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Legal Aspects of Cryptocurrency: Research in Vietnam

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ABSTRACT

On June 15, 2021, in Decision 942/QĐ-TTg, the Government assigned the State Bank of Vietnam to be the leading unit to research and pilot virtual currency based on blockchain technology (from now on referred to as virtual currency). According to the general trend, this type is expected to bring many advantages to payment activities compared to legal paper money. Still, it will pose many challenges for each country's monetary policy. Through the article, the author group focuses on researching the legal aspects of virtual currency and virtual currency management in Vietnam, thereby providing recommendations and proposals to build and Complete the law on virtual currency management in Vietnam during the upcoming period.

Keywords: *virtual currency, cryptocurrency, virtual currency management, legal improvement.*

I. INTRODUCTION

(A) Overview of virtual currency

Virtual currency is a phenomenon of the digital technology age; it offers users many investment opportunities and technology research and development opportunities while creating certain risks. The world's first virtual currency system, DigiCash, was born in 1994, but virtual money only became known and developed after Bitcoin and Blockchain technology appeared in 2009 (Mark Gates, 2017).

The appearance and development of virtual currencies in the financial and monetary system is an objective reality that cannot be denied or prevented. Currently, many types of virtual currencies have been created and are in circulation. According to Coinmarketcap statistics (as of December 15, 2021), there are currently 15,657 virtual currencies and 444 virtual currency exchanges worldwide. The total market capitalization of virtual currencies worldwide has increased rapidly, from nearly zero in 2013 to more than 2,142 billion USD. Among virtual currencies, Bitcoin has the highest market capitalization (more than 894 billion USD), accounting for about

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40% of the total market capitalization.

As economists define it, money “ *is anything generally accepted in payment for goods or services or the repayment of debts.*” (Prederic et al., 2001) and is a type of asset formed through printing and minting activities of the Central Bank. With this approach, "virtual money" can be understood as money that is not real and cannot be held or possessed in the objective world.

Currently, around the world, the concept of virtual currency has been researched and mentioned by organizers and scientists from many different angles.

According to the European Central Bank (ECB) (2015), virtual currency is a digital currency not issued by central banks or financial institutions. In its early stages of development, virtual currency was conceived as a type of money "*issued and controlled by its founders and accepted among members of the user community.*" Later, due to the expansion of virtual currencies, the ECB recognized that virtual currencies can be used for exchange and payment and are accepted for use in online and natural communities.

According to the International Financial Task Force FATF (2015), *virtual currency is a digital representation of value that can be digitally traded and functions as (i) A medium of exchange, (ii) A unit of account, (iii) A store of value, but not a fiat currency in any region of the world.* Virtual currencies do not have any authority and perform the above functions only by agreement within the community of virtual currency users.

According to the IMF research team (2016), *virtual currencies are digital representations of value issued by private developers with their own units of calculation. They can be held, stored, accessed, and traded electronically and used for a variety of purposes* as long as the transacting parties agree to use them.

Although there are many definitions of virtual currency, the above understandings all give a general idea of virtual currency *as a digital asset designed to act as a medium of exchange. Intermediate. Virtual currencies are encrypted to ensure the security of transactions, control the creation of new currency units, and authenticate the transfer and ownership of assets* (Shuettel, 2017).

Thus, virtual currencies are not considered actual currencies as their founders intended when creating them. However, reality shows that the existence of virtual money can potentially bring certain, even significant, benefits to users. Since its inception, virtual currency is expected to be

used to conduct transactions in cyberspace. Users can use virtual money in transactions to receive a corresponding amount of goods according to their needs. Through this method, transactions become fast and save many transaction costs. Thanks to high anonymity, no one needs to know or has difficulty knowing the subjects participating in the transaction. Pandemic. These outstanding advantages of virtual currency are increasingly attracting the attention and trust of users. Besides, the exchange rate of virtual currencies often tends to increase, proportional to the number of users and its popularity.

(B) Challenges and difficulties in virtual money management

The rapid development and popularity of virtual currencies pose many challenges for countries. One of them is the difficulty in managing virtual money.

First, virtual currency makes it difficult to operate monetary policy: The characteristic of virtual currency is that it is not controlled by anyone, including the Government or its creators. Therefore, the increased use of virtual currencies in the financial and monetary system will lead to an increase in the turnover of money, which can lead to inflation (Franco, 2015). In addition, virtual currencies parallel with fiat currencies issued by the Central Bank can also lead to a decrease in trust in fiat currencies. When payments using virtual currencies increase, the need to use cash and money reserves issued by the Central Bank will decrease, affecting the central bank's balance sheet and monetary policy. bad (Kastelen, 2017).

