

## Crypto-Related Crime and the Architecture of Criminal Liability in Indonesia: A Doctrinal Review

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### **Abstract**

*In Indonesian criminal law, the definition of crimes, offenders, and culpability necessitates a thorough analysis of the principles of criminal responsibility. This analysis may involve correlating the subjective and objective characteristics of the perpetrator with the standards established in the legislation and the prevailing legal realities. Indonesia employs a Roman-Germanic legal system that mandates all provisions to be documented, explicit, and unambiguous, with no room for interpretation. Existing laws must be reevaluated when criminal acts pertain to cryptocurrency offenses. This paper examines the extent to which the principle of criminal culpability in Indonesia determines eligibility for punishment in crimes related to cryptocurrency, in light of the implementation of the National Criminal Code and prevailing electronic transaction and information legislation. This study employs the doctrinal legal research method, incorporating a conceptual approach and a literature review to address the issues. The research will extract information based on the collected secondary data, which Scopus primarily indexes. The study's findings indicate that Indonesia faces constraints in enforcing criminal culpability due to the absence of codified laws serving as primary norms for addressing crimes associated with cryptocurrency. In the absence of clear and valid regulations, the impending challenge is legal uncertainty or ambiguity.*

**Keywords:** *crypto, strict liability, criminal law, Indonesia*

### **Introduction**

A corresponding escalation in cybercrime has paralleled the swift growth of Indonesia's digital economy. Initially presented as groundbreaking digital payment methods, cryptocurrencies now play a significant role in modern money laundering operations. Their principal technical attributes, including velocity, cross-border accessibility, and pseudonymity, render crypto assets appealing for both legal financial innovation and illegitimate financial transactions. In Indonesia, where digital financial services are actively promoted, the dual nature of cryptocurrencies presents a significant issue for criminal law in terms of tracing, attributing, and penalizing crypto-based money laundering.[1], [2]

Globally, anti-money laundering and counter-terrorist financing guidelines consider know your customer duties as fundamental to a preventive framework. Financial institutions, including banks and securities firms, must identify and authenticate their clients, comprehend the nature and purpose of the relationship, and monitor transactions to spot suspicious activities. In the realm of crypto assets, the gatekeeper function is expanded to encompass virtual asset service providers, including exchanges and custodial wallet providers. These firms are progressively required to register with authorities, establish stringent KYC protocols, and collaborate with law enforcement inquiries. Nonetheless, peer-to-peer transfers, non-custodial wallets, and privacy-enhancing tools persist in undermining the efficacy of KYC, as layers of pseudonyms and technical intermediates may obscure actual identities.[3]

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Discussions on KYC are intricately linked to overarching issues of criminal accountability. Strict liability, in doctrinal words, denotes circumstances in which liability may be assigned without the necessity of demonstrating purpose, knowledge, or negligence concerning certain aspects of the offense. Comparative research indicates that strict liability is frequently employed in regulatory domains characterized by extensive activity, technical complexity, and significant threats to public interests. In such contexts, necessitating evidence of a subjective mental state for each infraction would render enforcement virtually unfeasible. In contrast, those who benefit from the activity are typically best equipped to mitigate harm through internal controls and compliance mechanisms.[1]

Indonesia has implemented a rigorous responsibility framework within its criminal law, namely in high-risk sectors that significantly impact public interests. Environmental legislation and specific economic regulations embody responsibility frameworks that permit the imposition of liability upon demonstration of detrimental outcomes and a causal relationship to a regulated activity, even without comprehensive evidence of *mens rea*. These advancements do not eliminate the notion of fault; rather, they readjust the allocation of culpability in intricate contexts. In the cyber world, where digital infrastructure, financial technology, and transnational networks converge, a comparable rationale is becoming increasingly pertinent. The challenge of reconstructing the subjective mental states of actors obscured by layers of code, middlemen, and automated processes necessitates the examination of more stringent, objective criteria of accountability.

The convergence of KYC, strict liability, and cryptocurrency-related criminality is thus critically important for Indonesia. KYC regulations assign particular responsibilities to identified entities, such as exchanges and wallet providers, concerning the authentication and oversight of customers. Suppose these responsibilities are defined as strict or quasi-strict obligations in criminal law. In that case, the failure to execute sufficient KYC steps may constitute a basis for culpability, irrespective of the intermediary's subjective intent to support money laundering. In a context where cryptocurrency money laundering frequently capitalizes on deficiencies in oversight and compliance, correlating KYC obligations with stringent liability can establish robust preventive incentives and facilitate the transfer of risk management responsibilities to those who benefit from offering cryptocurrency services.[2]

Nonetheless, the conceptual dimensions of this approach remain inadequately examined in Indonesian legal studies. This paper addresses the fundamental issue of how Indonesia might doctrinally enforce strict responsibility for bitcoin offenses, specifically regarding KYC duties. The aim is to cultivate an understanding of this interaction by delineating the existing Indonesian regulations that incorporate strict liability, scrutinizing the current regulatory framework regarding KYC for cryptocurrency entities, and assessing how these two areas can be integrated within a cohesive theory of criminal responsibility. The study aims to elucidate the potential legal foundation for strict or near-strict liability resulting from violations of KYC obligations in instances of cryptocurrency money laundering, while also delineating the boundaries that must be maintained to uphold essential principles of criminal law.

