures to disguise their fundraising nature. It should be noted that this paper will not address situations where virtual currency simply serves as an advertising device while the actual object absorbed is fiat currency as such transactions clearly meet the elements of the offense. So such matter will not be considered here. A review of existing judgments shows that current cases of illegal absorption of public deposits involving virtual currency can, broadly speaking, be grouped into two types: token-issuance models and deposit-for-return models [2].

The token-issuance model is quite common in practice. Here, the actor creates and issues platform tokens, project tokens, or so-called ecosystem tokens, and promotes them to the public—often through roadshows or similar events—to generate expectations of investment returns. The real aim is to raise funds by selling these self-issued virtual currencies. In most cases, investors pay consideration that both sides accept, typically in fiat currency or stablecoins (such as USDT). Although this model involves virtual currency in form, its fundraising logic does not differ much from traditional forms of illegal deposit-taking. The key issue lies in explaining why the absorption of stablecoins can be treated as a disguised form of fund-taking—an issue that will be addressed later in the discussion of payment-oriented virtual currencies.

In contrast, “deposit-and-earn” scenarios cause the most controversy. The actor usually creates a virtual currency wallet or investment platform, promises preset returns (such as interest on deposited coins), and promises to return the virtual currency or its equivalent value after a specific period. To get people to deposit virtual currencies. The problem is that the item is virtual currency, often mainstream ones like Bitcoin or Ethereum. Some claim that virtual currency is virtual property rather than legal tender. In this view, “property” in criminal law is different from “deposits” under this offense, hence virtual currency does not fit the object of the crime requirement and should not be dealt with under this provision [3].

Although there are strong argument for this reasoning, it contradicts current judicial interpretations and several decided cases. To resolve this conflict, we need to examine how the meaning of “deposits” has evolved in the criminal law and clarify how far it can be extended to include the absorption of virtual currency.

2. Expanding the “Deposit” Requirement: Categorization Problems for Virtual Currency

2.1 The Expansion of the “Deposit” Requirement: Interpretational Difficulties under Virtual Currency Context

The “deposit” requirement for illegal absorption of public deposits is continuously evolving. The term “deposit” has changed over time into “funds”. This has been growing since the 2022 Judicial Interpretation on Several Issues Concerning the Specific Application of Law in the Trial of Criminal Cases of Illegal Fundraising.

The change began in 1998 with the implementations of Measures for Suppression of Illegal Financial Institutions and Illegal Financial Business Activities. The 2010 court ruling changed “deposits” to “funds” meaning it will be easier to attain conviction, which magnified this change. The 2022 Judicial Interpretation took this a step further by specifically identifying that “virtual currency transactions” would also fall under illegal taking money [4].

Virtual currency is drastically different from both “deposits” and “funds.” Treating all virtual currency absorbing conduct as illegal absorption of public deposits would stretch the limits of normal meaning of “deposits” and further blur the boundary of the offense.

Some scholars therefore argue that virtual currency should not be equal to deposits or funds. On a plain reading, the phrase “illegally absorbing funds through virtual currency transactions” suggests that virtual currency transactions are merely the vehicles for fund absorption, the provision actually targets conduct where virtual currency is used to absorb fiat money and assets with the nature of funds. If virtual currency would encompass virtual currency to attain convictions, then the meaning of “deposits” would be overly expanded.

Meanwhile, the strictly literal interpretation may conflict with the purpose of the law. The 2022 Judicial Interpretation was amended to explicitly include virtual currency transactions as a new category of conduct to bring the increasing number of fundraising activities involving virtual currency under legal control. If virtual currency absorption were deemed entirely separate from fund absorption, actors would easily avoid liability by denominating their transactions using virtual currency, a result contrary to legislative intent.

These issues create a familiar dilemma. An overly expansive interpretation may threaten the principle of legality, while a strictly literal one may frustrate the intent of the law. A way forward lies in a typological approach: instead of treating all virtual currencies alike, one should distinguish between different types and determine respectively whether they can be characterized as “funds.”

