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Digital Currencies from the Perspective of Jurisprudence and Law

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Abstract

The emergence of digital currencies has drawn a great deal of attention in research projects. Digital currency is a type of money in virtual space that are born on the Internet ground. Along with the introduction of digital currencies in the economy, we have seen a profound change in payment systems that may change the future of money. Digital currencies are money in nature and considered as a property in jurisprudence. According to studies, emergence, extraction, and framework or digital currencies are free of any jurisprudence impediment. Based on theoretical foundations, digital currencies are property and money and given their ambiguities and shortages and the administrative jurisprudence approach, digital currencies may not be approved by the religion while the ambiguities are not solved. Jurisprudence rules namely no damage, destruction and the rule of negation of domination (the sovereignty of non-Muslims on Muslim is not acceptable) are the key rules that limit the extent to which digital currencies are acceptable. At the beginning, digital currencies appear as highly complicated and ambiguous, while, they actually have a simple nature. The essence of digital currencies is not clear despite different opinions stated about them and advantages and disadvantages. The present study is an attempt to introduce efficient strategies to use digital currencies and solve many of the disadvantages.

Keywords: *Digital Currency; Bitcoin; Money; Property; Asset*

Problem Statement

About two decades have passed since the advent of digital currencies. Digital currencies or cyberspace currencies have created a new financial system and have attracted the attention of many countries around the world so that extensive researches are being done on them. Initially, there was only one digital currency called Bitcoin but gradually other currencies such as Ripple, Atrium, Iota, Dash and many more such examples were born in the world of digital currencies and are still being produced. So far, however, no precise task has been set for these currencies, and any country or government has expressed views on the issue, which are usually either merely a ban on these currencies or have been approved by negligence. There is practically no middle ground.

Perhaps the reason for this is related to the lack of real knowledge and proper legislation in this case. Proper legislation on digital currencies can lead to the proper use of these currencies and reduce their potential risks and losses. To measure these currencies, their true identities must be examined. One effective way to get a more accurate result is to look at digital currency metrics and then measure monetary and currency metrics.

This will help us to have a more accurate definition of digital currency if there is consistency and matching. The stock market and the digital currency do not seem to have much to do with each other, because we cannot buy a commodity like a car or a book with securities but digital currency has made this possible and this fundamental difference makes it less efficient to use the subject of stock exchange to measure the identity of digital currency. In this article, the nature of digital currency is analyzed from an economic and jurisprudential point of view and then, using jurisprudential criteria, the discussion of sanctity or legitimacy of their use is examined; finally, appropriate solutions to this complex issue are outlined.

Digital Currency and The Concept of the Blockchain

Cryptocurrency or digital currency is a method of electronic money transfer in which the process of approving transactions and forming new units does not require any central bank or institution and does not require the approval and signature of a third party. In this method all transactions without the need for banking communications are recorded and encrypted in a "distributed ledger" called Blockchain, and using the money transfer process, payments can be made directly and on a peer-to-peer basis. The most famous digital currency available is called Bitcoin. (Akhavan, 2017, 44) The process of making Bitcoin is called extraction. (Baghban, 2019, 4-6) The number of bitcoins produced is limited; this means that the more Bitcoins produced, the less Bitcoins left for production so that it will eventually reach 21 million Bitcoins and will no longer be produced. (Akhavan, 2017, 20-25)

Examining the Concept of Property

Property is something that is considered as desire of man and man wants to take possession of it. The word property is derived from the source of "desire" because property is something that man tends to. (Tabatabai, 1995, vol. 2/74) Property is an object that is desired by rational people for real or credit interests and in return they pay cash or something else such as food, clothes, books, etc. Of course, it is possible that something with this feature due to its abundance and multiplicity, be tax-exempt like water by the river or seawater, rocks by the mountains and air flowing everywhere. For this reason, some jurists, in order to exclude such matters, in order to express a comprehensive definition of property have added the description of “competition in obtaining it,” in the definition of property. Due to its special characteristics, property has value and credibility from the point of view of the wise. (Gorgi, 1980, vol. 2/311)