## Method

This study applies a doctrinal legal research methodology. Doctrinal legal research is defined as the methodical identification, interpretation, and analysis of legal norms, principles, and concepts as they manifest in legislation, case law, and scholarly literature, to elucidate the law and its functioning within a particular domain. This study employs a doctrinal approach in a somewhat light or mapping manner, aiming to present foundational information on the interplay between Indonesian strict liability in criminal law, know-your-customer obligations, and crimes related to cryptocurrencies.[4]

The research is solely dependent on secondary evidence, in accordance with the doctrinal approach. The principal corpus comprises peer-reviewed journal articles and academic book chapters indexed in Scopus that address doctrinal matters concerning strict liability, KYC regulation, anti-money laundering in relation to cryptocurrency, and, where applicable, Indonesian criminal law and financial regulation. Utilizing doctrinal methodological literature, secondary sources are viewed as instruments that consolidate and elucidate foundational legal resources, thereby providing an appropriate starting point for a comprehensive examination of the law in this domain. Statutes, case law, and soft law standards are regarded solely as they are presented and examined in these secondary sources, rather than being separately compiled as primary data.[5]

The data collection employed a systematic keyword search methodology. I formulated search strings utilizing Scopus and other platforms indexing Scopus-listed journals, incorporating terms such as “doctrinal legal research,” “strict liability,” “criminal liability,” “cryptocurrency,” or “virtual assets,” “money laundering,” “KYC,” or “customer due diligence,” and “Indonesia” or “Indonesian criminal law.” Supplementary keywords were generated iteratively from the initial set of results. Only publications indexed in Scopus at the time of the search were retained. I applied inclusion criteria from this pool based on substantive relevance to at least one of the following themes: strict liability in criminal law, legal accountability for financial or corporate crime, regulatory or doctrinal analysis of KYC or AML (Anti-Money Laundering) obligations, and the treatment of cryptocurrency in criminal law or economic regulation.[6], [7]

The chosen materials underwent qualitative analysis via close reading and thematic synthesis. Doctrinal arguments, definitions, and typologies were extracted and organized around three principal axes: the notion and functions of strict liability, the legal and regulatory role of KYC, and the treatment of money laundering associated with cryptocurrencies. Special emphasis was placed on how these sources define the responsibilities of financial intermediaries and their connection between consumer due diligence and culpability for cyber-enabled financial crime. The approach seeks to delineate and interrelate established doctrinal ideas, rather than to provide novel empirical results or propose an exhaustive normative reform.[5], [8]

## **Result and Discussion**

### **Strict Liability in the Criminal Law**

The concept of strict liability is a framework of criminal liability that has evolved significantly across many jurisdictions, notably within the common law. This viewpoint originated in the 19th and early 20th centuries, primarily instigated by the Industrial Revolution, which presented nations with complex frameworks concerning public welfare matters, such as occupational safety and environmental conservation. The notion of strict liability, as articulated by Lummert, gained prominence through the seminal ruling in *Rylands v. Fletcher*, which tacitly established the principle of culpability without fault, particularly in instances resulting in extensive environmental harm. This principle has been broadened to encompass various legal sectors, including economic criminal law and consumer protection law, to enhance the efficacy of law enforcement against high-risk actions without necessitating explicit *mens rea*. Glanville Williams elucidates that the imposition of strict liability is founded on legal policy considerations, emphasizing the necessity of prioritizing public interest to ensure effective law enforcement, especially in instances of regulatory or high-risk offenses. In this setting, strict liability serves as a legal mechanism aimed at social protection, aligning with the social protection philosophy, which prioritizes collective welfare over individual culpability.[9]

In contemporary criminal law doctrine, the interplay between the principle of strict liability and the element of culpability reveals a complicated conceptual confluence. Strict liability represents a conceptual divergence from the notion of no punishment without guilt, referred to in German as “*keine Strafe ohne Schuld*,” or the principle of culpability. Modern criminal law has evolved to concentrate on the individual offender, referred to as *strafrecht* or *strafrecht*. Criminal law differentiates between the attributes of a criminal act and the traits of the individual who perpetrates it. George P. Fletcher posits that an individual who perpetrates a criminal act may not face punishment, contingent upon their capacity for criminal responsibility. In contrast, someone who is penalized has undoubtedly perpetrated a criminal offense and may be held accountable. The essential component of criminal responsibility is culpability.

