The Legal Nature of Cryptocurrency

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Abstract. The article is a result of the cryptocurrency research with the view of its legal nature. Appearing in 2009, based on blockchain technology, cryptocurrency has quickly become worldwide popular and formed a new sphere of public relations which badly needs regulation and control from a government. One of the main problems is definition of cryptocurrency’s legal nature, i.e. answer to the question: what is cryptocurrency as an object of legal regulation? It is not easy to answer one because cryptocurrency in its matter and functions has resemblance not only with money but also with goods and non-documentary securities. Defining legal nature and status of cryptocurrency, governments of the world have an opportunity to either legally equate it to one of the existing objects of legal regulation or confront more complicated task which is to accept cryptocurrency as a fundamentally new object of legal regulation, give it legal definition based on its economic essence and start creating corresponding legislation. Author has researched special features of blockchain technology functions and emission of cryptocurrency, studied practices of legal regulations of cryptocurrency in various countries, considered positions of different states in defining legal nature of cryptocurrency and made relevant conclusions and suggestions.

1. Introduction
The emergence of cryptocurrency triggered the formation of a fundamentally new system of economic relations, where the exchange of assets takes place without involving centralized financial institutions (in particular, banks) or other intermediaries, and the security and reliability of transactions between counterparties is provided by a distributed ledger system that is a network of autonomous computers, controlling and reliably recording committed transactions with the help of cryptographic functions (blockchain). Like any new phenomenon in public life, cryptocurrency challenges the state with the most difficult tasks arising from the need for legal regulation of newly emerged and intensively developing social relations – providing the balance of interests of various stakeholders, ensuring the security of the state and society - while the state strategic planning is oriented toward building a digital economy, which is impossible without blockchain.

2. Relevance of the issue
Cryptocurrency has already been reviewed in numerous publications in the modern academic environment. The phenomenon is studied in its various aspects: economic and financial [1], legal [2], they explore advantages and disadvantages of cryptocurrency, motivation and barriers for its use [3], security of transactions in cryptocurrency [4], etc. At the same time, there are very few studies aimed at determining the legal nature of cryptocurrency, without which there is no point in talking about its legal regulation. Only with understanding what cryptocurrency as a legal category is, one can talk
about regulating its emission and turnover through legal norms. The definition of cryptocurrency as a commodity means that transactions on its sales are to be taxed on the added value. The exchange of cryptocurrency for goods falls under the legal regulation of barter transactions. If cryptocurrency is recognized as a security or other financial instrument, then the activity of cryptocurrency exchanges, similar to stock exchanges, must be licensed by the state. Thus, the definition of the legal nature of cryptocurrency as the basis of its legal status is a priority task that must be solved by the state before any measures are taken to legalize cryptocurrencies.

3. Definition of the legal nature of cryptocurrency in different countries

In the definition of the legal nature of cryptocurrency, there are two possible approaches: 1) to equate it with the already existing objects of legal regulation (non-documentary securities, foreign currency, commodity, etc.), which implies the need to create only certain regulations that take into account the specifics of cryptocurrencies as a variant of the corresponding object; 2) to introduce the concept of "cryptocurrency" into the legislation, recognizing it as a fundamentally new object of legal regulation, and, consequently, to create the cryptocurrency legislation from scratch.

To date, most countries in the world are trying to regulate the cryptocurrency relations and settle them, focusing mainly on the issues related to licensing operations with cryptocurrencies, taxation, as well as countering the legalization of proceeds from criminal transactions and financing of terrorism. At the same time, state authorities often fail to have a clear position on the legal nature of cryptocurrency, and therefore, try to regulate its turnover "blindly." As S. A. Timofeev notes, attempts to somehow regulate legal relations related to cryptocurrency are meaningless until digital rights, money and contracts become objects of civil rights [5].

In most cases, cryptocurrency is defined as one of the known and regulated objects of civil turnover. Thus, the Australian Taxation Office (ATO) has decided that the digital currency is a commodity, not a currency, which corresponds to the tax instructions provided by the relevant authorities in other countries, such as Canada and Singapore. Resolutions of ATO of December 17, 2014, stipulate that transactions in bitcoins are an analog to a barter agreement and have similar tax consequences. ATO also notes that bitcoin is neither money nor foreign currency, and for taxation purposes, the sale of bitcoin is not considered as a financial service. According to the Australian Securities and Investments Commission (ASIC), the digital currencies themselves are not included in the legal definition of a "financial product", and the digital currency trading does not fall under the category of financial services [6]. A different point of view was expressed by Stephen Poloz, the Governor of the Central Bank of Canada, who stated in January 2018 that he objected to the term "cryptocurrencies", since they are not currencies, they are not assets, they can rather technically be classified as securities [7].

For a long time, Russia had no clear position of the state regarding the legal nature of cryptocurrency and its legal status. Despite the fact that there is no direct ban on cryptocurrency transactions, in most cases, the officials' statements and the positions of government bodies showed a very cautious approach to the potential permission of settlements in cryptocurrency in the Russian Federation. The Bank of Russia considered it premature to let cryptocurrencies, as well as any financial instruments nominated or associated with cryptocurrencies, circulate and be used at organized trades and in settlement and clearing infrastructure on the territory of the Russian Federation for servicing deals with cryptocurrencies and their derivatives [8]. The Federal Tax Service of Russia stated that transactions related to the acquisition or sale of cryptocurrency using foreign exchange values (foreign currency and external securities) and/or currency of the Russian Federation are currency transactions [9], thus equating cryptocurrency with the foreign currency. To date, they have drafted and discussed a federal law "On Digital Financial Assets", which attributes cryptocurrency to property in electronic form, created with the use of cryptographic means. In accordance with the draft law, cryptocurrency is not recognized as a legitimate means of payment in the territory of the Russian Federation [10].