To examine the Jurisprudential nature of Bitcoin as one of the cryptocurrencies, it must be said that these currencies have financial value or maybe they are just a financial conception has been created in the minds of their owners. From the jurisprudential point of view, property is usually divided into three types in the external world: object, benefit and right. (Khomeini, 1993, vol. 1/16) Some believe that Bitcoins or virtual currencies are not money and are used in some way to transfer profits and services in society to facilitate exchanges and transfer of value, and for this reason some believe that digital currencies are capital goods. (Mirzakhani, 2018, No. 30)

Regarding the financial value of Bitcoin, the fact that digital currencies do not have an external and tangible shape does not mean that they are not identical and are beneficial. For this view, it is necessary to explain the problem with an example. In a lease, the tenant owns the benefit of the leased goods and can use the benefits. If the tenant rents an apartment unit, he does not only use the benefit but if the right of residence is used he can not demolish the walls of the house and add a room in the rooms of the house, because he only owns the benefit of the house and the right of residence. So it is clear that benefit is something that cannot be seen or touched with hands. But in the case of digital currencies, it is not in the interest of digital currency holders to use it, because they can buy, extract, sell and even destroy it. So the mere fact that digital currencies are not visible or tangible is not a reason to consider them a benefit.

In my opinion, digital currencies are properties and are considered as objects; but the material is the same as that created by computer data and has a different nature from banknotes and coins. Digital currencies are stored in digital wallets and, once extracted, transferred to the individual account. Digital currencies are not profits but objects. Another example is that when a person has a bank account and has activated the bank SMS system for his mobile phone, after each transaction he makes with his bank card, a message is sent to him by the bank based on the transaction and the person realizes that the amount of 300,000 Rials has been deducted from his account and the balance of his account is 3,500,000 Rials. Now that a person has seen this 3,500,000 Rials via SMS, in the real world there is 3,500,000 Rials of objective and real money for him. The same is true of digital currencies, and the numbers that are recorded in digital wallets are in fact the personal property of individuals, so digital currencies are not mere profits.

According to some jurists of twelve Imams school, the word "object" means something that is used against "debt" and "benefit" and is realized in the real world. Some others believe that "object" is a definite and external object and some others have said: "object" is something that, if created in the external world, appears as a three-dimensional object (length, width and height).

If we want to consider the first concept, which, of course, is more relevant to the topic ahead; we come to the conclusion that digital currencies are object and are not considered benefits because digital currencies are not imaginary and part of illusions; rather, their place of emergence is cyberspace. Cyberspace is a real and very important part of human life today. So we can not believe that it is imaginary. The reason for naming it virtual is just not seeing part of the processes involved and virtual versus real does not mean that it is unreal, but cyberspace is a real space. In the discussion of digital currencies, it seems that we refer to an object that is opposed to profit because the object against debt is out of our discussion.

Jurisprudential Definition of Money

In jurisprudence, price or money is what is considered as the price of goods and services. Some jurists of twelve Imams school and Allameh Helli stated that currency exchange contract (Sarf) means the sale of price with price and the price is the same as gold and silver and Mohaghegh Ardabili have said the currency exchange contract is the sale of price by price and the price includes both gold and silver coins and non-coins. (Kouchaki Golfzani, 2018, No. 3)

With the exception of gold and silver coins, which were inherently valuable to the people, the various forms of money were not an end in themselves, but rather their purchasing power was very important. As we move towards the future, the volume of exchanges between people expands more and more. We need a system that can transfer the most money in the shortest time all over the world so digital currencies can shape the future of money and continue this evolutionary process. Digital currencies are properties and they are money.

Economic Definition of Money

In general, economists have proposed three main uses for money:

1- Intermediary for exchanges: Bitcoin is currently accepted by tens of thousands of businesses and can be used as a currency intermediary.

