LEGAL REGULATION OF VIRTUAL CURRENCY: INTERNATIONAL EXPERIENCE AND DEVELOPMENT TREND IN RUSSIA

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Abstract

Purpose: The development of the digital economy has become essential in the modern world. Entrepreneurs use digital technologies to carry out their activities, through which they enter into various civil-legal relations. One of the most pressing topics discussed in the legal community is the use of cryptocurrency in trading. Currently, there is no mechanism for the legislative regulation of the circulation and the use of the cryptocurrency. The main purpose of this study was to develop legal proposals and effectively regulate cryptocurrency.

Method: the development trend of cryptocurrency in the Russian Federation was analyzed, and the experiences of foreign countries (USA, Germany, France, China, and Japan) were studied.

Findings: This research analyzed the problem of the legal regulation of the cryptocurrency, which is a logical continuation of the development in digital technologies and digital economy. Finally, the authors offer a legal community with single matrix of the legal regulation of the cryptocurrency consisting of international, regional and domestic levels.

Keywords: Crypto-currency, Digital economy, Legal regulation, Russian.

INTRODUCTION

The rapid development of modern digital technologies has had a large-scale impact on the development of the business sector. Over the past few years, the mechanism of civil law regulation has been modernized because entrepreneurs have actively used digital technologies in the process of economic activity. For example, when an electronic signature was introduced into civil law regulation and transactions, entrepreneurs have the right to use it. Also, entrepreneurs have a legal opportunity to use digital technologies and various remote access services such as carrying out remote state registration of legal entities (commercial organizations), receiving extracts from the state register of legal entities, participating in electronic auctions, file claims, petitions, complaining to the judiciary and other legal actions of Russian Federation.

MATERIALS AND METHODS

During the study, general scientific dialectic methods of cognition, universal scientific methods (systemic-structural and formal-logical method, methods of analysis, synthesis, induction, deduction, and abstraction) and legal-dogmatic and comparative-legal methods were used (Kuznetsova, E. (2019)).

RESULTS AND DISCUSSIONS

The state supports not only the integrated development of digital technologies but also contributes to the maximum development of digital economy, which is the strategic direction of the state. Thus, a special commission on the use of information technologies was created to improve the quality of life and business conditions, one of the main tasks of which is to increase the international ratings of the Russian Federation in terms of development of information technologies.

The digital economy of Russia was formed to create new markets based on the use of information and communication technologies, and provide leadership in these markets. The main regulatory and legal actions, defining the vector of development of the digital economy, is the Strategy for the Development of the Information Society in the Russian Federation for 2017–2030. It stipulates the need to introduce changes in the legislation of the Russian Federation, resulting in the alignment of the regulatory framework with the rates of development of the digital economy and the removal of administrative barriers (Kong, Hoi. 2010; Kremen A.E., Gulin K.A. 2017; Rybakov V.A. 2015; Solovyev S.G. 2012; Werner Menski, 2006).

In the past few years, legal science has been debating about the possibility of using cryptocurrency (virtual currency) in the trade, which can be quite logically regarded as a continuation of the modernization in the digital economy and digital technologies. There are different points of view considering the legal regulation of cryptocurrency. Firstly, it should be noted that there are more than 500 types of cryptocurrency in the modern world. The lack of a civil regulatory mechanism of cryptocurrency contributes to the fact that some entrepreneurs try to use Bitcoin, as a unit of account instead of money, in settlements between counterparties.

Under cryptocurrency, as rightly pointed out by V.V. Nedorezko, need to understand digital currencies created on the basis of blockchain technology, which are not emitted by the central banks of the states, not attached to official currencies,
volutarily accepted by market participants as a means of payment (exchange), transmitted and stored in electronic form. The blockchain technology is an electronic account that is constantly updated. The main disadvantage of cryptocurrency is its anonymity, i.e., it is impossible to identify the beneficiary. This situation contributes to the fact that the cryptocurrency can be actively used by criminal structures to legalize money obtained by criminal means (Hojati, M., Rezaei, F., & Iravani, M. R. 2014).

According to FATF, virtual currency is a means of expressing value that can be digitally traded, and functions as (1) a medium of exchange; and / or (2) the settlement currency; and / or (3) a means of storing value, but does not have the status of a legal means of payment (it is not officially valid and legal means of payment when settling with creditors) in any jurisdiction (Lima, A., Mendes, D., & Paiva, S. (2018)).

We believe that the ruble cannot be replaced with cryptocurrency. This situation is due to the fact that, firstly, the Constitution of the Russian Federation expressly provides that the currency in the Russian Federation is the ruble. The monetary issue is carried out exclusively by the Central Bank of the Russian Federation. The introduction and issue of other money in the Russian Federation are not allowed. Secondly, the Civil Code of the Russian Federation determines that the ruble is an obligatory legal tender throughout the entire territory of the Russian Federation. The legal regulation of money, which Knapp called them "the product of the rule of law", is a creation of state power, the main and only purpose of which is to act as a means of payment (Sultanbekova, Z., Yergobek, K., Atemova, K., & Koshenova, T. 2018).

