



## **Analysis of countries' criminal policies towards cryptocurrencies and the need to formulate laws**

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### **Abstract**

Following social developments and the evolution of money, humans thought of inventing money that no central institution could monitor, and the advancement of computer science gave rise to the idea of forming digital money in their minds; to the extent that cryptocurrencies entered the world of economics. The entry and spread of cryptocurrencies in societies has affected not only economics, but also law, to the extent that some thinkers believe that cryptocurrencies have become a tool in the hands of criminals and are used in most cases for criminal activities. The complexity and dynamism of this emerging phenomenon have confused governments in dealing with it, and we are currently witnessing the adoption of various criminal policies towards this emerging technology. This article, based on library sources in the form of description and analysis, after examining and analyzing the approach of countries, especially the United States, due to its leadership in dealing with cryptocurrencies, and our beloved country of Iran, will seek to answer the question of whether dealing with this phenomenon requires the formulation of a law. It is clear that because cryptocurrencies are being traded internationally; countries should seek to adopt a common criminal policy while using each other's experiences. The achievement of this research is to familiarize people, especially government officials and legal experts, with this emerging social phenomenon in order to adopt the correct approach to prevent the criminal functions of cryptocurrencies and adopt a proportionate and reasonable criminal policy.

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### **Introduction**

The phenomenon of cryptocurrencies, as an emerging social phenomenon, has entered the economic arena for several years and is used in transactions and exchanges. It can be safely said that this emerging phenomenon can have an impact

on the law as much as it has affected the economy. Despite the passage of several years since the creation and spread of cryptocurrencies and the relatively high volume of financial transactions with this technology, different countries have not yet reached a consensus on its nature and have adopted different criminal policies in dealing with it; to the extent that even in some countries, such as Iran, we have witnessed different approaches by policymakers and government officials to the phenomenon of cryptocurrencies at different times. These differences are largely due to the lack of consensus on the nature of this phenomenon. In this article, we have attempted to briefly describe the history of the formation of cryptocurrencies, and then to explain how different governments have dealt with this technology. Considering that the United States has regulated this issue more than other countries, we will also describe the regulatory process and examine Iran's policy from the beginning to the present. Finally, we will discuss the fact that dealing with cryptocurrencies requires a differentiated criminal policy and that drafting a suitable law in this regard is inevitable.

### **History of the Formation of Digital Currencies and Cryptocurrencies**

With the passage of time and the emergence of problems that people had in using paper money, mankind came to the conclusion that it could create credit. Money was the origin of the emergence of credit concepts; because it started from things that had intrinsic value and were needed by mankind; then it reached metals that had intrinsic value; after a while, remittances with backing became available and then gold and silver backing was also introduced and mankind understood the concept of credit. Therefore, mankind thought of inventing pure credit money that would not have the problems of previous money, and thus the idea of digital money was formed in the minds. On the other hand, with the invention of the computer and its entry into the present era and the impossibility of current life without its presence, humans thought of creating a monetary unit according to the requirements of the virtual environment so that it could be used and transferred in the computer environment.

Money has become more intangible, virtual and digital over the ages and has undergone a thousand-year evolutionary process that has now reached the concept of Bitcoin. With the development of information technology, electronic money entered the economy, which is essentially the same as paper banknotes, but has been transformed from a physical and tangible form into a series of numbers and figures inside a computer and network. In other words, electronic or digital money is a new mechanism for paying conventional bank notes. In recent years, a money has emerged that is inherently very different from bank notes and

has brought with it a new unit of measurement with a completely different and unique mechanism called cryptocurrency (Abadi Lemar, 1400: 12).

Although the theoretical roots of cryptocurrencies can be traced back to the Austrian monetary school and the metallurgical school, the history of the implementation of virtual money and currency that is not under the supervision and domination of governments can be traced back to the research of David Chum and Stefan Brands in 1983. People like Adam Beck developed the network confirmation and a mechanism for controlling the hash through algorithms until WeDay proposed the encrypted money protocol. WeDay, an IT expert, first proposed the concept of virtual money, meaning encrypted money, as an idea on his personal website in 1998. His intention with this proposal was to facilitate financial affairs and create money without the presence of intermediaries. The first digital currency, called Friends, was launched in 1999 by the Friends.com website in order to market and attract more customers. This digital currency was delisted in 2001 due to what the FBI called a scam. Then, years later, in February 2008, a Japanese programmer under the pseudonym Satoshi Nakamoto introduced the Bitcoin virtual currency to experts and people around the world in an article. In explanation, it should be said that an email with the name Satoshi Nakamoto was sent to various people and while publishing a nine-page document about electronic money, users were invited to cooperate in developing its software and build a community around it. In this regard, it was promised that this digital money does not require legal financial institutions to exchange money and archive information, and the two parties can transact directly without being involved in authentication processes. At the end of this document, the name Satoshi Nakamoto and an untraceable email were included. So Nakamoto created a currency and called it Bitcoin, which is a combination of the words bit, meaning a unit of computer information, and coin, meaning a coin. Of course, his invented money has no resemblance to coins or banknotes, there is no trace of paper, copper, silver or gold in the creation of this money, and only 31 thousand lines of programming and an internet announcement are mentioned about it. He wanted to invent a currency that would not be affected by unpredictable financial policies and thefts of the banking system (Qadirinejadian et al., 1402: 63-64).