2- Unit of account: Prices are measured in terms of money, to be able to say that the price of a kilogram of gold, rice or meat is a bitcoin is debatable because this issue is directly related to the acceptance of the people and the government towards digital currency. It is necessary to say that years ago someone bought a pizza for himself using Bitcoin.

3- Value Storage: For a long time, people saved a part of their income for their future so that they could provide a guarantee for their livelihood in the future. They knew that the money or goods they save have their value that will be maintained over time. In some parts of the world where Bitcoin is known, many people around the world buy Bitcoin or use it as an investment to maintain the value of their assets but there is one drawback to Bitcoin and that is the large price fluctuations which occur make it more like a risky investment than a place to store value. However, fast liquidity, availability and high security are among benefits of investing in Bitcoin. (Keyvanlo sharestanaki, 2018, No. 5-6)

It is also stated that the three characteristics of money (intermediaries, units of account and units of value storage) in the case of digital currencies are not fully realized. It is quite clear that the first feature is in the cryptocurrency and there are currently a lot of exchanges being done by them. As for the second feature, it must be said that the reason for many cryptocurrency holders is to store value; and by doing so, they save and invest in a way that preserves the value of their assets. But in the case of the third feature, although digital currencies, such as Bitcoins, are priced in dollars but the reason is that these currencies are not yet fully recognized, and if this happens and over time or as the digital currency cycle increases, we will see that, for example, the value of a residential apartment is equal to 20 Bitcoins and this does not change the nature of the cryptocurrency.

The reason why we still say that to understand the value of Bitcoin, each bitcoin is, for example, 920 million Rials or, for example, eight thousand dollars, is that there has not been much use of bitcoin or other digital currencies yet. At the moment, no one says how much ten thousands Rials is worth because due to the large use of thousands of ten thousands Rials to buy, as soon as you hear this question, things that can be bought for a ten thousands Rials come to people's minds and thus realize how much each ten thousands Rilas is worth.

In the case of digital currencies, if their use is widespread, these currencies will no longer be compared with other currencies or currencies such as: pound, dollar, Rial, etc. For example, if someone says how much is a bitcoin worth? One realizes the value of this money. Digital currencies are pure money, and even if they are lost or failed at some point, they will still not affect their being money, and they will be called lost money.

Benefits of Digital Currency

The structure of the digital currency contrasts with inflation.

Freedom to conduct payment operations and expand international access.

Increase the speed of international and cross-border transfers.

Inability of governments to confiscate and block.

Transparency of performance and the possibility of interception.

Digital currencies facilitate bilateral and multilateral monetary agreements and national and regional currencies can be created using their mechanism.

Provide a platform for the globalization of domestic businesses and help increase non-oil exports.

In no way can digital currencies be counterfeited. (Nouri, 2018, No. 15-18)

Disadvantages of Digital Currency

With the advent of any new or better digital currency, the old digital currency is exposed to extinction.

The price of digital currencies is not stable.

Ability to use promissory notes in bitcoin transactions.

There are no written rules and regulations regarding digital currency.

The true identity of the sender and receiver in the digital currency financial system is unknown.

In the event of the death of the digital currency holder, his currencies will not be transferred to the heir.

If the money is transferred incorrectly, there is no way to return it.

Financing terrorist and dissident groups

Insufficient public awareness about digital currencies

High fluctuations in the price of digital currencies

Ignoring the Central Bank and Intermediary Financial Institutions (Nouri, 2018, No. 19-27)

Jurisprudential Assessment of Digital Currencies

There are various methods for jurisprudential evaluation of digital currencies, but the basic view and knowledge of the basis of research, and conducting research, using the main characteristics, is the best way to explain a subject. Now to determine the duties of those in charge, including those in charge of the Islamic government and those who are considered imitators; to jurisprudentially study digital currencies, they must be examined from two perspectives. One from the perspective of individual jurisprudence and the other from the perspective of government jurisprudence.

We examine digital currency based on individual jurisprudence to determine the duties of imitators. In other words, if a person wants to use digital currencies or perform related activities in the Islamic society, what will be the legal ruling on his work? Majority of authorities do not consider the imitation of digital currencies and their use to be free of problems and are not considered lawful.

