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Legal Measures for Crimes in the Field of Cryptocurrency Billing

Medidas legales para los delitos en el campo de la facturación de criptomonedas

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RESUMEN

Los casos de criptomonedas continúan aumentando. Se analiza la naturaleza legal de la criptomoneda y se concluye que hoy en día, a pesar de algunos intentos de regular legislativamente la circulación de la criptomoneda, existen numerosas lagunas, la mayoría de las cuales están en el campo del derecho penal. Con base en el estudio de los puntos de vista teóricos disponibles de los nacionales, así como el análisis de los materiales de práctica de investigación judicial de la esfera legal en consideración, los autores consideran que es necesario llevar a cabo un trabajo para formular una serie de áreas que racionalizarán relaciones de derecho penal.

Palabras clave: Activo digital, bitcoin, criptomoneda, moneda virtual.

ABSTRACT

Cryptocurrency crime cases continue to increase. The legal nature of cryptocurrency is analyzed, and it is concluded that nowadays, despite of some attempts to regulate cryptocurrency circulation legislatively, there are numerous gaps, most of which are in the field of criminal law. Based on the study of the available theoretical views of domestic, as well as the analysis of the judicial investigative practice materials of the legal sphere under consideration, the authors consider the necessity to carry out a work to formulate several areas that will streamline the criminal law relations in the field of cryptocurrency circulation.

Keywords: Bitcoin, cryptocurrency, digital asset, virtual currency.

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INTRODUCTION

Disputes take place among the experts in the field of criminal law, regarding the legal nature of cryptocurrency and the need to protect their owners with current legislation measures, including criminal law. In less than a decade, bitcoin and other virtual currencies made a significant impact on society and have become a unique payment system problem for law enforcement agencies, and financial regulators around the world. The rapid introduction and dissemination of technological changes, such as the blockchain, which serves as the crypto basis of bitcoin, continues to outstrip the ability of the law and regulation to keep up (Trautman: 2018, p. 447). Cryptocurrency offers potential advantages over traditional currencies, including lower transaction fees and faster transfer of funds for the services (Jafari et al.: 2018). Digital payment methods are increasingly used by criminals to launder money obtained through cybercrime (Van Wegberg et al.: 2018).

METHODS

The materials for the work were the provisions of the Russian and foreign criminal and information laws, as well as regulatory legal acts in the field of information security provision. The reliability of the results is ensured through the study of a significant and necessary array of legislative norms, as well as the use of modern methods of cognition, including dialectic; general scientific (analysis, synthesis, deduction, induction); private scientific (systemic-structural, formal-logical, and comparative legal).

RESULTS

Bitcoin is a newly developed type of decentralized digital cryptocurrency that does not have a physical form. It relies on P2P networks and cryptography to maintain its integrity. The main advantages of bitcoin are low transaction fees and anonymity. The legal status of cryptocurrencies remains uncertain in Russia. There is no common understanding of this phenomenon nature by experts; various terms are used to define it: "digital currency", "property", "digital asset", "virtual currency", "digital financial asset", "electronic money", etc. There are several proposals for recognizing cryptocurrencies as money, as well as digital money. Scientists have determined that the key differences between cryptocurrencies and electronic money are the lack of participant identification in financial transactions, their anonymity, which poses a threat to the use of cryptocurrencies in money laundering schemes and the movement of criminal financial flows (Dorofeeva et al.: 2019, pp. 884-894).

We support the authors' point of view, who pay attention to the fact that modern cryptocurrency demonstrates the obvious unpreparedness of law enforcement agencies to prevent crime (Ivantsov et al.: 2019, pp. 85-93). It is possible to evaluate the ongoing scientific research positively in this area among specialists. A significant number of authors consider the criminological risks of cryptocurrency trafficking in the Russian Federation, the problems of fake cryptocurrencies, fake wallets, and fishing, using which the perpetrators try to force the victim to provide them with a username and password (Sidorenko: 2017, pp. 147-155).

