The Legal Problems of Blockchain Technology in Cross-border E-Commerce

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Abstract: With the continuous popularization of e-commerce platforms at China and abroad in the Internet era, cross-border e-commerce trade has become an irreversible trend. However, the transaction process involves domestic and foreign logistics, cross-border payment and cross-border flow of data, which inevitably leads to many legal problems that will not arise compared to simple domestic exchanges. Currently, blockchain technology can solve payment, dispute resolution and other problems in cross-border e-commerce by using the characteristics of multi-party coordination, immutability, traceability, verifiability, decentralization, de-trust and anonymity. However, after the application of blockchain technology transforms traditional contracts into smart contract in cross-border e-commerce, the identification of its nature is controversial. And automatic enforcement makes it difficult to determine the criteria for proprietary right alternation. While solving the problem of high cost of cross-border payment, blockchain technology also has problems such as lack of supervision, information leakage and risks caused by imperfect basic technology. In addition, the application of blockchain technology has created new problems in the application of laws and the determination of courts of jurisdiction for cross-border e-commerce dispute resolution. The existence of the above problems will affect the healthy development of cross-border e-commerce in the future. Based on the existing literature, the author discusses how to solve the legal problems arising from the application of blockchain technology in cross-border e-commerce through case analysis.

Keywords: Smart Contract; Jurisdiction Connection Point; Cross-border Payment; Cross-border Logistics; Application of Law

1. Introduction

China is the world's largest exporter and the second largest importer. The strong momentum of import and export trade also ensures the sustainable development of cross-border e-commerce. The State Council's report on the development of the digital economy shows that the total import and export volume of cross-border e-commerce in the first half of 2023 reached 1.1 trillion yuan, a year-on-year increase of 16%, and the total export volume reached 821 billion yuan, a year-on-year increase of 19.9%. Cross-border e-commerce has greatly promoted the current economic globalization. Existing literature shows that the characteristics of blockchain technology coincide with the solution to the unique problems and pain points of cross-border e-commerce. At the same time, the application of blockchain technology itself also brings some potential problems. At present, the articles on the application of blockchain in cross-border e-commerce mainly show that the nature of smart contracts cannot be determined, which makes it questionable whether traditional contract law can regulate smart contracts. The automatic execution technology of smart contracts makes the change of property rights lose its appearance, and there are doubts in the determination of the applicable law and the jurisdiction of the court due to the dataization of smart contracts. Based on the existing literature, the author explores possible means to solve the legal problems caused by the application of blockchain technology in cross-border e-commerce through theoretical analysis and inductive summary.

2. Basic Concepts of Blockchain and Cross-border E-commerce

2.1 The Concept of Cross-border E-commerce

Cross-border e-commerce refers to a

transaction method in which buyers and sellers in different customs territories complete online transactions, online payments, and cross-border transportation and delivery of goods through electronic platforms. Compared with domestic e-commerce, the main differences lie in the subject access qualifications of the trade platform, the cross-border flow of currency during the payment process, and the cross-border transportation of goods.

2.2 The Concept of Blockchain Technology

Blockchain technology was first proposed by Satoshi Nakamoto as a basic supporting technology in his article on Bitcoin, an electronic currency. The narrow concept of blockchain refers to recording data in blocks in chronological order and connecting them through chains. Cryptography uses public key encryption and verification, private key decryption and signature to ensure the security of the transaction process. Only those who have access rights can access the information. Blockchain technology has the characteristics of multi-party collaboration, non-tamperability, traceability, verifiability, decentralization, trustlessness, distributed accounting, and anonymity.

2.3 Smart Contract Concept

Cryptographer Nick Szabo first proposed the concept of smart contracts: "A smart contract is a set of digitally defined promises, including protocols by which the parties can execute those promises [1] ". It is mainly a computer program generated based on blockchain that can automatically execute contract terms.

Blockchain technology has been increasingly used in the field of cross-border e-commerce, which has also given rise to a series of legal issues, which this article will discuss one by one.