Second, virtual currencies can easily be abused to fund illegal activities. Virtual currencies allow users to make transactions within the system without having to accurately declare their full name, personal information, or transaction content. The appearance of virtual currency is still a relatively new issue. Therefore, the way the law regulates virtual currency management still has many differences in different legal systems. Different laws around the world. Besides, it is difficult to avoid situations where there are still some inadequacies and limitations in the provisions of the law, leading to many subjects taking advantage of virtual currency to do illegal activities such as money laundering, financial transactions, etc. supporting terrorism, gambling... It can be said that virtual currency crime is a painful problem for countries in terms of social security management. Reality shows that the outstanding advantages of virtual currency, typically high anonymity and invisibility, have created many opportunities for committing illegal acts, not only in the finance and banking sectors. For example, regarding the virtual currency LR (Liberty Reserve), according to an investigation by the US judicial agency,

in just about seven years, LR has conducted 55 million illegal transactions worldwide, related to about 1 million people with several billions of dollars (Tran et al., 2013).

On the other hand, some of the public invests time and effort in the virtual currency business - a field not recognized by law, so the products and achievements they create are not counted in GDP. From a particular perspective, this also affects the level of actual reflection of the data assessing national economic growth. Another consequence is the problem of black credit, which leads to market interest rates being pushed up and the risk of bad debt increasing; this consequence goes against the Central Bank's efforts on credit policy to serve the production and circulation of goods. , lowering interest rates, and improving the bad debt situation. (Pham Anh Tuan, 2018).

II. LEGAL ASPECTS OF VIRTUAL CURRENCY

III. Countries' views on the legality of virtual currencies

Countries worldwide have very different perspectives on the benefits and difficulties of managing virtual money. According to a report by the US Library of Congress (2018) on the legal status of Bitcoin in several countries around the world, countries' views on the legality of virtual currency can be divided into three main groups. as follows:

First, virtual currency should be recognized as a means of payment.

Japan is the leading country in recognizing Bitcoin and some other virtual currencies as a means of electronic payment in addition to national currency and developing specific rules to bind legal responsibilities and regulations. The rights and obligations of citizens when investing in virtual currency or using virtual currency in transactions in this country (Sayuri Umeda, 2016). The law was passed in 2016 and took effect in 2017.

Another country that recognizes virtual currency's legality is the United Kingdom. The UK government claims that virtual currency is not controlled, is considered foreign, and is not subject to VAT when converted into euros or other foreign currencies. However, VAT will still be applied when it arises. Transactions exchanging goods for Bitcoin or any other cryptocurrency where the value determined at that time is the value of the cryptocurrency at the time of the transaction, profits earned from cryptocurrency investment will be calculated special income tax from post-investment profits - gains tax (UK Government, 2019).

El Salvador, a country in Central America, is currently considered the first country in the world

to accept Bitcoin payments in parallel with fiat currency (since June 2021). This decision of the Government of El Salvador has "stirred" the financial and currency markets within the country and affected many other countries worldwide. Immediately after El Salvador, the Cuban Government also announced that it would begin allowing people to use virtual currencies and, at the same time, set regulations for agencies that license and regulate the use of currencies. Virtual.

Thus, virtual currency's existence and level of influence on countries today are increasingly present and clear.

Second, acknowledge that virtual currency is a unique asset but not a means of payment.

Argentina does not recognize virtual currency as the country's legal currency because the Central Bank does not issue virtual currency. At the same time, the Argentine Constitution stipulates that only the Central Bank has the right to issue legal currency. However, this does not mean virtual currencies are not considered money; they are still used in Argentina. The provisions of the Civil Code of this country will govern relationships or transactions related to virtual currency.

In Australia, on April 20, 2014, the Australian Taxation Office (ATO) issued a guidance document on draft taxes related to goods and services (GST), including regulations on the taxation of Bitcoin and other similar virtual currencies (virtual currencies). The ATO view is that Bitcoin is neither money nor foreign currency, but management will be similar to commodity exchange transactions and subject to similar taxes. In other words, individuals will not be subject to GST if they use Bitcoin to purchase goods for personal use and not for business use. When an individual uses Bitcoin to purchase consumer goods and receive income or debt with an estimated cost of less than \$100,000, it will be considered personal use. Individuals using Bitcoin to invest must comply with capital gains tax regulations - levied on the profits earned from investment. Businesses must record the value of Bitcoin transactions and consider it part of their business income. They are subject to GST when receiving Bitcoin to buy and sell goods or services (Australian Taxation Office, 2018).