However, in the view of government jurisprudence, decisions are based on corruption and interests that affect everyone. The ruler of the Islamic government is obliged to state the same general rule for those responsible in various matters. In this view, the jurist who rules the Islamic government investigates that there are both losses and gains in digital currencies. He adapts this profit and loss to the conditions of its country and nation and issues a general ruling on the issue. (Andalib, 2017, No. 2)

Reasons Why Some Researchers Oppose Digital Currency

Some researchers believe that there is no rationale for digital currencies and that virtual currency transactions do not make sense. So they say they are not property. According to this group of researchers, if we consider digital currencies as property, we face the following jurisprudential disadvantages:

1- The price is not property

2- Illegal use of property

3- Lack of rational intent in the transaction

4- Concluding a transaction based on trickery. (Mirzakhani, 2018, No. 80)

In response to the views expressed in the jurisprudence about accepting digital currencies as property, it should be noted that although virtual currencies are not used by all human beings and are used by only a part of society in the world but studies have shown that digital currencies are a very beneficial innovation for the future of the world economy despite the fact that digital currencies currently have undeniable disadvantages. If there are disadvantages in their implementation, or abuses of their benefits, there can be no rational reason for the lack of rational benefit for this valuable phenomenon. Regarding shortcomings and threats in this regard, we as a Muslim community should produce a virtual Islamic currency and use it to facilitate exchanges with other countries.

Regarding the view of the Concluding Bitcoin transactions based on trickery, it should be noted that Bitcoin and other cryptocurrencies have not yet been fully developed and they are still being elicitation. According to the explanations given in the definition of Bitcoins, their price is closer to reality when all 21 million available bitcoins have been extracted and then released.

Bitcoins are not unknown and ambiguous and the Bitcoin protocol from the beginning to the end of the production and distribution cycle is quite clear.

People can now get Bitcoins in several ways; either by extracting or buying and selling Bitcoins from relevant exchanges or through other methods. The reason for the fluctuations in the price of digital currencies is their comparison with the dollar because the fluctuations of the dollar price in Iran are more than other countries but if Bitcoin price fluctuations occur around the world, it can be explicitly acknowledged that use or trade in Bitcoin is based on trickery. Digital currencies are property and their transaction is rational and is not based on trickery.

Match of Digital Currencies to Jurisprudential Rules

The Rule of Respect of Mulims' Property

According to the jurisprudential rule, respect for the property, life and deeds of Muslims is respected and if someone violates them, he has committed haram. In this case, one who occupies it without the permission and consent of the owner of the property; he is obliged to pay retribution or compensate the damage.

According to the rule of respect and sanctity of squandering the property of Muslims, if digital currencies enter the economic cycle of the Muslim community; the amount of money production increases in a part of Islamic society, this is while, on the other side of society, there will not be such money. The unbalanced inflow of this money can lead to the loss of rights of a part of the Muslim community and that is why it will be called haram. (Samadi Largani, 2017, No. 11)

Therefore, the use of digital currencies can be considered forbidden in case of squandering the property of Muslims, and through this declaration of sanctity, the squandering of Muslims' property can be prevented.

The Rule of Destruction

The word "waste" is used in the sense of destruction. According to the rule, whoever loses another's property is the guarantor. The loss can be divided into two parts: the actual loss and the rule-based loss. If a person destroys another person's property, his act is called "real waste", for example, he loses his animal, burns his cloth, destroys his house, and so on but in the "verdict-based loss" the property is not destroyed, but in this type of loss, while the original property remains, the degree of the object's value is deducted. It's like someone hiding someone else's ice and snow somewhere in the summer and returning it to its owner in the winter. In this case, although the same ice and snow were not destroyed, that ice and snow was valuable in the summer, not in the winter, because in the winter, no one needs to buy ice anymore. There is no real waste here, rather waste here is a verdict-based one. (Yazdi, 1984, 111-115)