3. Current Application Status of Blockchain Technology in Cross-border E-commerce

3.1 Application of Blockchain Technology in Smart Contracts

Cross-border e-commerce transportation steps include domestic transportation, outbound customs clearance, international transportation, inbound customs clearance, and domestic transportation. Any problem in any of these steps will increase the probability of product

returns, and product returns must go through the above-mentioned entry, exit and international transportation steps, and the return time is also lengthy. In addition, due to the imperfect logistics mechanism for cross-border enterprises to return and exchange goods, special goods are often not supported for return and exchange. Ordinary goods are also difficult to return and exchange, and may also involve tariff issues. Even if there are quality problems with the goods themselves, the seller will push the responsibility to the logistics company. Similarly, if the damage is caused during transportation, the logistics company may also shirk the responsibility to the seller.

Blockchain smart contract technology is of great help in the lengthy process of returns and exchanges. Based on the real-time monitoring system information of the cross-border e-commerce contract performance content of smart contracts, consumers can check the logistics status of the goods at any time. When they find that the goods do not meet the order requirements, they can directly ask the logistics company to make corrections or stop the operation. Instead of receiving the goods first and then returning them after finding that they do not meet the requirements, reverse logistics can be reduced [2]. In addition, the buyer can still require the cross-border e-commerce platform to assist in continuing to fulfill the seller's obligations and re-deliver the goods. In response to the problem of counterfeit goods in cross-border e-commerce, relying on the tamper-proof characteristics of the technical information of smart contracts, every process of the goods being handled is recorded in an unalterable manner. By using the traceability function to find the source of the goods, counterfeit goods can be avoided from the source. Or specifically establish a traceability electronic tag for the goods and scan the tag to query the real information of the goods. For example, consumers can scan the electronic tag of the goods to query the origin, processing, assembly, sales, and import and export information of the goods, and thus infer whether the goods are counterfeit. Smart contracts have the transparent and open characteristics of blockchain technology, so the information on the performance of cross-border e-commerce contracts will be fully recorded on each branch of the blockchain [3].

This is meaningful for improving the efficiency and security of cross-border e-commerce transactions. Therefore, it has been applied in the supervision of logistics and goods quality of cross-border e-commerce.

Blockchain technology has been applied to solve the quality problems of cross-border e-commerce goods. Tmall Global, Suning International, and NetEase Kaola have applied blockchain technology to traceability operations, recording the entire process of cross-border goods so that consumers can check the quality and transportation route information of goods at any time, and achieve anti-counterfeiting through traceability.

3.2 Application of Blockchain Technology in Cross-border E-commerce Payment

Mercari, a Japanese online shopping website, is a C2C second-hand trading website in Japan, mainly targeting the second-hand trading market in Japan. Mercari does not support overseas direct mail. Chinese consumers who purchase goods on Mercari usually need to receive the goods through a collection agent with a delivery address in Japan and then mail them back to China, or find a forwarding company to collect the goods on their behalf or find a purchasing agent website. The transaction price of goods purchased by Chinese consumers on Mercari depends on the exchange rate between the RMB and the Japanese yen. Affected by exchange rate fluctuations, when the Japanese yen exchange rate rises, Chinese consumers' demand for expensive goods will decrease, so the shopping volume will decrease. People are more inclined to buy low-priced goods, exchange rate fluctuations have less impact on the sales of low-priced goods. For lighter goods, such as small cards in an album, you can ask the collection agent to mail them back to China by air after receiving a certain number of them to save shipping costs. For C2C transactions, exchange rate fluctuations are a factor that has a greater impact on cross-border payments.

Among the main entities in cross-border e-commerce transactions, B2B mainly adopts remittance and letter of credit payments. The payment process involves the transfer of multiple banks. Banks at all levels also need to clear and reconcile with banks at other levels, resulting in a long cross-border payment cycle and low efficiency. Cross-border payments also require fees such as handling fees and telecommunications fees, which have high payment costs. In addition, the transaction information of the parties involved in the cross-border payment process will be recorded in each bank that handles the payment, which is prone to information leakage and reduced security. In addition, when the buyer has already paid but cannot be sure whether the seller has shipped the goods, the buyer's transaction risk is higher because there is no possibility of handing over the money and the goods at the same time.