One of the options for determining the legal nature of cryptocurrency, which has been repeatedly proposed by officials of different countries, including Russia, is the introduction of the concept of a "digital commodity" ("virtual commodity"). With this variant accepted, the civil legislation should be
added with norms about a new object of the civil rights - a digital (virtual) thing. However, the extension of the real rights regime to such an object is difficult since it is intangible. From the point of view of the civil law, only a tangible thing can be alienated, whereas intangible objects of civil rights, including the results of intellectual activity and the means of individualization of legal persons, goods, works, services and enterprises, are not transferable, i.e. only the rights on them are subject to alienation.

A number of states did gradually come to understanding that equating cryptocurrency with the already existing objects of civil circulation is not right. In February 2016, in the UK, the Commonwealth Working Group on Virtual Currencies published a report on the legal status of the digital currency and the regulation of transactions in it, which adopted the virtual currency definition proposed by the Financial Action Task Force (FATF), a group for combating money laundering:

- a digital representation of value that can be digitally traded and functions as a medium of exchange, a unit of account and/or a stored value, but does not have legal tender status in any jurisdiction [11]. We believe that this definition most accurately reveals the essence of cryptocurrency and expresses a specific position regarding its functions as a means of accumulation, while excluding its use as a means of payment.

4. Cryptocurrency as a new object of the legal regulation

The points of view discussed above reflect different properties and functions of cryptocurrency. On the one hand, cryptocurrency can be considered as a commodity, since it has a real value, which is formed from the costs of its production in the form of using the computing power of computers, and accordingly, the cost of electricity, which is significant. On the other hand, the assignment of cryptocurrency to uncertificated securities is also possible, since it, while fixing a certain value, certifies the owner's right to receive a certain amount of money (the right of claim). However, cryptocurrency also has such characteristics that do not allow attributing it definitely to this or that category. So, if we consider cryptocurrency as the right of claim, the question arises: to whom this claim can be made? If the user is one side of the legal relationship, then who is the other party? With electronic money systems, it is a system operator, yet with a decentralized cryptocurrency system, there is no such by definition. If there is no debtor, can one talk about the right of claim at all [12]?

Representation of value in a digital format was used even before cryptocurrency appeared. This is how electronic money functions, which is used as traditional currency storage systems. Yet unlike cryptocurrency, which is not guaranteed by anything and is not secured with any property, electronic money is secured with real, fiat money. The payment power of cryptocurrency is supported solely by its recognition by the participants in the turnover and the economic mechanism of supply and demand, and the release of new monetary units, unlike traditional emissions, is realized through connection to the system of additional computing capacities by such participants [13].

This feature alone is a sufficient reason to understand that it is impossible to find analogues to cryptocurrency among existing objects of the legal regulation. Cryptocurrency is distinctive and unique, and its inherent properties must underlie its legal status and legal regulation of relations with its use.

The states that accepted the emergence of cryptocurrency as a reality and realized the irrationality of its legislative prohibition should also recognize that the new object of legal regulation would affect, to certain extent, all existing social relations. Therefore, we need a balanced approach to determining the legal nature and legal status of cryptocurrency, this will determine the content of the legal norms on control over its turnover, taxation, licensing the activities of the participants in the relations, etc. As V. K. Shaidullina points out, "the legitimization of cryptocurrency features will also improve the efficiency of financial intelligence, as it will be possible to adapt modern anti-laundering standards and recommendations to the peculiarities of virtual currency" [14].

5. Conclusions

1. The legal regulation of the relations connected with the issuance and turnover of cryptocurrencies
should be preceded by understanding of the economic nature and legal nature of cryptocurrency based on its key characteristics and functions, as well as the legislative definition of cryptocurrency (virtual money) and its legal status.

2. Any cryptocurrency is encrypted information in the form of a cryptographically protected record designating a certain value and certifying the possessor’s ability to use this value at his own discretion. From this position, cryptocurrency is similar to non-documentary securities that certify property rights. Since cryptocurrency itself embodies the value that comes from the economic costs of using the computing power of computers in the blockchain network, it can also be considered as a commodity. However, by its functions, cryptocurrency is closest to money.

3. Despite the similarity of cryptocurrency with other objects of civil rights, one must admit that it is a completely new phenomenon, with no analogues in the past. The way of creating a crypto currency and the fact that it is not secured with any assets does not allow classifying it unambiguously as money, including electronic money, which is always secured with real money. The emission of cryptocurrency cannot be controlled and regulated by any external entity, since it is implemented on the basis of a specified software algorithm. Being generated in the process of conducting transactions in a distributed network, cryptocurrency is essentially just encrypted information that records transactions with any assets and denotes a certain value, which is formed from the costs of using the computing power of computers participating in the implementation of the blockchain. Some similarities with different economic instruments is not a ground for legal equating of cryptocurrency to the already existing objects of the legal regulation, since it does not fully fit into the definition of any of them, rather combining only certain features of several objects. Therefore, by its legal nature, it cannot be attributed either to money, or to commodities, or to securities. This is a fundamentally new object falling under the category of property.

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