Simons asserts in his textbook that an individual is deemed to have committed a fault by the legislator if they recognize that their acts contravene the law, hence enabling them to ascertain their intention to perpetrate the offense. Remmelink views fault as a censure from society that applies contemporary ethical standards to an individual who engages in avoidable aberrant behavior. This aligns with Mezger's perspective, which characterizes blame as a collection of circumstances that establishes the foundation for personal censure of the offender in criminal conduct. Guilt is invariably associated with the individual who perpetrates the offense, as encapsulated in the adage *facinus quos inquinat aequat*. According to this definition, guilt pertains to two aspects: the blameworthiness of the act and the avoidability of the unlawful act.[10]

Van Hamel further elucidates fault as a normative psychological condition and competency that encompasses three criteria examined via the lens of capability. Indeterminism posits that humans possess free will in their acts, serving as the foundation for volitional decisions. Consequently, in the absence of free will, there exists no

culpability. Consequently, there is no culpability and, so, no retribution. Secondly, determinism posits that humans do not possess free will. Volitional decisions are primarily influenced by character and motives that arise from both internal and external stimuli. This implies that an individual cannot be deemed culpable due to the lack of free choice; the absence of free will paradoxically engenders a person's accountability for their acts. Thirdly, guilt is unrelated to free will. To clarify, free will is unrelated to guilt under criminal law.

Vos and Pompe thoroughly associate the connection between fault and unlawfulness through two key arguments. Firstly, fault is subjective, as it is perceived from the perpetrator's perspective, whereas unlawfulness is objective, being observable by others. Secondly, someone who is culpable has undoubtedly engaged in an illegal act, yet may not inherently possess fault. Moreover, Vos delineates that faults can be categorized into three distinct features. The wrongdoer may be held liable. Secondly, a psychological link exists between the perpetrator and their conduct, typically manifesting as intent (*dolus*) or negligence (*culpa*). Third, there are no justifications for absolving the culprit of accountability for their conduct. Consequently, the components of fault encompass: Firstly, the capacity for accountability; Secondly, the psychological connection between the offender and the act perpetrated. This psychological link gives rise to two types of fault: intent (*dolus*) and negligence (*culpa*).[11]

The notion of fault may also encompass the types of fault characterized as *dolus* and *culpa*. Third, there are no justifiable reasons for abolishing criminal liability through justifying factors that negate the unlawful nature of the act and exculpatory grounds that absolve the perpetrator of blame. According to the traditional criminal law framework, the principle of *actus non facit reum nisi mens sit rea* applies. It is a fundamental principle that asserts a person can only be punished if there is a conjunction between the act (*actus reus*) and the mental culpability (*mens rea*). The concept of culpability signifies the moral and psychological connection between the offender and their actions, whereby punishment is determined not merely by the outcomes but by the intent or negligence that warrants accountability.[12]

The evolution of intricate criminal typologies suggests that establishing the element of *mens rea* is not invariably definitive, particularly in crimes that are complex, systematic, and significantly impact public interest. The idea of strict liability emerged as a qualified deviation from the principle of fault. Moreover, the implementation of the doctrine of strict liability, which represents a qualified divergence from the principle of culpability, aims to enhance law enforcement in instances where proving purpose is challenging. This transition markedly redirects the emphasis of criminal culpability from the moral and subjective dimensions (*mens rea*) of the offender to the assessment of objective accountability. This liability is now determined not by the purpose or culpability of the legal subject, but rather by the consequences resulting from the act done (*actus reus*).[13]

Strict liability is a principle of unconditional accountability for a type of offense that necessitates no element of culpability, only the occurrence of an act. Strict responsibility is a rigorous accountability framework that permits legal entities to be held criminally liable without regard to the requirement of *mens rea*. This principle asserts that punishment may only be administered if the offender is demonstrated to possess a culpable mindset,

manifested as either intent (*dolus*) or negligence (*culpa*). H.L.A. Hart asserts that the imposition of strict responsibility constitutes a "policy-based deviation" from the principle of fault, as its implementation aims to fulfill broader societal objectives, including public safety and economic stability. Strict liability is not simply an absence of *mens rea*; it is a type of preventative liability that necessitates heightened prudence in activities capable of causing significant harm. Strict liability does not entirely eradicate the element of fault; instead, it serves as a normative framework that modifies the principle of fault to facilitate effective law enforcement against specific offenses, including economic, environmental, and information technology crimes, as well as other offenses with extensive and significant destructive consequences.