If smart contracts are used as payment prerequisites, then as long as the smart contract detects that the contract conditions are met, it will trigger automatic payment, or the bank will automatically settle the payment under the bank's promised payment conditions. This helps alleviate the problem of long payment cycles caused by massive payment and settlement needs. Even if smart contracts are not used as payment methods, blockchain peer-to-peer technology can also find a way for buyers and sellers to get rid of redundant intermediary banks and the buyer to pay the seller directly, which has decentralized characteristics. The specific method is: using virtual currency as a medium, the currency of the remitter's location is converted into virtual currency at the fund remittance end, and then the virtual currency is converted into the currency of the recipient's location after being transferred to the fund receiving end. Therefore, the payer's bank can directly contact the recipient's bank for real-time transactions [4]. In addition, blockchain technology removes intermediaries and also eliminates fees such as payment transfer bank fees and telecommunications fees, which is conducive to reducing transaction costs. Finally, reducing the number of transaction participants ensures that the times of data information is exposed is minimized.

4. Analysis of Blockchain Legal Issues in Cross-border E-commerce

4.1 Legal Nature of Smart Contracts

The application of blockchain technology in cross-border e-commerce first involves legal issues related to smart contracts. Smart contracts in blockchain belong to the category of digital contracts and are the digital

extension of traditional paper contracts. While smart contracts improve the efficiency of communication between parties, they also weaken the transmission of the parties' intentions. Regarding the nature of smart contracts, some scholars believe that smart contracts are not contracts in the true sense, because the parties may assume legal obligations without knowing or intending to do so [5]. Some scholars believe that smart contracts are pre-contracts [6] and the purpose of entering into a smart contract is to reach a declaration of intention in order to enter into a formal agreement in the future. However, the purpose of a pre-contract is to ensure that a certain contract will be entered into in the future. The content that a smart contract automatically performs is the content of the contract to be entered into in the future. Therefore, it should not be considered a pre-contract.

There are still many differences between smart contracts and traditional paper contracts. First, autonomy of will is the foundation and core of contract law. Compared with traditional contracts, smart contracts in cross-border e-commerce are usually pre-drafted format clauses, which have obvious restrictions on the autonomy of the parties. At the same time, the transaction subjects of cross-border e-commerce are usually not face-to-face transactions, and it is easy to ignore the capacity for civil conduct of the parties, which is a necessary condition for the establishment of traditional contracts. Smart contract technology has gotten rid of the traditional contract establishment steps of offer and acceptance. Once the contract is established, it can be automatically performed. This is contrary to the existing model that contracts need to be established or effective through offer and acceptance, and then the content is realized through the performance of the parties. The performance of smart contracts is irreversible. Once the conditions for performance are met, the contract will be automatically executed according to the established procedures and contents, and there is no possibility of suspension and modification. Although smart contracts have the above differences compared with traditional contracts, smart contracts also perform the expressions of will agreed by the parties and have the essential attributes of

traditional contracts. Therefore, they should belong to a new type of contract.

Compared with the simple operation of code, traditional cross-border e-commerce contracts still have some advantages. First, traditional contracts are different from the pre-prepared format clauses of smart contracts. They can maximize the autonomy of the parties and allow cross-border trade entities to flexibly set rights and obligations. Just as the complex legal relationships of cross-border e-commerce are difficult to convert into technical codes, smart contract codes are usually written according to simple rules of "if...then...". When faced with complex international trade contracts, how to accurately convert legal terms into code language. Code writers are often not legal scholars, and the legal attributes of the contract will generate new ambiguities during the code conversion process [7]. Secondly, the content of traditional cross-border e-commerce contract terms is easy for neutral third parties to understand, while it is difficult for third parties to understand the content of smart contracts through code, including the fact that both parties who use smart contracts to conclude contracts may not fully understand their content. The operation of smart contract codes has high technical requirements for the participants in cross-border e-commerce transactions and is likely to damage the interests of the weaker party [8]. Finally, because traditional contracts have clear terms, it is easy to apply contract interpretation rules to alleviate unclear or omitted agreements, so as to promote the smooth establishment and performance of contracts. In the event of disputes, they can also be adjudicated based on the circumstances of contract conclusion and performance. However, smart contract codes are unable to take account of international civil and commercial practices, trading habits between the parties, and other factors that may facilitate contract interpretation.