American scientists are considering the applicability of traditional criminological concepts to explain the causes of criminal activity in the virtual space and identify the factors contributing to crimes related to bitcoins. From law, cryptocurrency as a product or property is recognized by the legislation of several countries. So, the tax laws of Australia and the laws of the United States position cryptocurrency as the property taken into account for income tax calculation. In Israel, a profit tax is established when cryptocurrencies are sold at differentiated rates, and their amount is up to 25% of the total cost of sales. Taking into account the positioning

of cryptocurrency as a product or property in South Korea, it is planned to introduce VAT, gift tax, income tax and capital gain tax (Kethineni et al.: 2018, pp. 141-157).

In Russia, according to Art. 128 of the Civil Code of the Russian Federation, the objects of civil rights began to include digital rights since October 1, 2019. The distinctive features of bitcoin - decentralization, and pseudo-anonymity - are also attractive for criminal structures (Brown: 2016, pp. 327-339). However, criminal law does not allow the analogy of the law to be applied. Thus, it should be noted that the mechanism of criminal law counteraction to crimes committed using cryptocurrency is at the initial stage of development.

The first steps to cryptocurrency regulation are observed in the decisions of the Supreme Court of Russia, which indicated that cryptocurrency is also the subject of crimes establishing liability for laundering money and property acquired by criminal means.

DISCUSSION

We have developed proposals for current legislation improvement aimed at developing the mechanism for combating crimes committed in the field of cryptocurrency circulation. The first direction. It is necessary to determine the legal status of cryptocurrency at the legislative level, including its definition: "digital asset", "virtual currency", "results of intellectual activity". After this, one should determine the rights and obligations of participants - the owners of such "goods", as well as the measures of responsibility for unlawful encroachment on this group of legal relations.

The second direction. It is necessary to indicate what cryptocurrency can be in the criminal law doctrine during the process of committing a crime: the subject and (or) the means of committing crimes. This is important for its theoretical definition in the doctrine of criminal law and law enforcement since this concept depends on:

a) Determination of the subject powers for this type of acts counteraction;

b) Provision the coordination of countermeasure activities in an ever-changing information field and cyberspace and the growth of the facts of cryptocurrency use for criminal purposes.

Cryptocurrency can be the means of committing crimes. In turn, a cryptocurrency that reflects the subject of a criminal assault is a digital asset that has material value in connection with which or about which a crime is committed; acting on which the object of the crime is harmed.

The third direction. The established concept of understanding the subject and means of committing a crime exclusively as the things of the material world has outlived itself. The most common form of transfer is the transfer of the RF currency, which is the only legal means of cash payment in the country, as well as foreign banknotes that are in financial circulation. According to the provisions of the Federal Law No. 161-FL "On the National Payment System" (Federal law No. 161-FL: 2011), cash includes (but is not limited to) electronic cash. In this regard, it is currently not possible to attribute cryptocurrency to a possible subject of a bribe or commercial bribery in the form of money and securities.

We offer to consider cryptocurrency as a subject of corruption crimes in the form of illegal property service provision. An official can accept virtual money and transfer it to any currency in seconds, and can also pay for services without converting it into currency, and also use it as the means of payment in another way. The explanations of the Plenum of the RF Supreme Court regarding a similar subject of crime are quite abstract and are interpreted broadly. Thus, the illegal provision of property-related services by a court means "an official provision with a bribe of any property benefits, including relieving him of property obligations ..." (On judicial practice in cases of bribery and other corruption crimes: Resolution of the Plenum of the RF Supreme Court No. 24: 2013).

One of the problems is the clarification by the court, according to which the property transferred as a bribe or commercial bribe must receive a monetary value, and to take into account the expert's opinion if necessary. In this regard, difficulties arise in property value determination seized or limited in circulation. Several scientists

suggest setting the cost of such an object of bribe based on market prices in the existing illegal services (Rustem et al.: 2018, pp. 996-999). This can cause certain questions of law enforcement when the latter has to turn to the illegal item market to set prices.