In strict liability criminal offenses, the suspicion or awareness of the perpetrator is enough to impose criminal liability. The presence or absence of *mens rea* is no longer a significant element for proof; it just necessitates the existence of an act (*actus reus*). The differentiation between fault and strict liability often results in considerable conceptual uncertainty, particularly in defining the boundaries between these two primary forms of legal liability. This uncertainty arises, in part, from the frequent occurrence of criminal activities that possess indistinct or challenging-to-identify characteristics of culpability, despite the necessity for criminal liability to ensure the ensuing legal repercussions.

The digital shift within the financial sector has given rise to novel forms of international criminal activity that are challenging to monitor using traditional techniques, including digital asset fraud, money laundering through cryptocurrency exchanges, and offenses that utilize digital technology, such as blockchain. The intricacy of this system frequently complicates the demonstration of the perpetrator's culpability (*mens rea*), as most transactions occur over digital platforms (the internet), characterized by speed, automation, and decentralization. The notion of strict liability serves as a pertinent legal mechanism that underscores the objective accountability of system operators or commercial entities in adhering to relevant rules and regulations.

The evolution of contemporary criminal law has transitioned from a focus on moral fault-based culpability to compliance-based liability. This perspective is exemplified by the implementation of the Know Your Customer (KYC) principle, which came from banking law and anti-money laundering efforts. This concept mandates that all institutions or individuals involved in financial services must execute client identification and verification as a measure of legal diligence. Within the framework of strict liability, the KYC principle serves as a significant "due diligence defense," utilized in the verification and analysis of papers and transactional entities to evaluate compliance and legal eligibility. The due diligence defense mechanism serves as a proactive legal strategy for corporations to exhibit reasonable care in their operations, providing a foundation for defense against claimed legal infractions or criminal conduct.[3]

In this context, the implementation of the KYC principle ensures that companies identify and monitor the parties involved in transactions to prevent the misuse of the financial system for illicit purposes, such as money laundering or terrorist financing, while reinforcing the company's legal standing in demonstrating its compliance with relevant regulations.

The KYC principle fundamentally acts as a doctrinal nexus that reconciles the strict liability doctrine, which mandates objective accountability without necessitating evidence of intent (*mens rea*), with the principle of fault, which inherently demands proof and subjective criminal responsibility from each offender of a criminal act.

Moreover, in the realm of law enforcement addressing economic and technological offenses, particularly those related to technology-driven crimes such as blockchain and cryptocurrency transactions, the implementation of the KYC principle has evolved into a regulatory tool encompassing both administrative and judicial aspects. Within the framework of crime typology, utilizing digital technologies such as blockchain and cryptocurrency, the assessment of subjective elements (*mens rea*) is a crucial factor in classifying types of criminal culpability. The perpetrator's mental state is a critical differentiating factor between actions executed with intent that legally demonstrate *mens rea* for Money Laundering (TPPU) or fraud (e.g., through asset concealment methods utilizing crypto mixers) and actions that result solely from negligence (*culpa*). Adherence to this principle signifies the demonstration of a lack of culpability, which may serve as a restricted justification or excuse (qualified exculpation). Consequently, the KYC concept serves as a "bridging principle" between the doctrine of strict liability, which emphasizes objective responsibility, and the principle of fault, which requires subjective responsibility from the offender.[14]

### **The History of Strict Liability in the Tort Law**

In contrast to the criminal law mechanism, which emphasizes responsibility and penalties, the implementation of strict liability within tort law, also referred to as unlawful conduct, is a well-established notion in civil law. The idea of strict liability within the civil framework, emphasizing risk-based accountability, represents a doctrinal advancement of absolute liability in the criminal context, which is centered on fault-based responsibility. Marco Cappelletti asserts that the strict responsibility framework within the civil system reallocates the burden of loss from the victim, deemed the "innocent party," to the party that has legally contributed to the danger of loss. This risk primarily pertains to behaviors that intrinsically possess a significant level of danger, directing attention towards the incurred losses and their causal link to the hazardous activity, rather than the intent or negligence of the offender.[14]

A comprehensive comparison study is essential to examine the application of strict liability in cases of unlawful acts within the civil system. The implementation of strict liability can be explored across many countries that actively utilize this principle to enhance compensation for damages arising from unlawful actions that inflict harmful consequences, particularly material and ecological harm, on victims.