There are different views on whether existing contract law norms can regulate smart contract technology. From an international perspective, firstly, the mainstream view is that the current United Nations Convention on Contracts for the International Sale of Goods (CISG) does not exclude the application of smart contracts in cross-border e-commerce, just as many countries have already used smart contract

technology in cross-border logistics and product traceability, but have not yet formed legally binding international practices or international rules. Secondly, in the field of international cargo transportation law, paper bills of lading or electronic documents are still widely used for maritime cargo transportation, and they still rely on central supervision, which shows that the decentralized effect of smart contracts has not yet been recognized in practice. From a domestic perspective, firstly, there are few legal norms for the application of blockchain smart contracts and the legislative level is low. At present, the main legal documents for the application of blockchain technology in cross-border e-commerce are the "Blockchain Information Service Management Regulations", which were reviewed and approved by the National Internet Information Office's meeting and are departmental regulations in nature. The remaining promulgated rules are mainly normative legal documents issued by the State Council to guide the application of blockchain technology. Secondly, the legislative content is mostly framework provisions. They are mainly regulatory norms for the application of blockchain smart contract technology in the field of cross-border e-commerce, rather than constitutive norms, that is, they do not involve specific application scenarios [9].

4.2 The Standard Issue of Property Rights Change in Smart Contracts

Smart contracts are gradually being applied to the cross-border e-commerce sector, which has also raised issues regarding the standard identification of property rights changes. When blockchain smart contracts lead to the automatic performance of contracts, there are differences between the property rights change methods and change times stipulated in the existing "Civil Code of the People's Republic of China" of China. For example, Article 209 of the "Civil Code of the People's Republic of China" stipulates that the rules for the change of movable property rights are based on the time of delivery, while those for immovable property are based on registration. This is mainly because delivery and registration have a reliable appearance and have a presumed publicity credibility. The bill of lading in cross-border e-commerce has the attributes of a property right certificate. The delivery of the bill of lading indicates the delivery of movable property rights, and the consignee can request the goods from the carrier with the bill of lading. Traditional paper bills of lading can be actually possessed or actually delivered, and both have a real and direct appearance of rights. However, in the scenario of blockchain smart contracts, the automatic performance of the contract is actually the operation of the code, and the legal effect lacks a certain publicity credibility. The delivery of the bill of lading is replaced by digital information due to digitization, and the bill of lading is published in the public domain of the blockchain, so the exclusive possession and delivery of the bill of lading will lack clear external characteristics. At this time, the time point of the change of property rights cannot be known because the time point of the transfer of the bill of lading cannot be determined.

4.3 The Impact of Smart Contract Technology on Traditional Dispute Resolution Methods

Another legal issue that blockchain technology brings to the cross-border e-commerce field is the dispute resolution. Since the application of blockchain technology has introduced a new digital transaction in the cross-border e-commerce field, its decentralized characteristics make the cross-border transaction subject and process lack contact with third parties, so general jurisdiction and exclusive relationship are completely inapplicable. In the field of cross-border transportation, electronic bills of lading are delivered through blockchain technology, and the property rights of goods in cross-border e-commerce change accordingly. In the performance of traditional cross-border e-commerce contracts, the place of performance of the contract and the place of signing of the contract, which are used to determine jurisdiction and applicable law, can be found very intuitively and clearly. However, the court cannot determine the jurisdiction of the place of signing electronic bill of lading, and the place of transfer of the bill of lading using blockchain technology through established standards.

Although the parties to a cross-border e-commerce transaction can use an agreement to determine the jurisdiction of the court and applicable law, when the smart contract

between the two parties is directly executed, there will be no opportunity for the two parties to reach an agreement. The "Law of the People's Republic of China on Choice of Law for Foreign-Related Civil Relations" does not clearly regulate the use of blockchain technology in cross-border e-commerce, and there are doubts as to whether the provisions of it are still applicable to cross-border e-commerce cases that apply blockchain technology.