The emergence of the 2008 financial crisis had important consequences on the attitude of economists and policymakers towards financial markets and the atmosphere that governs them. The inherent instability of institutions such as banks in the face of bank runs and the simultaneous appeal of depositors to the bank to receive their deposits, led to increased attention to the issue of "too big to fail" and its effect on the emergence of crises in the monetary and financial system. Simultaneously with the 2008 financial crisis in the United States, the world was

faced with the idea of decentralizing money, and the first decentralized money based on pure computer credit was introduced to the world in 2009. This idea, the basic basis of which was also proposed by Hayek in the late seventies, was able to create various forms of private money in the economy (Mahdavi et al., 1402: 37).

Although Bitcoin is known as the oldest cryptocurrency with peer-to-peer identification, today, numerous cryptocurrencies are created and used on the blockchain platform, and the most important issue in relation to them is simply public acceptance, which can be decisive for the spread of their use. In this article, and in order to better understand the subject, it seems necessary to give a brief explanation about blockchain technology.

In general, there are two main approaches to software system architecture: the centralized approach and the distributed approach. In centralized software systems, the components and elements of the system are connected to a central element that plays a coordinating and controlling role. In contrast, a distributed system is a network of interconnected components with no central element responsible for coordinating or controlling the other components. A peer-to-peer system is inherently a distributed system and consists of computers that make their computing resources, such as processing power, storage capacity, data, or network bandwidth, available directly to all network members without any coordinating center. In fact, a peer-to-peer service is a decentralized platform through which members directly transact with each other without intermediaries or third parties. A distributed ledger, while using distributed peer-to-peer systems, is used as a method for recording and publishing data on the Internet. A distributed ledger system is a digital database that is shared across a network of computers. Since the distributed ledger is based on a peer-to-peer system, it is also different from other databases in that the technology is not maintained or controlled by a central administrator. No single, independent node can add information to the ledger. A node can propose new data, but the data is only added to the ledger when other nodes agree that the entry should be recorded. Hashgraphs, holochains, and blockchains are some of the different types of distributed ledgers, and ultimately, blockchain is a distributed, decentralized network of computers that is used as an advanced technology and tool for recording and storing information in a secure and verifiable manner. In other words, blockchain is a distributed ledger or distributed database in which a decentralized network of computers records transactions. This technology is not maintained and controlled by a central administrator, and no node has the power to add information to the system independently and singly. A node can propose new data entry, but the data is added to the ledger only when other nodes reach a

consensus that the entry should be recorded (Tajlangorudi and Dehdar, 1403: 89-90).

It can be said that digital currencies, as a new concept of money and property, are an important and inevitable reality of today's world by creating a new type of ownership called digital ownership, data ownership or ownership of digital or intangible assets, and are the initiator of a transformation in the world economy. Digital ownership refers to the legal rights of an individual or organization over a digital asset (Mir Majidi, 1403: 160), so one must be prepared to face them and take steps towards regulation in this area. It is clear that adopting the best criminal policy in this regard depends on studying and analyzing the behavior of leading countries in dealing with and confronting this phenomenon.

### **Governments' Response to Cryptocurrencies with a Focus on US Policy**

In general, there are two perspectives on the functioning of cryptocurrencies: The first perspective, which has a positive view of the issue, considers virtual currencies as a new method of payment that will become very widespread in the future due to their unique features. The second perspective, however, takes a pessimistic view and considers virtual currencies as a powerful new tool at the disposal of criminals, terrorist financiers, and individuals or countries under sanctions to circumvent sanctions, relocate financial resources, and evade taxes (Shamloo and Khalili Paji, 2010: 69).

After the spread of various private cryptocurrencies and subsequently other types of encrypted digital assets (cryptoassets), central banks sought to use the tools at their disposal to provide a proportionate response to these new technology financial instruments by controlling the spread of cryptocurrencies and central currencies, and in this regard, the Central Bank of the Islamic Republic of Iran finally approved the regulations for the issuance of digital rials on 21/10/1400 by the Money and Credit Council (Shadkar et al., 1401). Also in Iran, the Center for Parliamentary Research (2014) in its report, after briefly describing the history of Bitcoin, described its mechanism without the need for a central bank, and finally described the legislative experience of three countries, the United States, Germany, and China, which have considered Bitcoin as a commodity in their laws. Seyed Hosseini and Doaei (2014) have discussed the opportunities and challenges of cryptocurrencies in their article after explaining the history and technical basics of Bitcoin. They consider the most important challenge of these currencies to be the issue of legislation and have divided countries into four categories based on their approach to Bitcoin: The first category includes countries that do not have legal prohibitions and are mainly in the process of formulating laws and regulations, such as the American continent except Mexico. The second category

includes countries that are skeptical of Bitcoin and have banned people from it and are seeking to enact laws to prevent it, such as Mexico. The third category includes countries that have considered the use of Bitcoin illegal, such as Vietnam and Iceland, and the fourth category includes countries that have not yet taken a clear position on this issue, such as Iran (Navabpour et al., 2018: 215).

Due to the acceptance of Bitcoin among cryptocurrencies and its greater prevalence compared to other cryptocurrencies, the basis of the study and analysis is this specific type of cryptocurrency; however, it should be kept in mind that all cryptocurrencies have a similar and sometimes identical mechanism to Bitcoin. Therefore, the results of the study and the way to deal with Bitcoin can be generalized to other cryptocurrencies.