### **Overview of Strict Liability in English Law**

The doctrine of strict liability in English Tort Law, within the common law framework, pertains to three categories of torts: a) Public nuisance (disruption of public order, public thoroughfares, and disturbances from noxious odors leading to environmental degradation); b) Criminal libel (defamation and slander); c) Contempt of court (disgraceful and improper conduct in judicial proceedings). The intricacies of strict

liability within the common law framework exhibit a constrained and particular area of application, as evidenced by case law and regulations about unlawful activities within that jurisdiction. The case of *Rylands v. Fletcher*, decided in 1868 in England, established a general doctrine of strict liability for illegal acts. This principle asserts that an individual who, for personal gain, introduces or accumulates substances capable of causing environmental harm to land—where such damage is not a result of natural processes—must be held accountable for the resultant destruction and any losses stemming from environmental degradation. This doctrine subsequently established the foundation for liability, eliminating the necessity to demonstrate negligence in tort law cases, particularly those involving high-risk activities that impact the environment, society, or the state. The premise is that proof of fault or negligence is unnecessary due to the substantial consequences of the loss, thus prioritizing the optimization of compensation for damages incurred from these activities.[1]

The United Kingdom enacted strict liability restrictions through specific statutes, notably the Civil Law Act 1949, the Nuclear Installations Act 1959 and 1965, and the Animals Act 1971. The application of strict liability has evolved through legal precedents in the United Kingdom, particularly illustrated by the Consumer Rights Act 2015, which holds manufacturers strictly liable for product defects, thereby making them accountable for the quality of their products.[14]

Moreover, in various instances in England, particularly concerning proprietors of perilous animal species exhibiting violent or aberrant traits, the regulations are delineated in the Animal Acts 1971, as articulated in Article 2 of such Acts. This approach was applied in the 2003 decision of *Mirvahedy v Henly*, which established that owners of certain animals could be held accountable for damages caused by these animals without the necessity of demonstrating owner negligence. This rule considers the hazards and inherently hazardous characteristics of these creatures, which may inflict harm on others, so holding the owner, as the individual who possesses or transports the animal, accountable.

The extensive use of strict liability in the United Kingdom, which follows the common law framework, is often criticized as being static and restrictive. The mechanism of strict liability in tort law is typically not precisely regulated and is instead encompassed under general norms. The application is contingent upon the judge's assessment of particular circumstances and the extent of the damage, rendering its application non-absolute. Conversely, in the United Kingdom, the imposition of strict liability can be unequivocal if explicitly delineated in specific statutes, such as the Animals Act 1971, which clearly imposes the notion of strict liability. The application of this concept generally relies on the judge's discretion, considering several factors. The application of strict liability varies based on the nature of the unlawful act and its consequences, including the losses incurred by the victim, a legal entity, or the state, as well as the existence of statutory provisions that mandate the application of a strict liability framework.[15]

### **Overview of Strict Liability in the United States**

Sharing traditional roots with England, which follows the common law, the United States embraced the principle of strict liability in tort law cases, subsequently refining it to

render its application broader, more systematic, and more quantifiable in doctrinal terms. The expansion was primarily propelled by the codification and formulation of laws established by the Restatement (Second) of Torts, which offers extensive legal certainty regarding tort liability mechanisms in specific instances, including those categorized as “Abnormally Dangerous Activities” and “Products Liability” cases. [9], [16]

This situation is informed by the Restatement (Second) of Torts, which subsequently incorporated the strict liability framework into statutes such as the River and Harbors Appropriation Act (1899), Price Anderson Act (1957), Trans-Alaska Pipeline Authorization Act (1973), Comprehensive Environmental Response Compensation and Liability Act (CERCLA 1980/1986/1994), and Clean Water Act (CWA).

The United States formally incorporated the doctrine of strict liability from the English case *Rylands v. Fletcher*, as articulated in Articles 519 and 520, which were codified in the Restatement (Second) of Torts, applicable to activities characterized by significant inherent risks, such as bombing, explosive storage, or hazardous waste disposal that poses a threat to public health. Liability for "Abnormally Dangerous Activities" arises from the understanding that the resulting damages are a foreseeable outcome of the activity's inherent nature. The transformative application of the United Kingdom's principle of strict liability by the United States is articulated in Article 402, which governs product defects. This provision allows consumers, as legal entities, to initiate lawsuits against manufacturers for damages resulting from product defects without the necessity of demonstrating fault or legal transgression, contingent upon the product being sold to consumers in an unsuitable or unreasonable state that resulted in harm.

Additionally, a pertinent case classified as an “Abnormally Hazardous Activity” is *Loe v. Lenhardt*, which transpired in 1961. This case involved property and crop damage resulting from the defendant's aerial application of herbicides. The Oregon State Supreme Court adjudicated the matter by imposing strict liability, negating the necessity to demonstrate the defendant's negligence. Despite the defendant's adherence to the principle of reasonable care, they still presented an inherent and unavoidable risk. Consequently, the defendant was mandated to compensate the victim for the resultant damages to property and crops.[17]

According to the Restatement (Second) of Torts, this can be examined through the case of *Greenman v. Yuba Power Products, Inc.*, which serves as a cornerstone of jurisprudence in strict liability product cases in the United States. In the 1963 opinion of the California Supreme Court, the judge specifically asserted that Yuba Power Products, as the producer, must be held strictly accountable for distributing the product without prior testing or inspection before its release to customers. The manufacturer's failure to test the product resulted in losses or adverse effects for consumers following its use. The *Loe v. Lenhardt* decision imposed strict liability to prioritize compensation for victims of property and crop damage resulting from the perpetrator's conduct. This ruling established the foundation for contemporary precedents concerning the implementation of strict liability, which can supersede the necessity of proving negligence and prioritize the interests of affected parties in securing full compensation, while simultaneously enforcing preventive measures for manufacturers and individuals to safeguard the community.