The distributed algorithm under blockchain technology enables cross-border e-commerce participants to access anywhere in the world. At the same time, decentralization means that there is no fixed central computer server. Each user can become the center and an independent network node to store their own data information. However, when disputes occur, there is no centralized institution to sort out the legal responsibilities of both parties, and the role of arbitration or litigation institutions will gradually fade. The application of blockchain technology is mainly carried out through network codes, which leads to the weakening of the characteristics of contract performance and the application of the most significant relationship will also become vague.

5. Countermeasures to Blockchain Legal Issues in Cross-border E-commerce

5.1 Smart Contract Countermeasures

In the face of the problem that the expression of smart contracts is not as accurate as that of traditional contracts, the integration between smart contracts and traditional contracts should be strengthened. Since the code writing entity of the smart contract is not the same as the party to the cross-border e-commerce contract, it is difficult for the cross-border e-commerce transaction entity to determine whether the content of the smart contract violates the law only through the code. Therefore, a conversion mechanism between smart contracts and traditional contracts should be established, and conversion standards should be established so that entities with weaker computer code technology can also accurately know the content of the smart contract.

Secondly, the transparency and openness of smart contract information can easily lead to the leakage of privacy or commercial confidential information of transaction subjects.

Therefore, it is necessary to strengthen the supervision of information sharing and flow to maintain the security of cross-border e-commerce transactions. To address this issue, legislation can be passed to classify different data into security levels according to the "Personal Information Protection Law" and the "Data Security Law" according to the degree of impact on national security. Based on blockchain technology and smart contract technology, data with less impact on national, corporate, and personal security can be automatically shared, thereby reducing the cost of transmitting data at every stage of transactions and payments. Compared with manual sharing of data information, it saves the cost of data review, reduces the error of manual review, and saves the time of obtaining data between sharing subjects.

Finally, since the performance of smart contracts is irreversible, there are also transaction risks for the transaction subjects, such as how to restore the original state when the contract is invalid or revoked or obviously unfair. In order to ensure that the legitimate rights and interests of cross-border e-commerce entities are protected, strict automatic review standards for smart contracts should be established to reduce the occurrence of non-performance of contracts from the source.

5.2 Measures to Deal with the Standard of Property Rights Change

In order to solve the problem of how to determine the time point of the change of property rights, it is necessary to find a private key that can represent the rights of the bill of lading in the blockchain. The private key in the blockchain is generated by a digital password and is unique. The private key will only be sent to the transferee, and it is exclusively in their possession. This is also in line with the uniqueness of the bill of lading holder. Therefore, the private key has the function of representing the rights of the bill of lading [10]. Therefore, the time when the private key is formed can be used as the time when the property rights change.

5.3 Measures to Address Jurisdiction and Applicable Law Issues

At present, the jurisdiction of cross-border e-commerce is regulated in the exclusive

jurisdiction of Articles 272 and 273 of "The Civil Procedure Law of the People's Republic of China". For disputes involving property attributes, the scope of jurisdiction will generally be expanded as much as possible. For lawsuits filed by defendants who do not have a residence in the territory of the People's Republic of China, if the contract is signed or performed in the territory of the People's Republic of China, or the subject matter of the lawsuit is in the territory of the People's Republic of China, or the defendant has property that is executable in the territory of the People's Republic of China, or the defendant has a representative office in the territory of the People's Republic of China, the People's Court at the place where the contract is signed, the place where the contract is performed, the place where the subject matter of the lawsuit is located, the place where the property that can be executed is located, the place where the infringement occurred, or the place where the representative office is located may have jurisdiction.

In view of the fact that traditional jurisdiction and applicable law determination standards cannot be used to resolve cross-border e-commerce disputes based on blockchain, some scholars have creatively proposed adding connecting points of legal application, such as the plaintiff's location and the actual location of data impact [11]. Due to the anonymity of blockchain, the identity of the defendant is usually unknown when a dispute arises, while the identity and residence of the plaintiff can be determined. Therefore, from the perspective of facilitating litigation, the plaintiff's residence can be selected as the jurisdiction connection point. In addition, in view of the difficulty in determining the jurisdiction court, some scholars have proposed the creation of a dedicated blockchain court. Making the blockchain court one of the exclusive jurisdiction types for real estate property rights cases can avoid the situation where the search for the jurisdiction court is fruitless.