Countries have adopted different approaches to policymaking around Bitcoin in various areas of banking, business and consumption. These approaches can be classified into three general categories: 1- The approach of banning the use of Bitcoin 2- The approach of observation and evaluation 3- The approach of specific policymaking and regulation (Shamloo and Khalilipaji, 2020: 251). No country has yet recognized digital currencies as a monetary unit like national currencies or the currencies of other countries. Many governments have unofficially accepted these currencies, and countries such as the United States, Germany, China, Japan, South Korea, India, Singapore, Brazil, Bulgaria, Denmark, and Australia have issued licenses for the use of these currencies in their monetary and financial markets. The Chinese government has declared digital currencies to be a special commodity and, although it has not prohibited individuals from exchanging them, it has explicitly prohibited legal entities and governments from carrying out these exchanges. In the United States, digital currencies are considered goods and assets of individuals. The Ministry of Finance of the Federal Republic of Germany has also considered Bitcoin to be a personal currency and a personal means of payment. In addition to the three countries mentioned, Singapore has also enacted value-added tax laws appropriate to the use of digital currencies. This is while Denmark has accepted Bitcoin-based transactions, but does not consider it to be real property and does not charge taxes. Australia has not placed any restrictions on the use of these cryptocurrencies and considers this type of economic activity to be completely legal. On the other hand, countries have also openly opposed this issue; including Jordan and Lebanon, which have declared the use of digital currencies illegal and consider this type of economic activity a crime (Rahimi and Sharifian, 2020: 16-17). Regardless of the nature that governments have given to cryptocurrencies; as stated, cryptocurrency is a digital asset that is designed and provided based on distributed blockchain technology. Due to its unique features

such as special encryption, distribution and being beyond the control of geographical restrictions and some other features, blockchain technology has given cryptocurrencies a different nature from other digital currencies, to the extent that some even consider it not currency and money, but a financial asset. These characteristics make it very difficult for governments to control cryptocurrencies, and sometimes even impossible (Ghomami and Alipour, 1401: 152-153).

Currently, the most active approach to legal and regulatory oversight of cryptocurrency operations is the enforcement of money transfer laws and regulations, as these laws are implemented in almost every jurisdiction in the world and their primary purpose is to prevent money laundering, i.e., the conversion of funds from illicit activities into funds from legitimate business activities. Currently, legal requirements designed to prevent money laundering are the most common means used by governments to monitor and influence virtual currency systems and transactions. These laws tend to focus on record-keeping, monitoring, and reporting requirements for all parties involved in the transfer of funds. A rapidly growing number of jurisdictions are currently imposing money transfer regulations on key players or participants in the virtual currency ecosystem, such as providers of currency conversion and exchange services. Another very active legal framework that currently exists and is commonly applied to influence digital currency activities is the set of rules that govern the provision of financial services. In many jurisdictions, banking, commodity trading, foreign exchange conversion and other types of financial services are regulated by government authorities. Many jurisdictions around the world are currently interpreting those rules to apply to specific aspects of the virtual currency market, such as conversion between digital currencies and traditional national currencies such as the dollar and the euro. A rapidly growing number of jurisdictions are now routinely describing significant virtual currency operations as regulated financial services and therefore applying these operations to the existing financial legal framework (Matsura et al., 2018: 163). The United States is a leader in compliance and its approach can be described as regulatory with an active role in oversight. The laws governing cryptocurrency in the United States can be considered different in many states, so much so that it can be said that the states act as real sandboxes, because first policies are set on a new phenomenon in different states and the federal government begins to enact central legislation after feedback from the results. For example, the state of Vermont passed a regulation that data stored in the blockchain can be presented in court without the need for third-party validation. Also, in the state of Arizona, cryptocurrencies are taxed, while in the state of Wyoming they are exempt from

paying taxes. In the state of Georgia, individuals can also pay their taxes in cryptocurrency, and in states such as California and New Mexico, they have warned against investing in Bitcoin. Therefore, it can be added that cryptocurrencies have seen a lot of attention from the federal government and local governments in the United States. Many government agencies, including the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, the Treasury Department, the Internal Revenue Service, the Office of the Comptroller of the Currency, and the Financial Crimes Enforcement Network, have sought to legislate in this area. Of course, there is no specific definition of cryptocurrencies in the United States, and they are referred to as virtual currencies, virtual assets, digital assets, digital currency, or crypto, so the regulatory framework for cryptocurrencies has been inconsistent, despite some overlap between different agencies. For example, the Commodity Futures Trading Commission considers Bitcoin to be a commodity, while the Treasury Department considers cryptocurrencies to be a form of currency. Another government agency, the Securities and Exchange Commission, considers many crypto assets, including Bitcoin, to be securities. However, other US government agencies have developed their own definitions of cryptocurrencies and do not recognize them as securities. For example, in March 2014, the US Internal Revenue Service issued guidance on the taxation of Bitcoin and other cryptocurrencies, stating that it considers cryptocurrencies to be financial assets and that the buying, selling, trading, and mining of them by individuals and legal entities are taxable events. The US Financial Crimes Enforcement Network, in its guidance published in 2013, considered the virtual currency Bitcoin to be a standard example for purposes of the Bank Secrecy Act, defining cryptocurrencies as: "a medium of exchange that functions like money in some settings but does not have all the characteristics of real money" and "has a value equivalent to real money or acts as a substitute for real money". The latest definition by a US government agency comes from the Office of Foreign Assets Control, a branch of the US Treasury Department (one of the fifteen departments of the US federal government responsible for managing the government's financial interests). The Office of Foreign Assets Control defined cryptocurrencies as a type of backed currency, allowing the US Treasury Department to sanction or prosecute individuals and countries that use cryptocurrencies (Ghadirinejadian et al., 1402: 72-74).

In general, given the history of the world's monetary system, the power and hegemony of the dollar in global exchanges, and its vital importance to the dominant country of the United States, this country's interaction with the phenomenon of cryptocurrencies is instructive and can be modeled correctly.