Considering the recommendations contained in the European Convention on the Criminal Responsibility for Corruption, the scope of the criminal law should be expanded to cover any form of an undue advantage, including the benefits of intangible nature, regardless of whether it has a market value or not. When qualifying bribery, the subject of which is illegal property values, it is necessary to take into account the following: the very fact of obtaining property benefits is criminal.

The fourth direction. Predicting the future fate of cryptocurrency and its recognition at the legislative level as other property, we formulate some judgments about the need for its protection by the criminal law provisions, including the provisions of the Ch. 21 and 22 of the Criminal Code.

Scientists propose to establish the legal criterion of other people's property about cryptocurrency, which will officially recognize the latter as an object of civil rights along with non-cash funds (Article 128 of the RF Civil Code) (Drozd et al.: 2017, pp. 221-228).

The value of cryptocurrency should not be determined by its physical signs, but by economic ones. However, the conclusion is complicated by the concepts of "property" and "right to another's property", which are the objects of crimes against property. The main question is related to such a feature of the subject of theft as a physical feature that describes the possibility of moving the object with volume and mass in space. This can be solved by the legislative definition of cryptocurrency as the objects of civil rights (Article 128 of the RF Civil Code). In this case, we propose using the approach positively applied by the Supreme Court in the Decree No. 48 "On judicial practise in cases of fraud, misappropriation, and embezzlement" (November 30, 2017), which indicates that non-cash funds may be the subject of fraud, including electronic. However, the latter, as you know, is not of material, but of binding nature from the standpoint of civil law (Drozd et al.: 2017, pp. 221-228).

We believe that the legal means of influencing crimes related to the theft of cryptocurrencies in Russia is not enough. Despite this, some law enforcement agencies took the path of qualifying the offence under the Art. 272 and Art. 159.6 Of the Criminal Code. But the subject of offences under the Art. 159 and Art. 159.6 of the Criminal Code is another's property, and the right to another's property.

In turn, cryptocurrency can be represented by the subject of a crime under the Art. 165 of the Criminal Code. There is a diverse position on the legal assessment of the actions related to the theft of cryptocurrency among law enforcement officers. The fifth direction. The study showed that the criminal use of cryptocurrency threatens the economic and national security of the Russian Federation.

We believe that it is worth thinking about making changes to the following crimes:

1. Recognize the possibility of committing crimes using cryptocurrency as qualified elements of crimes against human life and health: the paragraph "b", ch. 2, art. 105 "The murder of a person or his relatives in connection with the performance of an official activity or the fulfilment of public debt by this person, as well as paid using cryptocurrency"; paragraph "a", ch. 2, article 111 "Deliberate infliction of grievous bodily harm, committed against a person or his relatives in connection with the performance of official activities or the fulfilment of public debt by this person, as well as paid using cryptocurrency";

2. Recognize the subject and means of committing several crimes in the field of economics: paragraph "d", Part 2, Art. 163 "Extortion committed on a large scale, as well as related to the requirement of cryptocurrency transfer", part 2 of the article 175 "The acquisition or sale of property obtained by criminal means, using cryptocurrency", part 2, article 172 "Illegal banking activities using cryptocurrency";

3. Amending Art. 187 of the RF Criminal Code, which establishes liability for illegal circulation of payment means in terms of fixing the ban on the creation, use, and distribution of electronic programs or other electronic information intended for the illegal gaining of access to cryptocurrency

CONCLUSION

The study of the legal nature of cryptocurrency suggests that its understanding as a subject of legal regulation is ambiguous. However, the legislation of several countries positions cryptocurrency as a product or property, which allows taxation of various operations with it. We have developed several directions to improving the current criminal law, aimed at the mechanism improvement to counteract crimes committed in the field of cryptocurrency circulation. An important point is the need to recognize cryptocurrency as other property and provide additions to several articles of the RF Criminal Code, which will protect it with the provisions of the criminal law, and which has financial value and can act as the means of payment taking into account the properties of cryptocurrency.

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