The Canadian legal system has no documents recognizing virtual currency as a legal currency or means of payment in this country. According to Canada's personal property laws, virtual currency is considered an intangible property that is allowed to be traded. This country does not prohibit citizens from using them. It will soon add virtual currency trading to its legal

regulations, creating anti-money laundering and anti-terrorism mechanisms based on the C Budget Act. -31 was passed in 2014 (Trinh et al., 2020). In the field of investment, in 2017, the securities regulatory organization of Canada and Canadian territories - Canadian Securities Administrators (CSA), posted a notice related to virtual currencies, warning about the risks involved. To virtual currency, ICO virtual currency capital raising activities and related issues. The document recommended that securities laws could be applied to manage some cases related to ICOs or IPO capital-raising activities using virtual currencies. The announcement also encourages investors to include virtual currencies in their investment portfolios. It is transparent in verifying the identity of virtual currency transactions to avoid money laundering or terrorist financing activities (Canadian Securities Administrators, 2019).

Third, do not accept virtual currency and prohibit transactions in virtual currency.

China is a country with regulations prohibiting virtual currencies. On December 3, 2013, the Central Bank of China (PBOC) issued a notice on Bitcoin risk prevention. This announcement affirms that Bitcoin is a particular "virtual commodity" type, not currency, and cannot be circulated or used in the market as currency. Banks and credit institutions in China are prohibited from using Bitcoin; financial institutions are prohibited from using Bitcoin prices for goods or services and buying and selling Bitcoin. On February 9, 2017, many Bitcoin exchanges had to suspend or delay Bitcoin withdrawal transactions; according to press sites, this came from the request of the PBOC. According to Chinese press reports, a senior PBOC official said the bank has a document asking Bitcoin mining companies to "orderly withdraw" from businesses and miners in China. Quoc said they received a notice from the government requesting to limit electricity consumption, and they had to move Bitcoin miners to foreign countries or places with cheaper land and electricity costs, such as Mongolia, to operate. Dynamic.

In addition to China, Bangladesh, Bolivia, Ecuador, Kyrgyzstan, and Nepal are also countries that have issued Bitcoin bans (Nguyen et al., 2021). In general, the view of countries taking drastic action against virtual currencies is that virtual currencies inherently exist on the fringes of the global financial system and are not managed by a state agency like fiat currencies—regulations issued by the Government.

Currently, with the irresistible advantages of virtual currency, the general trend of most countries around the world is to research and build a legal framework for virtual currency

management and consider recognizing virtual currency at Different levels and forms. This will be a lesson for Vietnam in perfecting the legal framework for virtual currency management in the current period of international integration.

(A) Legal aspects of virtual currency and virtual currency management in Vietnam today

On February 27, 2014, the State Bank of Vietnam (SBV) issued a Press Release on Bitcoin and other similar virtual currencies for the first time. The content of the Announcement affirms that Bitcoin and other similar virtual currencies are not legal means of payment in Vietnam. Next, in response to unpredictable developments and adverse effects of virtual currency-related activities in Vietnam, on July 21, 2017, the Prime Minister issued Decision No. 1255/QĐ-TTg on approving the Project to complete the legal framework for managing and handling all types of assets, cryptocurrencies, and virtual currencies. On April 11, 2018, the Prime Minister issued Directive No. 10/CT-TTg on strengthening the management of activities related to Bitcoin and other similar virtual currencies. On April 13, 2018, the Governor of the State Bank issued Directive No. 02/CT-NHNN on measures to strengthen control of transactions and activities related to virtual currency to implement Directive No. 10/CT-TTg. These are the first documents recording the basis for research and promulgation. Regulations related to virtual currencies also demonstrate the necessity and urgency of promulgating a complete legal framework to manage virtual currencies in Vietnam.

In the current period, although no specific legal documents regulate this issue, regulations related to virtual currencies are scattered in different legal documents and represent a common problem. Some legal opinions on virtual currency and virtual currency management are as follows:

First, virtual currency is not an asset

Article 105 of the 2015 Civil Code stipulates: “ *1. Assets are objects, money, valuable papers, and property rights. 2. Assets include real estate and movable property. Real estate and movable property can be existing assets or assets formed in the future. To be considered an asset in the form of objects, money, valuable papers, or property rights to be included in civil exchanges, the virtual currency must satisfy specific requirements and conditions, especially regarding legal edge.*

First, virtual currency is not considered an object in its true nature because to become an object

in civil exchanges, it needs to satisfy the following conditions: be part of the physical world; humans can possess it; bring benefits to the subject; and may exist or will form in the future.