Therefore, the behavior and operational approach of this country to the phenomenon of cryptocurrencies will be examined. In general, the United States has had two patterns of interaction with the phenomenon of cryptocurrencies: 1- Promoting dollar-backed cryptocurrencies: Most of the cryptocurrencies produced to date have been designed on the blockchain network. The meaning of blockchain is a chain of blocks. Users can have multiple user accounts and no usage details are recorded in them. Blockchain technology works almost like a digital signature. Blockchain is an open source technology and no one owns it. This technology does not have a central executor to confirm transactions and automatically adjusts the network. This decentralized nature of cryptocurrencies, along with the strong desire of the United States to expand the hegemony of the dollar in order to influence other economies around the world, has led US policymakers to consider the platform of cryptocurrencies and blockchain as a threat to the dollar; therefore, by supporting cryptocurrencies such as Tether, which, according to the claim of its creators, was issued with the backing of the dollar, the hegemony of the dollar has been preserved. 2- Monitoring and surveillance of cryptocurrency transfers: One of the measures that the United States has taken in the face of the cryptocurrency phenomenon is to support companies that monitor cryptocurrency transfers. These companies monitor the IP and digital wallet addresses of suspicious individuals on the blockchain network and, after reporting to US regulatory agencies, take measures such as blocking their accounts and dealing with their activities in the real world (Qadirinejadian et al., 1402: 81-83).

Currently, the World Trade Organization, the International Monetary Fund, the World Intellectual Property Organization, and the United Nations Children's Fund are among the global organizations that recognize cryptocurrencies and accept them for humanitarian aid (Zare, 1401: 97-98).

### **The Iranian government's approach to the phenomenon of cryptocurrencies from the beginning to the present**

The nature of cryptocurrencies in the Iranian legal system is still unclear. Only in a document published by the Central Bank of the Islamic Republic of Iran on February 28, 2018 under the title of Requirements and Regulations for Cryptocurrencies, cryptocurrency is introduced as a type of financial asset on a digital blockchain platform that, under certain circumstances, assumes a monetary function. On the other hand, in paragraph one of the resolution of August 3, 2019 on the subject of regulations on the extraction and use of cryptocurrencies, the Council of Ministers considered itself competent to establish a ban on the exchange of cryptocurrencies, which indicates that the government has considered

cryptocurrencies to be a form of money. This is while in various studies, major researchers have accepted the currency and monetary nature of cryptocurrencies as a default without any expert or legal review.

On the other hand, the 13th government, in its first year of activity, issued a document on the transformation of the people's government on March 8, 1401, in which it discussed cryptocurrencies in detail under the topic of investment and the financing system, identifying it as a financial asset containing value that can be exchanged in capital markets or as a means of payment, and stated its goal as confronting and actively using it to solve the country's problems. However, the Central Bank and the Industry, Mining and Trade Organization continue to confront activists in this field as activists in the foreign exchange and exchange fields, and for example, the Center for the Development of Electronic Commerce assigns the Central Bank to review the licenses of cryptocurrency exchange platforms for issuing these cases (Ghomami and Alipour, 1401: 153-154). With the explanation that in the regulatory literature, the following discussion of government intervention in public affairs in situations where it does not have the intention or ability to supervise is raised and applied as an intermediate solution in contrast to entrepreneurship. In fact, given that the government alone does not have the ability to manage all areas, it deals with regulation by entrusting each sector to independent and specialized government institutions and also creates a balance between private actors or networks on the one hand and the interests and rights of citizens on the other (Ghomami and Alipour, 1401: 156).

Regardless of the differences and ambiguities that exist regarding the nature of cryptocurrencies, the country's legislative criminal policy has not yet adopted a unified and coherent approach to the issue. In such a way that it cannot be said with certainty about the criminalization or non-criminalization of the purchase and sale of digital currencies. In particular, the vague and ambiguous definitions and words in the text of laws and regulations have paved the way for broad and arbitrary interpretations and have been constantly criticized by activists in this field due to the creation of a kind of confusion and uncertainty. The judicial criminal policy, with a broad interpretation of the Law on Punishment of Disruptors in the Country's Economic System (approved in 1980) and especially with a kind of judicial criminalization under the title of "disruption through ..." has a strict, highly punitive and centralized approach to the activities of digital currency exchanges and considers the large-scale purchase and sale of digital currencies with considerable discretion as an example of disruption in the country's economic system. However, a close examination of the relevant set of laws shows that even in the event of criminal activity, the judge can, with a much

more expansive approach and taking into account the requirements of the digital economy, consider the act punishable in accordance with other articles. In addition to the shortcomings that can be attributed to the legislative and judicial levels of criminal policy governing the field of cryptocurrencies, the fundamental problem is the lack of alignment between legislative and judicial criminal policy (Mir Majidi, 1403: 162-163).

The trade and ownership of digital currencies were banned in 2017 and 2018 due to concerns about money laundering and terrorist financing. All financial institutions such as banks, exchanges under the supervision of the Central Bank and other major financial centers were prohibited from working with digital currencies or promoting them in any way. Thus, the Central Bank officially banned working with digital currencies in the thirtieth meeting of the Supreme Council for Combating Money Laundering (09/09/1396) and in May 2018, through an official announcement, it notified banks of the ban on the use of these currencies. However, in February of the same year, a draft law entitled "Requirements and Regulations in the Field of Cryptocurrencies" was prepared by the Deputy for New Technologies of the Central Bank, and all cryptocurrencies were separately examined, explained, and regulated, although it did not reach the final approval stage. In July 2019, although the Minister of Interior had assigned issues related to cryptocurrencies to the Ministry of Intelligence and the Headquarters for Combating Smuggling of Goods and Currency, the Governor of the Central Bank made new statements, and the Deputy for New Technologies of the Central Bank also stated about Bitcoin: "Its purchase and sale within the country is prohibited, according to the resolution of the Supreme Council for Combating Money Laundering." While in the thirtieth session of the Supreme Council for Combating Money Laundering on 09/10/2017, the use of Bitcoin and other virtual currencies was prohibited only in the country's monetary and financial centers. Therefore, the purchase and sale of digital currencies is not prohibited, and the subject of the resolution was only their use as a means of payment. In addition, the emphasis of the resolution was only for the country's monetary and financial centers; therefore, other centers or citizens could use it. However, on 04/19/2019, the Central Bank again, citing the country's Monetary and Banking Law (approved in 1972 and its subsequent amendments), while re-emphasizing the monetary and banking sector activists to comply with and implement the resolution of 10/09/2017, stipulated:

- 1- Issuance of cryptocurrencies backed by rials, gold and precious metals and various currencies is the monopoly of the Central Bank.