In case of civil disputes such as infringement and breach of contract in cross-border e-commerce, the "Law of the People's Republic of China on Choice of Law for Foreign-Related Civil Relations" is generally applied to find the legal basis. For example, in case of contract disputes involving breach of contract, the parties may agree to choose the law

applicable to the contract. If the parties do not choose, the law of the habitual residence of the party whose performance obligation best reflects the characteristics of the contract or other laws that have the closest connection with the contract shall apply. In case of B2C consumer contracts, the law of the habitual residence of the consumer shall apply; if the consumer chooses to apply the law of the place where the goods or services are provided or the operator does not engage in relevant business activities in the habitual residence of the consumer, the law of the place where the goods or services are provided shall apply. It can be seen that the most important thing in cross-border e-commerce litigation is to determine which country has a substantial close connection with the transaction in space, which is also an important basis for finding the applicable law and determining the jurisdiction of the court. After cross-border e-commerce is fully digitized by blockchain technology, data becomes a more obvious detection mark. The place where the data actually affects is a new embodiment of the principle of closest connection.

6. Conclusion

The rapid development of cross-border e-commerce trade has gradually exposed its unique problems compared to domestic trade. As the number of cross-border trade forms between individuals increases, the scope of trade involved is also wider, and the business environment is more complex, more contradictions will gradually be exposed. Although blockchain technology has many advantages in the application of cross-border e-commerce logistics, goods quality, payment, and information supervision due to its unique advantages such as decentralization and smart contracts, it has also raised the following legal issues: First, the nature of smart contracts cannot be determined, which makes it questionable whether traditional contract law can regulate smart contracts; second, automatic execution technology makes the change of property rights lose its clearly perceptible appearance; finally, cross-border e-commerce dispute resolution is questionable in the determination of applicable law and jurisdiction of the court due to digitalization. Blockchain technology is still a new product for legislation in various countries, and

legislation is often lagging behind. As for the relationship between smart contracts and general contracts, based on the identification standards for changes in property rights under smart contracts and whether cross-border e-commerce is still subject to applicable laws after the addition of blockchain technology, the essence of the operation of smart contracts is analyzed, and it is concluded that it should belong to a new type of contract. By comparing the respective advantages of smart contracts and traditional contracts, a fusion conversion mechanism that can strengthen the integration of smart contracts and traditional contracts is proposed to ensure the legitimate rights and interests of cross-border e-commerce entities. The private key of the blockchain can represent the bill of lading rights because of its exclusivity, so the formation time of the private key can be used as the time of property rights change. Traditional jurisdiction and law application determination standards cannot be used to resolve cross-border e-commerce disputes based on blockchain. Adding legal application connection points such as the location of the plaintiff and the actual impact of the data can provide a clear "door to litigation" for disputes. Traditional international treaties and domestic laws of various countries do not exclude the application of blockchain technology in cross-border e-commerce. However, there is no legally binding international practice or international rules on how to solve the problems caused by the application. Domestic laws and regulations are at a low level, and most of the content is framework provisions, that is, no specific application scenarios are involved. Therefore, countries can generally apply the application of blockchain technology in cross-border e-commerce in the form of establishing international treaties. At the same time, when formulating international treaties, it is also necessary to consider how to deal with the conflict between domestic laws and international laws.

In summary, blockchain technology has great potential in solving cross-border e-commerce problems, but it also brings new problems to cross-border e-commerce. As an emerging technology, blockchain is still in its early stages of practice, with problems such as unclear standards for property rights changes, doubts about the applicable law and the determination of the jurisdiction of the court. However, according to theoretical feasibility analysis, it is expected that the legal problems brought about by blockchain technology will be solved by improving relevant supporting facilities, and its position as a technical support for cross-border e-commerce will be consolidated. Therefore, it is necessary to pay attention to new trends in blockchain technology in a timely manner, actively participate in international cooperation to promote the healthy development of the cross-border e-commerce economy.

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