## **Overview of Strict Liability in French Law**

The United States has adopted the strict liability tradition from the United Kingdom, which applies a common law legal system. In contrast, France, operating under a civil law, has systematically integrated strict liability from a doctrinal standpoint, establishing it as a general codified principle applicable beyond specific statutes that impose strict liability, thereby allowing for its broader implementation as a fundamental principle.[10]

In France, the implementation of this doctrine is not solely contingent upon judicial discretion, which varies by case based on the urgency of the unlawful act and the resultant harm; instead, the application of strict liability is fundamentally anchored in an expansive interpretation of the French Civil Code. The notion of strict liability is enshrined in written law in Article 1384, Paragraph 1 of the French Civil Code, which governs liability for damage inflicted by objects under an individual's control (*fait des choses*). French jurisprudence has broadened the interpretation of this article by embracing the theory of risk (*théorie de risque*), which emphasizes the danger posed by the object rather than the fault or negligence of the individual overseeing it.

The foundational principle of strict liability, increasingly implemented in France, is exemplified by the 1930 decision in *Jand'heur v. Les Galeries Belfortaises*, which explicitly construed Article 1384 (1) of the French Civil Code as a universal doctrine of absolute liability for the custodian or owner of an object. The judge determined that the guardian or owner of an object that caused harm to an individual could be held accountable without demonstrating negligence. Consequently, the implementation of strict liability in this instance evolved into a foundational principle that transformed and broadened the concept of strict liability, providing a more progressive framework for its application. Before the *Jand'heur v. Les Galeries Belfortaises* case, the absolute liability model allowed for exemptions from liability if one could demonstrate that the perpetrator exercised due diligence, necessitating the proof of negligence.[14]

Following this decision, the doctrine of strict liability was promptly revised through the incorporation of the *Theorie du Risque* into the civil law framework, thereby broadening its scope and implementing contemporary adjustments that aligned the law with societal objectives. This subsequently reinforced the status of strict responsibility as a universal basis of civil law in France, in contrast to its limited application in common law jurisdictions.

## **Strict Liability in Indonesia**

The theory of strict liability was initially established in the 1868 case of *Rylands v. Fletcher* in England, under the common law legal system. The principle of strict liability imposes total liability without the necessity of demonstrating carelessness or wrongdoing in cases involving environmental issues, ownership of hostile animals, and hazardous products that pose substantial risks and serious consequences. The Indonesian legal system incorporated the concept of strict liability through doctrines within the civil law framework that emerged in the 1970s, particularly in environmental administrative law, exemplified by Law Number 42 of 1982 concerning the Basic Provisions of Environmental Management and its subsequent amendment in Law Number 32 of 2009 concerning Environmental

Protection and Management (PPLH Law), which explicitly articulates the application of strict liability. The principle of strict liability was initially acknowledged in Indonesian positive law via Article 88 of Law Number 23 of 1997 on Environmental Management, subsequently reinforced and elaborated in Article 88 of Law Number 32 of 2009 on Environmental Protection and Management (PPLH Law), which articulates:

“Any individual whose actions, efforts, or activities involve hazardous and toxic substances, generate or manage hazardous and toxic waste, or pose a significant threat to the environment shall be strictly liable for any resulting losses without the necessity of proving fault.”

The stipulations in this article constitute *lex specialis* in legal actions related to criminal activities, as outlined in Article 1365 of the Civil Code. The principle of strict liability in the Environmental Protection and Management Law is applicable in the context of a civil lawsuit. Article 88 of the Environmental Protection and Management Law mandates that strict liability may be invoked through a civil lawsuit for incidents including industrial installation leaks, hazardous waste contamination, machinery-induced explosions, and specific activities deemed “ultrahazardous” or high-risk as defined by the law. The application of strict responsibility in civil law remains challenging due to the intricacies of environmental situations, many of which are not amenable to litigation. The concept of strict liability in Indonesia has evolved in tandem with modern law, undergoing normative development and being codified in specific legislation, recognized not only within the civil law framework but also increasingly within the domain of criminal law.

Following the adaptation within the civil law framework as outlined in the Environmental Protection and Management Law (PPLH), the strict liability model has been further applied to the environmental criminal administrative law regime, as articulated in Articles 116-118 of the PPLH. This provision permits the imposition of criminal penalties on corporate entities without necessitating the demonstration of *mens rea*, instead emphasizing the consequences of non-compliance with precisely delineated legal obligations. This clearly defies the legal framework in Indonesia, which strictly upholds the norm of legality and the principle of “*geen straf zonder schuld*,” necessitating purpose or negligence.