Second, according to the provisions of the State Bank of Vietnam Law in 2010, Bitcoin, in particular, and cryptocurrencies in general, are not considered the official currency of the State of Vietnam. Clause 2, Article 6 of the 2010 Law on the State Bank of Vietnam reinforces this argument by showing that virtual currency is not considered a foreign currency (not the official currency of any country) and is also not an object of foreign currency regulation. Forex.

Third, virtual currency, including Bitcoin, is not listed in the list of valuable papers according to the provisions of Official Dispatch 141/TANDTC-KHXX dated September 21, 2011, of the Supreme People's Court, regulations Identify types of valuable papers, including Government bonds, corporate bonds, promissory notes, stocks, bills of exchange, promissory notes, checks, other negotiable instruments...

Fourthly, virtual currency is not considered a property right because property rights are value rights calculated in money, including property rights for subjects with land use rights, intellectual property rights, and other property rights. Other assets (usufruct rights, surface rights, land rights...).

The above analysis shows that virtual currency is not a type of asset regulated in the 2015 Civil Code.

Second, virtual currency is not a legal means of payment.

According to the provisions of Clause 6, Article 4 of Decree No. 101/2012/ND-CP dated November 22, 2012, of the Government on non-cash payments (amended and supplemented by Decree 80/2016/ND-CP dated July 1, 2016, of the Government), non-cash payment instruments used in payment transactions include Checks, payment orders, payment orders, collections, collection orders, bank cards and other Other means of payment according to regulations of the State Bank. At the same time, Clause 7, Article 4 of this Decree also stipulates that illegal payment means a payment that does not fall into the above cases.

Thus, with the abovementioned regulations, using virtual currency as a means of payment is illegal in Vietnam because virtual currency is not a check, payment order, payment authorization, collection, or collection authorization. , bank card, or any other means of payment specified in the Law on State Bank of Vietnam 2010 (amended and supplemented in 2017).

Furthermore, in the State Bank's Press Release dated February 27, 2014, on Bitcoin and other similar virtual currencies, the State Bank affirmed that Bitcoin and other similar virtual currencies are not legal means of payment in Vietnam—Nam (Source: sbv.gov.vn).

Third, the legal value of transactions related to virtual currency

According to the provisions of Article 117 of the 2015 Civil Code, the conditions for the validity of a civil transaction are: i) The subject has civil legal capacity and civil act capacity appropriate to the civil transaction. Established; ii) Subjects participating in civil transactions are entirely voluntary; iii) The purpose and content of the civil transaction do not violate prohibitions of the law or violate social ethics; iv) The form of a civil transaction is the condition for the validity of the civil transaction in cases where it is prescribed by law.

If we consider the above conditions, it can be seen that transactions involving virtual currencies can be valid. However, the anonymous nature of the subjects establishing transactions related to virtual currencies shows that controlling relationships related to virtual currencies in general and virtual currency transactions is challenging to implement. Presently. This means that virtual currency transactions are not prohibited legally according to the provisions of the 2015 Civil Code. However, competent state agencies are unlikely to control the establishment and implementation of this type of transaction. Furthermore, the failure to recognize virtual currency as a type of asset also leads to difficulties for competent state agencies, especially the Court, in resolving disputes that arise because, in principle, the Court judge may not refuse to resolve a civil case or matter because there is no applicable law.

Fourth, it is not yet possible to collect taxes related to virtual currencies.

Determining that virtual currency is not a type of asset will affect the application of legal regulations in the areas of tax law, specifically: It is not possible to collect value-added tax, personal income tax, corporate income for virtual currency business activities, and income from virtual currency business. The constant fluctuations in the value of virtual currencies, especially Bitcoin, cause many organizations and individuals trading in virtual currencies to gain significant profits. In June 2011, the price of Bitcoin was only about 0.95 USD, and then in November 2021, the price of Bitcoin pushed up to 69,044 USD before falling (Vietnamplus, 2021). In Vietnam, many people who buy Bitcoin also earn large profits; however, because there is no legal framework for virtual currency, taxes cannot be collected on these increased values. Virtual currency is not identified as a type of asset, so income earned from trading virtual

currency is not subject to corporate income tax or personal income tax (Value Added Tax Law 2008; Income Tax Law 2008; Enterprise 2008 and Personal Income Tax Law 2007 and amended and supplemented documents).