2.2 A Typological, Restrictive Approach to Virtual Currency

Virtual currencies differ widely, not only in their types but also in the overall reliability. Against this backdrop, whether a particular virtual currency can be treated as “funds” under this offense should be assessed in light of factors such as its degree of anchoring to fiat currency and the ease with which it can be converted. On this basis, virtual currencies can be grouped into three categories—payment and settlement types, mainstream asset types, and value-deficient types—and evaluated accordingly.

2.2.1 Payment and Settlement–type Virtual Currencies

This category includes stablecoins like Tether (USDT) and USD Coin [5]. Typically, their issuance procedures demand a one-to-one fiat currency reserve for par redemption. This design makes them unique among virtual currencies due to their constant prices and cross-border use. They can be easily converted to fiat money [5,6]. As quasi-money, absorbing them is similar to absorbing fiat cash.

The actor can obtain control over some sort of financial resources that are equivalent to fiat money by accepting these tokens. These tokens represent claims on fiat value because they were created using cash reserves. The bearer consequently has power over fiat assets as a result [7]. Second, they act like fiat money when they raise money illegally. Actors take such tokens to convert them into fiat for business or personal purposes, while investors use them as deposit-like instruments. They act as a means of exchange like fiat currency. Their relative price stability makes them popular units of account and bookkeeping standards in virtual currency exchanges, measuring value [8]. Taken together, the economic function and effect of absorbing such tokens are essentially the same as absorbing fiat currency, and they should be treated as quasi-money.

2.2.2 Mainstream Virtual Currencies with Large Market Capitalizations

Mainstream virtual currencies, like Bitcoin and Ethereum, have large market capitalization and widespread acceptance. These assets with considerable liquidity are easily exchangeable for fiat currency. There are also available judicial cases where these types of currencies has been treated as public deposits, as the Lin Mou bao case mentioned earlier.

Current thoughts that these currencies should be considered as “virtual property” rather than “funds” have presented challenges. Therefore, treating property absorption as the absorption of funds under this crime therefore requires in-depth explanation to avoid analogy reasoning.

In terms of protected legal interests, absorbing mainstream cryptocurrencies is similar to absorbing fiat currency. This offense protects two types of legal interests: national financial regulatory order and the safety of the public's property [9]. At the macro level, actors promise principal protection and returns to attract deposits of mainstream virtual currencies and form pool of virtual currency that are functionally similar to the fund pools created by banks. The typical model often involves receiving the currencies, lending them out and profiting from the interest. This is substantially similar to the deposit and loan transactions that are solely permitted by license of financial regulatory authorities. This will undermine financial regulation order.

At micro level, such actors often lack risk management and safeguards like those in banking system. Due to the higher price volatility of mainstream cryptocurrencies, market swings or operational failure will be more likely to cause runs and break the funding chain. This means that the investors' property interests will ultimately be harmed.

For these reasons, although mainstream cryptocurrencies do not meet the technical definition of "funds," the primary focus of this offense is the unlicensed conduct of credit intermediation, like pooling assets and disrupting financial order above mentioned. Through functionalist interpretation, given that the conducts of actors substantially operate a deposit-taking business similar to that of a bank and create similar level of harm, the law should respond accordingly. Thus, if individuals engage in deposit-taking without a license, their conducts should be treated as a disguised form of deposit-taking falling within the scope of the offense.

2.2.3 Value-deficient Virtual Currencies

The third group includes virtual currencies that don't have any value. These assets have no intrinsic value because of their lack of technological applicability, consensus, or currency backing. Instead, prices are driven largely by hype and speculation, which will cause volatility. Additionally, they are easily manipulable. Common examples include so-called "altcoins" with no real use case, meme coins, and tokens whose white papers promise unrealistic or fabricated prospects.

Such assets differ markedly from "funds." In economic terms, the core features of funds are relative stability of value and the ability to circulate; these tokens, given their extreme volatility, cannot reliably serve as stores of value or media of exchange. From the viewpoint of legal interests, actors who acquire such tokens are dealing in highly unreliable assets, which is different from those of banks. Consequently, they do not directly undermine the state's financial regulatory system or monopoly [10]. Instead of disrupting financial management, the main illegality is exploiting information asymmetries to defraud investors.