2- The formation and activity of individuals to create and operate a monetary and payment network based on blockchain technology is considered unauthorized by this bank. The Central Bank reserves the right to prosecute individuals who create and operate a network or advertise for it by ignoring the regulations.

3- Any losses and damages resulting from activities based on monetary and payment networks based on blockchain technology and related businesses are borne by their publishers, acceptors or interlocutors. In contrast to this ban, the head of the Parliament's Economic Commission announced the recognition of digital currencies at the same time. However, no license has yet been issued for their use at the exchange level. Again, in a dual decision, the Cabinet of Ministers first approved the regulations on the mining process (extraction of encrypted processing products of cryptocurrencies) and the use of cryptocurrencies in its meeting on 05/13/2019, and accordingly stipulated: "The use of cryptocurrencies is carried out solely by accepting the responsibility of risk by the participants and is not subject to the support and guarantee of the government and the banking system, and its use in domestic transactions is not permitted." According to this resolution, the use, purchase, and sale of cryptocurrencies is permitted; however, the government and the banking system do not guarantee the intrinsic value of cryptocurrencies. That is, they do not protect the private property of the holders of these currencies. The National Cyberspace Center announced in March 2019 that no decision has been made to provide licenses to portals and websites active in the field of trading and purchasing digital currencies in Iran. However, the increase in digital currency users, the start of digital currency exchanges in Iran, and the problems caused by sanctions forced the government to lift restrictions in this regard, and the digital currency law in Iran underwent some changes. In this situation, the Central Bank, by virtue of a directive in Ordibehesht 1400, set the terms and conditions governing digital currency buying and selling platforms. However, again, in paragraph one of Resolution No. 58144 dated 05/13/1400, the Cabinet of Ministers declared all cryptocurrency exchanges within the country illegal. Ultimately, the feedback received regarding the aforementioned directive and the conditions and requirements governing the country's economic and currency system led to the government's approval of the exploitation and mining of digital currencies in Shahrivar 1401 and their use for import was permitted. Thus, the ownership and mining of digital currencies in Iran became legal by obtaining a license from the Ministry of Finance, and the government inevitably demanded the development of blockchain in a governmental manner and with a centralized approach (Mir Majidi, 1403: 163-164).

In any case, despite the opposition of some people regarding cryptocurrency operations and the lack of transparency of the legislator's position in this regard, in April 2019, Bitcoin officially entered the Tehran Stock Exchange with the presence of a Swedish company in Iran and accepting Bitcoin deposits and converting them into Rials for investment (Karmipour and Rajabzadeh, 1402: 237), although some have claimed that this happened in 2017 and the Swedish company paid Bitcoin to invest in the Iranian Stock Exchange and received Rials in return (Gilke et al., 1403: 362).

By examining the developments in the Iranian government's dealings with cryptocurrencies, it can be said that Iran's first approach to cryptocurrencies was to ban their use. In January 2017, at the thirtieth meeting of the Supreme Council for Combating Money Laundering, the use of Bitcoin and other cryptocurrencies was banned in all monetary and financial centers of the country because cryptocurrencies have the potential to become a means of money laundering, financing terrorism, and transferring criminal funds. The first official response of the Central Bank to the trading of digital currencies was announced in February 2017 by the then Deputy Director of New Technologies of the bank, Mr. Nasser Hakimi, who stated that the Central Bank does not recommend buying or not buying cryptocurrencies, and emphasized that nothing can be said more clearly about cryptocurrencies than this. After repeating the positions of the Central Bank on both sides, Mohammad Javad Azari Jahromi, Minister of Communications and Information Technology, announced the implementation of the country's first digital currency on an experimental basis and said: "A passive approach to technology and the expectation of institutions from each other will lead to backwardness and ultimately to the inaction of the government." The above issues were reflected in the document on the scenario for the future of the global economy in the face of cryptocurrencies by the Ministry of Economy and Finance, and in this document, in 2017, it was decided that the Central Bank would announce its official opinion on the use of digital currencies by the spring of next year. After a year has passed since the resolution of the Supreme Council for Combating Money Laundering, the Central Bank of the Islamic Republic of Iran, on 08/11/2018, took a more realistic approach and published a draft document entitled "Requirements and Rules for Activities in the Field of Cryptocurrencies in the Country." The Central Bank of Iran also announced in July 2019: "The issuance of cryptocurrencies backed by rials, gold, precious metals, and various currencies is the monopoly of this bank. The activities of individuals to create and manage a monetary network and payments based on blockchain technology are prohibited by this bank, and this bank will have the right to prosecute individuals who create and manage a network or advertise these digital currencies by ignoring

regulations." The next document related to the law on buying and selling cryptocurrencies is Resolution No. 58144/T55637 on the conditions for using cryptocurrencies, approved by the Cabinet in August 2019. The most important points that can be taken from this resolution about cryptocurrencies in Iran are that the government and the country's banking system do not support transactions in which cryptocurrencies are exchanged. The use of cryptocurrencies is only possible with the acceptance of risk responsibility by the participants, and their use in domestic transactions is not permitted. Cryptocurrency mining is permitted with the permission of the Ministry of Industry, Mines and Trade, and cryptocurrency mining centers are considered industrial production units and are subject to tax regulations.