IV. SOME RECOMMENDATIONS TO DEVELOP AND IMPROVE LEGAL REGULATIONS ON VIRTUAL CURRENCY AND VIRTUAL CURRENCY MANAGEMENT IN VIETNAM

From the analysis in Sections 2.1 and 2.2, to initially build and complete the legal framework for virtual currency management in Vietnam, the legal issues that the legislature needs to pay special attention to are:

First, the 2015 Civil Code needs to recognize virtual currency as a particular type of asset.

Property is a broad category; in the context of the country's legislative level, it is impossible to generalize the concept of property, but the current concept of closed listing still applies (a specific form of listing without suggestive words). Opened as other assets, other forms...), it is recommended to consider bringing virtual currency into the concept of assets, an independent position like money, instead of trying to attach virtual currency to objects, valuable papers, or property rights in order to The purpose is to assert that virtual currency is a unique asset. At the same time, the new name can also be used for assets in the same way of birth and existence as virtual currency, promising to be a particular type of asset that will soon appear when the technology storm occurs. Gradually dominate all areas of social life. Affirming that virtual currency is an asset will be a solid legal basis and foundation for regulations on protection and establishing rights for owners as an independent asset in civil transactions and investment and business activities.

Recognizing virtual currency as an asset may lead to significant changes in the legal system when reviewing relevant legal documents and proposing developing specialized laws to regulate correction on this issue. However, this entails many benefits as follows: i) Virtual currency can become a commodity in commercial law tax law, become securities... thereby helping competent state agencies Resolve disputes taking place in the above areas; ii) The state can collect taxes related to virtual currency, increasing state budget revenue; iii) Help the State thoroughly apply the provisions of the Penal Code to suppress criminal activities related to virtual currency. Recognizing virtual currency as a type of asset is consistent with the current situation in Vietnam, especially since it will catch up with the general development trend of the

world.

Second, virtual currency should not be recognized as a means of payment for a short time.

The strong growth in the quantity and value of cryptocurrencies poses many challenges for the financial and banking systems and the central bank's monetary policy management. Therefore, although there are countries around the world that recognize virtual currency as money or a means of payment, in the current period, when the conditions of technological infrastructure, finance, and awareness of people are still not high enough, order to ensure monetary security, prevent limitations and risks that occur in activities related to virtual currency, at this time, Vietnam should not recognize virtual currency as a means of payment. Convenient payment.

Third, transactions involving virtual currencies need to be controlled.

One of the characteristics of virtual currency is that it is highly anonymous; controlling the identity of the owners is very difficult. This leads to a situation where activities related to virtual currency in both regular and criminal transactions, such as money laundering, terrorist financing, and other illegal activities, are very difficult to control. Therefore, transactions related to virtual currency need to be controlled. Specifically, virtual currency-related transactions should only be recognized for registered and identified transaction wallets. There should be a ban on activities related to anonymous virtual currencies, and further administrative or criminal measures can be applied to entities conducting unregistered virtual currency transactions.

Besides, once the state recognizes the legality of virtual currency transactions, it is necessary to research and test virtual currency exchanges to ensure maximum consumer rights. Simply put, a virtual currency exchange is a platform where investors can buy and sell virtual currency. This model not only increases investor access and strengthens the safety level of transactions but also increases commodity liquidity and maximizes public benefits through revenues from Taxes, fees, and charges.

Fourth, taxes on virtual currency-related activities should be collected.

Research and consideration in calculating taxes on activities related to virtual currency is entirely valid, especially when the State recognizes virtual currency as a type of asset, becoming a taxable subject according to the law. Regulations of tax law. However, it should be noted that tax collection on virtual currencies also has certain specific characteristics. It cannot be applied

mechanically like other countries but requires careful consideration of many economic factors, Vietnam's politics, and society.

In countries that treat virtual currency as an asset, taxation on virtual currency transactions is governed by tax laws. Depending on each country's tax system, taxes applied to popular virtual currency transactions often include income tax, value-added tax, and property tax. As for income tax, the tax on virtual currency will depend on the difference between one's investment and the return from virtual currency or can also be applied based on the legal status of the owner (virtual currency owner is an individual or a business), the purpose of use (regular transactions or infrequent transactions). Regarding value-added tax, most countries currently regulate which types of virtual currency transactions are not subject to VAT (such as conversion transactions between virtual currency and fiat currency and transfer transactions). Exchange between virtual currency and other digital currencies, etc.). As for property tax, many countries view virtual currency as property, so this tax is applied in cases where that country taxes inheritance, gifts, transfers, etc.

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