Indonesia adheres to the idea of culpability; nonetheless, the doctrine of strict liability has been selectively applied in response to the risks associated with specific high-risk activities. Consequently, in Indonesian criminal law, strict liability is implemented in a highly restricted manner, diverging from the overarching principles of criminal doctrine. It is exclusively applicable to specific criminal offenses that are administrative or regulatory in nature (*mala prohibita*), necessitating explicit stipulation in the governing legislation, mirroring the principle of strict liability in the United Kingdom's common law and in the United States' civil law. Both countries implement absolute or strict liability in a restricted manner, preventing its application as a general and universally applicable principle, unlike the extrinsic and progressive application observed in the French Civil Code.

## **Cryptocrime and Strict Liability, an Indonesian Context**

The Indonesian legal response to cryptocurrency-related criminality functions within a disjointed framework of general criminal law, specific legislation on information and electronic transactions, anti-money laundering regulations, banking oversight, and sector-specific supervisory mechanisms. These instruments were primarily designed with traditional fraud and centralized financial services in consideration. Consequently, they only partially encompass the distinct dangers associated with decentralized crypto assets, non-custodial wallets, and pseudonymous online transactions.

The Criminal Code, at the level of general criminal law, is founded on the premise of *nullum delictum sine lege* and a fault-based culpability model that requires a clearly identifiable perpetrator, a locatable locus delicti, and a demonstrated mental element. The Indonesian concept generally perceives criminal responsibility as the intersection of an unlawful actus reus with either purposeful or negligent mens rea. Prosecutors have sought to apply conventional fraud statutes, such as Article 378 of the Criminal Code, to address misbehavior associated with cryptocurrency. Nonetheless, as Pambudi observes, numerous conventional cryptocurrency methods, including rug pulls, fraudulent token creation, or the exploitation of smart contract flaws, do not align precisely with the traditional components of deception and falsehoods mandated by Article 378. Crimes are frequently perpetrated using code and automated protocols instead of direct interpersonal deceit, resulting in a strained theological framework of the offense and allowing several destructive practices to evade effective punishment.

The Law on Information and Electronic Transactions (UU ITE) serves as a *lex specialis* for digital conduct, in conjunction with the Criminal Code. Article 28, paragraph (1) of the revised ITE Law is often cited in cases of online fraud, particularly those involving digital assets. It forbids the distribution of deceptive material that adversely affects customers in electronic transactions. This rule may be utilized to contest misleading whitepapers, promotional materials for token sales, or deceptive assertions on trading platforms within the cryptocurrency environment. Pambudi demonstrates that the ambiguous phrasing of "misleading information" engenders significant factual and interpretative uncertainty. Determining whether initial promotional statements in a token project were false at the time of release or became so due to subsequent changes in intent, such as developers abandoning the project and withdrawing funds, can be a challenging task. This ambiguity generates legal uncertainty and diminishes the deterrent effect of the prohibition against crypto-specific fraud.

The primary legislation for addressing cryptocurrency-related money laundering is Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering. This law fundamentally adopts an expansive definition of assets, thereby encompassing digital value. In reality, the legislation was formulated before the widespread recognition of blockchain-based assets and does not explicitly include cryptocurrency tokens in its enumeration of property categories. Pambudi underscores that this textual silence, along with the pseudonymous, rapid, and cross-border nature of cryptocurrency transactions, has generated exploitable vulnerabilities. Regulatory and law enforcement organizations face challenges in tracking the movement of illicit funds and integrating cryptocurrency-

based layering within an established doctrinal framework. The situation is exacerbated by the restricted scope of the financial Law, which pertains solely to regulated financial organizations and traditional payment methods. Stablecoins and other digital value representations that serve as de facto payment methods beyond the conventional banking system usually remain beyond its explicit jurisdiction.

In response to the rapid growth of cryptocurrency investment, the Commodity Futures Trading Supervisory Agency (BAPPEBTI) has designated specific crypto assets as commodities eligible for trading on registered futures exchanges. BAPPEBTI regulates and licenses physical traders of crypto assets in Indonesia, mandating compliance obligations for custodial service providers. Bank Indonesia and the Financial Services Authority (OJK) continue to fulfill their traditional functions in payment systems and financial markets, including a ban on the use of cryptocurrency as a legal tender. Nonetheless, oversight remains disjointed. BAPPEBTI focuses on trade elements, whereas DeFi platforms, non-custodial exchanges, and cross-border peer-to-peer transactions primarily operate outside of any cohesive framework of criminal law. Earlier in January 2025, it was officially announced that cryptoassets are defined as property, and the Financial Services Authority now exercises control over them.