The resolution approved by the Cabinet in 2019 focuses only on the limitations and conditions of mining, as well as the taxation of cryptocurrency mining units. In paragraph five of the aforementioned resolution, the Ministries of Communications and Information and the governorates and governorates are required to identify cryptocurrency mining centers in cooperation with the Ministry of Energy and, if necessary, eliminate them through legal mechanisms. This can be considered a security measure to prevent the crime of money laundering through cryptocurrency in the Islamic Republic. Shortly thereafter, pursuant to Resolution No. 39228/T57373 of the Cabinet in 2019, all owners of cryptocurrency mining devices were required to declare and register their identity and the devices they own in the Ministry of Security system.

In paragraph one of the initial Cabinet resolution, individuals are prohibited from transferring cryptocurrencies within the country. A complaint regarding this paragraph of the resolution was filed with the Administrative Court of Justice, since the subject of the complaint was that this paragraph of the resolution was against Islamic law; the Administrative Court of Justice, in accordance with Article 87 of its Rules of Procedure, sent the matter to the Guardian Council for comment. After examining the matter, the Guardian Council, in its opinion, did not consider this paragraph to be against Islamic law, and the complaint was also rejected by the Administrative Court of Justice (Parvin and Al-Hayarifard, 1403: 1568-1569). The plaintiffs stated in their detailed petition regarding this clause: "The provision set forth in clause one of the resolution on the liability of cryptocurrency traders for risk, the lack of support and guarantee from the government and the Central Bank for it, and the lack of permission to use cryptocurrencies in domestic transactions is not consistent with any of the axes of establishing an independent regulation in Article 138 of the Constitution (including performing administrative duties, ensuring law enforcement, and regulating administrative organizations),

because including goals such as performing administrative duties and regulating administrative organizations in the provision set forth in this clause is counterproductive to the subject matter, and no law has been enacted in this regard to enact the above clause in order to implement it. Therefore, considering that the General Board of the Administrative Justice Court has considered in its numerous opinions the establishment of a mandatory rule that creates or negates rights and obligations and the creation of special conditions for the enjoyment of legal rights for individuals to be reserved for a legislative or pre-legislative decree, clause one of the contested resolution is therefore outside the scope of the authority of the Council of Ministers. In addition, the prohibition of the use of Cryptocurrencies in domestic transactions also contradict Article 46 of the Constitution, because cryptocurrencies and virtual currencies are subject to the Sharia rules of respect and sanctity of wasting the property of Muslims and do not contradict any of the Sharia standards (Zare and Aminnejad, 1403: 288).

Therefore, it can be seen that Iran, in the gray state of its economy, was forced to limit transactions in these currencies by the Supreme Council for Combating Money Laundering in order to prevent the outflow of foreign currency until January 2017. As stated, in July 2019, the Central Bank of the Islamic Republic of Iran announced that the issuance of cryptocurrencies backed by rials, gold, precious metals, and various currencies is the monopoly of this bank, and that the activities of individuals to create and manage a monetary network and payments based on blockchain technology are prohibited by this bank, and this bank has the right to prosecute individuals who create and manage a network or advertise these digital currencies by ignoring the regulations. Also, any financial losses resulting from the exchange of digital currencies based on monetary networks and online payments will be borne by the publishers, acceptors, and participants in these exchanges. By looking at this statement as a whole, it can be seen that Iran does not have effective support by enacting specific regulations on this issue and has included the pursuit of damages incurred by the victims of these crimes in the context of its general and predetermined laws. Although on August 4, 2019, the Cabinet of Ministers introduced the process of mining digital currencies in Iran as a new industry, its purchase and sale is still prohibited due to the decline in the monetary base of the Iranian economy and to prevent the outflow of foreign currency from the country. The exchange of these currencies is still included in the crimes of money laundering and internet fraud and causes severe damage to the basic economy of Iran. From a theoretical point of view, the approach of the Islamic Republic of Iran to globally recognized cryptocurrencies has a special status; so much so that since 2017, the Supreme Council for Combating Money Laundering has included these exchanges under the laws related to fraud and internet money

laundering, and the restriction of such economic activities has continued until 2019. While since July 2019, the Central Bank of Iran has considered digital cryptocurrency exchanges backed by fiat currencies and precious metals as its exclusive property, since August 2019, the Council of Ministers has considered Bitcoin mining by miners to be a nascent industry and does not consider combating mining as legal, and has stipulated that regulatory organizations will issue official licenses to miners within the next six months (Rahimi and Sharifian, 2020: 13-14). Finally, in its latest document, the Cryptocurrency Regulation, Iran has foreseen a supportive policy for cryptocurrencies with backing and transaction transparency, and a policy of active control and confrontation with global cryptocurrencies and their risks.