Further stretching the definition of "funds" to include such tokens would result in excessive expanding criminal punishment. Consequently, conduct involving the acquisition of value-deficient virtual currencies should not be found under this crime, but should rather under other offences where appropriate.

3. Practical Approaches Following the Typological Distinction

The foregoing typology shows a clear gradient among the three categories of virtual currency in terms of their connection to fiat money. Building on this, the discussion now returns to the two patterns of conduct identified earlier and sets out a more concrete approach for judicial determination.

3.1 Token-issuance Models

In this model, the actor issues project tokens or platform tokens and raises consideration through public promotion. In substance, this is not very different from traditional forms of illegal deposit-taking. The main point of contention arises when the consideration is paid in stablecoins. The key question, then, is whether stablecoins can be treated as "funds" under this offense.

As noted above, stablecoins fall within the category of payment and settlement–type tokens and can be regarded, in a broad sense, as funds—namely, virtual property with quasi-monetary characteristics. On this basis, where an actor raises stablecoins in the name of token issuance, the conduct is in substance a disguised form of fund-taking. Provided the other elements of the offense are met, it should be punished as illegal absorption of public deposits. Where both stablecoins and fiat currency are absorbed, the conduct may be dealt with as a whole under this offense, without the need for separate treatment.

3.2 Deposit-for-return Models

In this model, the actor typically sets up a virtual currency wallet or investment platform and promises fixed returns (for example, interest on deposited coins), thereby attracting the public to deposit virtual currencies. The legal characterization should depend on the type of virtual currency involved.

Absorbing stablecoins is directly related to the offense for the reasons given. Additionally, given the high liquidity and convertibility of mainstream cryptocurrencies like Bitcoin and Ethereum, when they are absorbed and promised returns of principal and interest, it's justifiable that the conduct should be treated as a disguised form of fund-taking and punishing it under this offense.

If the actor does not perform conversions of mainstream cryptocurrencies into fiat currency, liability may be questioned. The answer should be yes. Conversion shouldn't matter. In either case, the actor has created a pool of assets with deposit-taking features like centralized use of funds and a promise to repay principal and returns. Once repayment pressure builds, the arrangement can disrupt finances. It should be considered a disguised form of illegal deposit-taking. However, mainstream cryptocurrencies should be limited to those with consistently high market capitalization, strong global liquidity, and broad market acceptance to avoid setting the criminal liability threshold too low.

Third, where the assets involved are value-deficient tokens—such as so-called "air coins" or certain altcoins—they lack both the attributes of funds and any meaningful payment function. They therefore cannot qualify as the object of this offense and should not be brought within its scope. This does not mean, however, that such conduct falls outside criminal law altogether [11].

As a matter of legal characterization, Virtual currency is considered online virtual property and protected by criminal law.[9] Where the actor acts with intent to unlawfully appropriate property and induces the public to invest by fabricating facts or concealing the truth, the conduct may constitute fraud, with virtual currency serving as the medium. Where a multi-level referral structure is used—recruiting participants and rewarding them based on the number of recruits—this may amount to the offense of organizing or leading pyramid selling activities, a pattern often seen in "air coin" schemes. If the conduct involves hacking into computer systems to obtain others' virtual currencies, it may constitute the offense of illegally obtaining data from computer information systems.

Even if the assets don't match the "funds" and "deposit" criteria, the activity can be prosecuted under other crimes. This helps ensure that the criminal law framework does not leave such activities unregulated.

4. Conclusion

The rise of virtual currency has strained criminal law. Virtual money has confused the definition of "deposit" in the context of illicit absorption of public deposits. Overly expansive readings may violate legality, while strictly precise interpretations may frustrate appropriate court interpretations and pose rising financial hazards outside criminal law. A more thorough theoretical approach is needed to balance these competing concerns.

Criminal law is the last line of protection against financial risk, which affects national security and development. Rapidly evolving digital financial activities need to be brought onto a rule-of-law footing promptly. Interpretation of criminal law should neither cling to outmoded understandings and allow new risks to flourish unchecked nor stretch uncritically beyond the statutory text. This study proposes a typological approach and outlines alternative solutions based on the primary types of conduct found in practice. Note that this framework is not finished. As blockchain technology evolves, the classification scheme and legal characterization criteria will need to be refined.

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