On the subject of digital currencies, we should say that they can lead to the loss of Muslim property and capital, although their loss is not real and is a verdict-based one. So it is clear that the ruler of Islamic society can prevent the flow of digital currency among Muslims by relying on the rule of loss because the shortcomings of digital currencies can easily lead to the loss of Muslim property. (Samadi Largani, 2017, No. 11)

No Damage Rule

Like other jurisprudential rules, digital currencies can be prohibited by invoking the no-damage rule. Digital currencies can harm Muslims because of shortcomings that have not yet been addressed. The no-damage rule is practically the basis of many of the jurisprudential rules we have proposed so far.

According to the no-damage rule, any damage leads to commitment and the person who caused the damage is the guarantor of compensation for the damage he has caused to the injured party. One of the strongest proofs of the rule of "no-damage" is the manner of the wise. (Yazdi, 1984, 151,154,156)

According to this rule, any activity related to digital currencies is prohibited. However, there is another rule called the rule of dominance, according to which individuals have control over their assets and can take possession of their property. Digital currencies or any other property can be exploited according to the rule of dominance but here the no-damage rule narrows the scope of the rule of dominance because digital currencies have disadvantages that can be clearly seen as harmful and this is how the no-damage rule prevails over dominance rule. (Samadi Largani, 2017, No. 11)

The Rule of Negation of Domination

The famous verse that is cited for the rule of negation of domination is the noble verse 141 of Surah Nisa:

"And God has never given way to the unbelievers over the believers."

Therefore, according to the rule, in the legislation, the religion of Islam does not provide any ruling that causes the infidels to dominate the Muslims and the believers. This verdict is general and includes all cases. (Mesbah, 2018, No. 4)

On February 25, 2017, Mashreq News, an analytical news site, published a news item in which it revealed the background of Bitcoin's affiliation with the Central Intelligence Agency (CIA). (Mashreghnews.ir: Disclosure about Bitcoin) But no one has yet confirmed this news from Britain and the United States and if the truth of this story is revealed; according to the rule of prevention of the potential loss, we are obligated to block digital currencies. According to the rule of prevention of the potential loss, which is one of the rational rules, if we feel threatened in an issue, it is intellectually necessary to avoid the potential risk.

Usury and Digital Currencies

Usury literally means surplus and in jurisprudential terms, whenever a transaction is made on an object and a surplus is stipulated in a transaction or they consider this condition in the loan, it is called usury. There are two types of usury, loan usury and transaction usury. (Motahari, 2002, No. 28-30)

Usury is realized in a cash transaction, that is, dirhams against dirhams or dinars against dinars, or in non-cash goods. Any transaction between two objects of the same, such as wheat and wheat, must be done in equal amounts, for example, 1 kg of rice must be traded exactly with 1 kg of rice; even if it weighs a lot of 1 gram, the deal becomes usurious. Such usury is called transactional usury. (Ex)

Loan usury takes place in such a way that one person lends another person something and the lender bets the borrower that he must pay more than he took when he repaid what he borrowed. For example, if he has lent one million Rials, he stipulates that the borrower will return the amount of one million Rials and two hundred thousand Rials. (Ghezel Baiglou, 2019, No. 13)

Considering the above and the definitions of virtual currencies that have been fully proposed, it can be said with certainty that usury has no place in the nature of virtual currencies and if usury occurs in it, it is due to the activities of irrational people who use virtual currencies illegally as these people behave similarly to common currencies.

Conclusion

According to the studies, the emergence and extraction of digital currencies has not faced any obstacle from the religious point of view and the anonymity of the inventor of this technology does not lead to the illegitimacy of these currencies.

All the issues raised in the form of jurisprudential rules are issues that can not be ignored and the Islamic government, due to its special position, can not base its decisions on weak and probabilistic principles. It is obvious that until the issue of digital currencies stabilizes and the facts hidden in it are revealed, the Islamic government, in order to protect the Islamic society from possible dangers, will not accept and approve such a phenomenon.

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