However, currently, mining any type of digital currency in Iran is practically facing legal prosecution, and activists in this field are waiting for the approval of a protective law and the announcement of new tariffs by the Ministry of Energy regarding the amount of industrial electricity consumed, because in the current situation, violators are sentenced to pay heavy fines and confiscate property and mining devices. It is expected that this practice will continue until the final announcement of the status of the laws in similar cases. According to unofficial reports from some sites, at least three months after the approval of the issue by the Cabinet of Ministers, eighty thousand Bitcoin mining devices were confiscated and fifteen people were sentenced to prison. The approach of the Iranian legal system, even in the face of Bitcoin mining, is such that if the police detain an individual with mining equipment in his or her own car; in addition to confiscating the equipment, that individual will also be fined for carrying illegally imported equipment. The criticism of this behavior is the lack of uniform legal treatment of illegally imported equipment. Because today, the gray market in Tehran and throughout the country, especially border cities, is a place where many goods are illegally imported; Of course, this behavior of the government is a sign of sensitivity to these global currencies that contain elements that stimulate the occurrence of money laundering crimes and internet fraud (Rahimi and Sharifian, 2010: 15-16). The latest document compiled by the Supreme Council for Cyberspace also only refers to the mining of cryptocurrencies within the framework of the country's laws and regulations and under the supervision of regulators (the Ministry of Integrity), and the government's position on mining cryptocurrencies is still not clear.

Analysis of the approach of government officials to cryptocurrencies and the need to adopt a differentiated criminal policy and formulate a law

As is clearly evident from examining the way government officials in the country deal with them, no consensus has been reached so far regarding the nature of cryptocurrencies and their equal treatment; Iran, like many countries, is hesitant about the necessity or non-necessity of legislation, especially the adoption of criminal laws in this regard; it seems that Iran has adopted a passive attitude and is waiting to see whether this newly emerging phenomenon will be able to end the dominance of the dollar over the world economy and the supervision of central banks of countries. Apparently, the ultimate goal of Iran and the countries that have adopted this policy is to benefit from the experiences of other countries. Regardless of the fact that some believe that cryptocurrencies will not have an effect on increasing the commission of crimes and consequently increasing the crime rate, it must be accepted that the nature of cryptocurrencies has increased the attractiveness of committing crimes in the online space and directly and indirectly causes an increase in the commission of crimes. It is clear that the lack of a clear and explicit law in this regard, on the one hand, ties the hands of law enforcement to determine and impose punishment on those who disrupt the economic and social order and becomes an excuse for criminals to escape punishment. On the other hand, this emerging, unbridled phenomenon may progress to the point where it ultimately affects legislators under the influence of populism, resulting in hasty, inadequate and ineffective legislation. Therefore, understanding the legal dimensions of cryptocurrencies, especially its criminal dimension, adopting a proportionate criminal policy and ultimately passing an appropriate law, seems obvious. It is clear that given the rapid spread, acceptance, and use of cryptocurrencies by members of society, legislators no longer have much time to formulate appropriate legislation in this regard, and the introduction to formulating appropriate legislation is the adoption of a proportionate and differentiated criminal policy.

In today's world, criminal policy as a science has gained sufficient credibility and there is no ambiguity about its concept and scope. However, the issue that should be taken into account is that, in line with the developments in the world of crime, the policies to combat them and, consequently, the adopted criminal policy patterns governing different societies have also changed, to the point that today we are talking about the plurality and diversity of measures and macro strategies of criminal policy in societies. In fact, the increasing prevalence and increasing rate of crime and the necessity of more technical means of combating them have led to the development of a discourse that speaks of the diversity of criminal policy models and claims the necessity of adopting various and numerous criminal policies in society in a way that can respond appropriately to different crimes in different time and place conditions and provide an opportunity to control the

crime rate in society (Mandani, 2015: 21-22). With the explanation that gradually new crimes and punishments entered criminal law in parallel with social, political, industrial, technological and scientific developments, especially in the second half of the twentieth century, which made it necessary to review the principles of criminal law at the beginning of the nineteenth century. Within the framework of this goal, the then Italian Minister of Justice, Mr. Mario Zagari, in cooperation with the United Nations Institute for Social Defense Research, held a conference entitled "Study of Issues and Prospects for Differentiated Strategies in the Field of Criminal Policy" in Rome in February 1974, corresponding to 1353. The main conclusion of the sessions of this international conference was that the era of uniform treatment of crime was over and that with the diversification of crimes, criminals and victims in terms of typology, it is necessary to examine the diversification of strategies and responses of criminal law and criminal policy in general. Thus, differentiation, stratification or classification of criminal policy as a new strategy actually entered criminal policy studies in the last quarter of the twentieth century (Lazerges, 2017:54.)

It was demonstrated that the adoption of differential criminal policies in dealing with different crimes is inevitable; cryptocurrencies are no exception to this rule, and in the vast cyberspace and in the vast expanse of the Internet and among computer crimes, the phenomenon of cryptocurrencies attracts significant attention. A phenomenon that has a strong impact on both the economy and the science of law at the international level, and this necessitates the formulation of a law.

From a legal and criminological perspective, virtual currencies should be considered at three levels: First, the virtual currencies themselves, which should be regulated with unique features such as decentralization, cross-border, anonymity of users, encryption and irreversibility of transactions, etc., and the methods Technical and forensic analysis will be helpful in this regard; second, the use of virtual currencies is carried out through new intermediaries such as exchanges. In this case, laws should be set in a way that minimizes harm and risks and does not hinder the development and spread of technology; third, users of virtual currencies should be informed about the risks of virtual currencies (Abbaspour Ikder et al., 1403: 52).