In this institutional framework, client due diligence requirements function as a crucial protective measure. In accordance with international norms and FATF directives, Indonesian legislation requires financial organizations, including licensed cryptocurrency exchanges, to identify and authenticate customers, comprehend the purpose of business interactions, and report suspicious activities. The rationale parallels the global stance on custodial wallet providers, regarded as financial intermediaries obligated to implement KYC and adhere to AML and CFT regulations. Simultaneously, as Barbereau and Bodó demonstrate in their comparative analysis, non-custodial wallet software and decentralized applications can be deployed and utilized without any identified intermediary conducting KYC procedures. In scenarios where users retain their own keys via open-source or browser-based wallets, there is a lack of a discernible gatekeeper to whom regulatory responsibilities can be assigned, allowing criminal entities to utilize this framework to transfer cash internationally in manners that circumvent traditional anti-money laundering oversight.[18]

The concept of stringent or near-strict liability is particularly pertinent at the convergence of KYC procedures and cryptocurrency money laundering. Indonesian criminal law has progressed beyond a solely subjective model of responsibility in several high-risk sectors. Environmental legislation, specific consumer protection frameworks, and recent regulations concerning corporate criminal liability utilize forms of strict liability, whereby corporate entities can be held accountable for detrimental outcomes arising from regulated activities, without necessitating comprehensive evidence of individual intent or negligence. The justification for these models lies in the significant societal hazards associated with the activities and the enhanced capacity of regulated businesses to mitigate harm via internal controls.

In the context of cryptocurrency, this doctrinal experience allows for the characterization of specific KYC and AML responsibilities for licensed virtual asset service providers as either strict or quasi-strict criminal requirements. In this model, a

cryptocurrency exchange that neglects to perform sufficient customer due diligence or to monitor and report suspicious activities may face criminal liability if its services are utilized for money laundering, regardless of the individual managers' subjective intentions to facilitate the underlying crime. The Indonesian framework must meticulously delineate the parameters of strict liability to uphold the principle of legality and prevent imposing excessive obligations on intermediaries, particularly concerning open, non-custodial infrastructures that are not currently governed by law.

The current Indonesian legal system provides multiple avenues for addressing crypto-related criminality through general fraud laws, the ITE Law, money laundering legislation, and regulations governing banking and commodities. However, as research on the cryptocurrency ecosystem underscores, these instruments were not conceived with decentralized technology in consideration and reveal substantial deficiencies regarding legal entities, jurisdiction, and the handling of pseudonymous assets. In this context, the developing Indonesian practice of strict liability in various regulatory domains provides a significant doctrinal resource. It posits that a more impartial distribution of accountability to KYC-compliant intermediaries in the cryptocurrency domain may align with established criminal law concepts and thus constitute an essential element of a more efficacious approach to combating crypto money laundering.[11]

## **Conclusion**

This study offers a comprehensive doctrinal analysis of the existing Indonesian criminal law's approach to cryptocurrency-related offenses, as well as the potential interplay between strict liability and 'know your customer' requirements within that framework. Operating within a Roman-Germanic legal framework that emphasizes written, explicit standards, Indonesia currently lacks a clear and thorough codification for cryptocurrency offenses, resulting in ambiguity when traditional fault-based liability is applied to decentralized, pseudonymous transactions. Indonesian law has acknowledged strict liability in specific high-risk sectors, particularly in environmental and certain economic regulations, indicating that the legal framework can incorporate more objective forms of accountability where social risks are significant, and prevention is paramount.

The analysis indicates that KYC can serve as a doctrinal link between fault-based culpability and strict liability within the cryptocurrency framework. KYC assigns specific preventive responsibilities to distinctly recognized intermediaries, including exchanges and various virtual asset service providers. Suppose these responsibilities are defined as rigorous or quasi-strict obligations. In such cases, Indonesia may hold intermediaries accountable when lapses in due diligence enable money laundering through crypto assets, especially in instances where establishing individual intent is challenging. This would align with established applications of strict liability in other regulatory domains, while addressing structural enforcement deficiencies arising from non-custodial wallets, peer-to-peer transfers, and swift cross-border transactions.

Due to the ideological and Scopus-based character of this research, the conclusions constitute a delineation of superficial knowledge rather than an exhaustive reform suggestion. The paper emphasizes the necessity for future research to enhance the

examination of Indonesian legislation and case law, investigate particular legislative measures to codify cryptocurrency-related liability, and incorporate empirical insights into enforcement practices. Nevertheless, even at this initial stage, the relationship between strict liability, KYC, and cryptocurrency crime in Indonesia seems to be a viable pathway for developing a more coherent and practical framework of criminal accountability for offenses related to digital assets.

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