It should be noted that the strengthening of responsibility in this area will not contribute to the solution of the existing problem - the lack of legal regulation. Although the cryptocurrency is not economically secured, in our opinion, the need for the business sector for cryptocurrency and its development trend cannot be ignored. Ignoring the legal regulation of cryptocurrency will help entrepreneurs not to use it officially. National regulators and fiscal bodies, as rightly written by Kucherov and Khavanov, are still at the stage of understanding the problems, arising in the virtual world and associated with the use of virtual currencies (Guislain, P. (1997)).

It is important to define the legal boundaries of cryptocurrency and formulate instruments of legal regulation at the doctrinal and regulatory levels. Thus, one should take into account the modern international experience in legal regulation. For example, in the US, the Chicago Commodity Exchange defines Bitcoin as a commodity. The exchange draws attention to the fact that market participants must take note that the emerging basic cash markets and Bitcoin exchanges remain largely unregulated markets. In Florida, a bill has been drafted, according to which “virtual currency” is defined as a “monetary instrument”, and not the coin or currency of the United States or other countries (8, 20). Virginia has developed a bill that defines a virtual currency as a digital currency, in which encryption methods are used to regulate the generation of currency units and operate independently of the central bank.

The Federal Financial Supervision Authority of Germany noted that Bitcoins are not expressed in the form of legal tender. Bitcoins are a unit of value that has the function of private means of payment as part of trade exchanges. The Central Bank of France drew attention to the danger of using virtual currencies, indicating that they cannot be considered a real currency or means of payment since Bitcoin is a means for speculation and a tool for money laundering. Summarizing the position of financial regulators in Europe, the European Central Bank pointed out that virtual currencies, such as Bitcoin, are not money, as is often defined in the economic literature, nor are they electronic money or currency based on a legal point of view (Matandare, M. A. 2018; Nazoktabar, H., & Tohidi, G. 2014; Kuznetsova, E. 2019).

The Central Bank of China issued a formal notice referring to the need to use precautions when using cryptocurrency, indicating that it is a “virtual commodity” and not a currency. The Central Bank of Japan noted the need to introduce mandatory requirements that establish state registration in the circulation of cryptocurrency. Thus, most countries concluded that the cryptocurrency cannot replace money, i.e., we will not allow a surrogate to use money (Prins, C., & SavelEva, I. V. (1993)).

Among the CIS countries, the Republic of Belarus became the first state that developed and practically applied a legal act with the aim of regulating cryptocurrency. Thus, the President of the Republic of Belarus, A. Lukashenko, signed the Decreem December 2017, “On the Development of the Digital Economy”, according to which it is necessary to create conditions for introducing the registry using blockchain technology into the economy, as well as other technologies based on the principles of distribution of decentralization and the security of operations performed with their use. The main goal of this legal action, as A. Lukashenko noted, is to create conditions for IT companies in the world to come to Belarus, open their representative offices, develop centers and create a product (Lima, A., Mendes, D., & Paiva, S. 2018).

Discussion on the development and implementation of virtual currency is also going on in other CIS countries, e.g., Kazakhstan. The Astana international financial center and the EXANTE- new generation investment company signed a memorandum related to developing the market of crypto active assets, in Kyrgyzstan and many others.

CONCLUSION

We believe that the legal regulation of cryptocurrency will be effective if a multi-level regulatory mechanism is applied, according to the following:
First, the main international organizations (and all FATF) need to develop special intergovernmental recommendations aimed at minimizing legal and financial risks in case of unfair use of virtual currency.

Secondly, the legal regulation of cryptocurrency should be carried out through regional legal acts, for example, at the CIS level (by analogy with the unified model civil law of the CIS). The main task of regional acts is to protect the economic interests of the states united by territorial, commercial, investment or other criteria. This act in the CIS can be a multilateral agreement on the legal regulation of cryptocurrency.

Thirdly, there is a need for domestic legal regulation through the adoption of relevant legislative or other legal acts. We are convinced that in the Russian Federation this normative act should be the existing Strategy for the development of the information society in the Russian Federation for 2017-2030 and sectoral legislative acts. The main refinements of the Strategy should determine the trends in the legal regulation of cryptocurrency, its legal nature and develop effective mechanisms for its improvement.

**FINDINGS**

The problem of legal regulation of cryptocurrency is essential for further development of the country's economy. The legal community needs to develop effective mechanisms for regulating the release and circulation of cryptocurrency, which will allow identifying their beneficiaries and facilitating circulation in trade within strictly established legal boundaries.

**REFERENCES**