Some believe that, given the characteristics of cryptocurrencies, criminal law intervention in this area is not justified and that criminal law intervention should be chosen as a last resort, because resorting to criminal law is necessary when no other option that is not invasive and invasive is available. Obviously, it is not possible to justify the position and manner of criminal intervention in society and

regulate social relations solely by relying on criminal law and without understanding and applying the teachings of other fields. On the other hand, criminal laws should not be so restrictive that they become cumbersome and hinder the growth and development of new technologies such as cryptocurrencies. However, criminalizing cryptocurrencies is neither justified nor necessary (Mansourabadi et al., 2014: 17-18), but others believe that the lack of recognition of cryptocurrencies in the legal system and the legal vacuum have caused virtual currencies to gain their greatest popularity as new financial instruments in the criminal field, such as corruption. This legal vacuum is mainly due to the lack of understanding of the economic importance of virtual currencies and the criminal capacities of such currencies by some domestic and international experts, which provides the ground for criminals to commit various criminal activities such as money laundering, drug trafficking, and other organized crimes using virtual currencies (Saffari et al., 2020: 236). From the perspective of these scholars, in terms of justification for cryptocurrencies, necessities such as protecting economic security, containing danger, the precautionary nature of criminal justice, and the globalization of criminality make criminal intervention inevitable (Khalilipaji and Shamloo, 1400); however, the criminal risks of cryptocurrencies have led to the discussion of criminal intervention or non-intervention in this field being considered; which at first glance violates the minimal principle of criminal law, but examining the course of its formation provides justifications to prove its necessity. So much so that it can even be considered consistent with Jonathan Shenshak's filtering or filtering criminology model. According to the aforementioned model, criminalization will be justified when it successfully passes through three filters. In fact, passing through the following three filters provides moral and legal authorization for criminalization: 1- The filter of principles 2- The filter of assumptions 3- The filter of functions. The first filter in the refinement criminology model is the principles filter, which is the initial stage of the process of justifying criminology and, in fact, expresses the principles and values of society, based on which even individual freedoms can be restricted. The second filter is the assumptions filter. At this stage, the legislator first considers non-criminal solutions such as civil, administrative and disciplinary measures to deal with behavior, and uses other means of social control, and if these measures are insufficient, he proceeds to criminalize. The next stage is the functions filter. This rationality-based filter is a tool that reminds the government of the cost-benefit analysis in this risky matter (Khalili Paji and Shamloo, 1400: 31-32). In short, it can be said without a doubt that the legislative approach in this field cannot be outside of two general approaches: first, prohibiting any use and second, drawing an appropriate and dynamic legal framework. The first approach is considered a

failure because, on the one hand, virtual currency technology has positive functions, and prohibiting its use means depriving people of its benefits, and on the other hand, this approach will not have an effect on reducing criminal risks because the unique attractions and features of virtual currencies will be effective in attracting virtual criminals regardless of the prohibitions created (Shamloo and Khalilipaji, 2010: 271). Although the second approach will also have many challenges, and in this regard, the important question is whether it is generally possible to regulate virtual currencies as a policy, but it is inevitable. Regulation is a set of measures that society takes to restore the situation to normal when it sees its values and norms violated. In line with the importance of the issue of regulation, it is important to note that in the global governance indicators that the World Bank publishes every year and in which it calculates the rank of different countries, one of the six components of the governance indicator is the quality of regulation in the economy (Asadi et al., 2019: 477).

Here it seems necessary to make a brief reference to the difference between regulation and legislation. Regulation is carried out by the government and can have different characteristics based on different policies, but legislation is carried out by the Islamic Consultative Assembly. Regulation is more flexible than legislation because the laws enacted change with difficulty and over a long period of time, but government policies can change the regulatory process for short periods of time. Sometimes, the enactment of a law is the creation of a new and basic procedure, but regulation is the regulation of behaviors that may have existed before; only government policies change the regulatory process at a specific time (Babapour and Javadi, 2010: 15). Therefore, first, the legal status and nature of virtual currencies must be determined. Second, the framework of regulation, regulation, and criminalization of its various dimensions must be outlined. Third, the technical/cyber strategies necessary to strengthen preventive systems should be studied and finally formulated. Fourth, this technology should be continuously monitored and reviewed so that, in accordance with its dynamic nature, necessary measures can be taken and implemented at a reasonable speed. Fifth, virtual currencies that are outside the scope of official supervision should be weakened and new currencies should enter the market to replace them (Saffari et al., 2020: 242). Despite all the difficulties in enacting and implementing the law, it must be admitted that the spread of cryptocurrencies has reached a point where legislation has become inevitable. In Iran, too, given the widespread use of virtual assets, especially cryptocurrencies, in recent years and the need to legalize its various aspects, efforts have been initiated to enact relevant regulations; Although this has not yet reached a specific conclusion, in order to accurately include the law on combating money laundering, legal identification of virtual assets and

related service providers that have a function such as an exchange remains the most important need of the country in this area. The criminal risks of cryptocurrencies can be properly controlled when requirements such as the recommendations of the Financial Action Task Force are considered by the legislator. The importance of this becomes twofold when we consider virtual asset service providers to be necessary for the establishment, operation, and supervision of these persons. Accordingly, the first step is to define virtual asset service providers, and the next step is to create guidelines for these persons (Khalilipaji and Niazipour, 1400: 193).

## **Conclusion**

Cryptocurrencies are a new phenomenon in the world of economics and law that governments have not yet reached a consensus on the nature and method of dealing with. Some countries have declared their use permissible and legal, while others have prohibited it. Amidst this confusion, the Iranian government has also adopted different and sometimes conflicting policies in recent years. However, what is clear in the midst of this confusion is that due to the spread of cryptocurrencies at the international level, their prohibition and rejection by one or more countries is not possible. Dealing with cryptocurrencies requires a differentiated criminal policy, and the best solution is for governments to prepare the ground for creating their own supervisory capacity by legally recognizing cryptocurrencies and creating appropriate legal structures. Due to the attractiveness of cryptocurrencies for criminals, criminal intervention also seems inevitable. Obviously, lack of intervention in the field of regulation and regulation-making and the absence or weakness of the law will result in nothing but the inability to take appropriate measures against the dangers of this emerging phenomenon and deal with criminals.

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