

Submission date: 15 Apr 2024

Acceptance date: 15 Oct 2024

Publication date: 31 Dec 2024

REGULATORY FRAMEWORKS FOR CRYPTO ASSETS: COMPARATIVE FIQH STUDY BETWEEN MALAYSIA AND INDONESIA

^{i,*}Mohamad Amerzan Mohamad Sobri & ⁱMuneer Ali Abdul Rab

ⁱFaculty of Syariah and Law, Universiti Sains Islam Malaysia (USIM), 71800, Nilai, Negeri Sembilan, Malaysia

^{*}(Corresponding author) e-mail: amerzansobri1@raudah.usim.edu.my

ABSTRACT

The purpose of this study is to examine the regulatory frameworks governing cryptocurrencies in Malaysia and Indonesia through the lens of Islamic law (Shariah), this study sought to address the growing need for clarity regarding the compatibility between these digital assets and the principles of Shariah. With technological advancements rapidly changing the way financial transactions are conducted; it became imperative to assess how governments have adapted their regulatory approaches to accommodate the emergence of crypto assets and to ensure the use of crypto assets align with shariah principle. Utilizing a descriptive qualitative research design, this study provided an in-depth examination of the challenges associated with developing the guideline for Shariah compliant crypto assets while also exploring potential solutions for aligning their usage with the principles of Islamic finance. By integrating theoretical and practical perspectives, this investigation shed light upon the complex issues involved in regulating crypto assets under Shariah, ultimately contributing valuable insights towards improving existing policies governing digital assets particularly in the context of Malaysia.

Keywords: *Regulatory Frameworks, cryptocurrencies, Malaysia and Indonesia, shariah, challenge.*

Cite as: Mohamad Sobri, M. A., & Ali Abdul Rab, M. (2024). Regulatory frameworks for crypto assets: Comparative fiqh study between Malaysia and Indonesia. *SALAM Digest*, 1(1), 66-77. Retrieved from <https://salam.usim.edu.my/index.php/salamdigest/article/view/54>

Introduction

The financial world has undergone significant changes in recent years due to the rapid growth of crypto assets. These digital currencies have introduced new ways of handling money and financial transactions. As the results of the technology advancement in finance especially in Islamic financial landscape, the crypto assets or currency can be used as payment or exchange in virtual world (Okhuuse & Victor, 2017). As crypto assets become more popular, it's crucial to create rules and regulations to ensure they are used responsibly and effectively. This research aims to examine the rules and regulations that govern crypto assets in two important Southeast Asian countries: Malaysia and Indonesia. We will do this by looking at these regulations through the lens of Fiqh, which is a set of Islamic principles.

Regulating crypto assets is essential because they have the power to change how we do financial transactions. They can make transactions faster, more secure, and available to more people (Hamdani, 2020). However, they also bring challenges, because they are decentralized and often anonymous, they can be used for illegal activities and tax evasion. To ensure that crypto assets are used for good and to avoid problems, we need rules and regulations.

Regulations help protect people who use crypto assets. They also help prevent financial crimes, ensure taxes are paid, and keep financial markets stable. Having good rules in place also makes people more confident about using crypto assets. This confidence helps the financial market grow and stay strong.

We are focusing on Malaysia and Indonesia for this research because they have unique features that make them important for our study. Malaysia is a strong economy with a diverse population. Most of the people in Malaysia are Muslim, and Islamic finance is significant there. Malaysia has rules that encourage modern financial practices while respecting Islamic principles. It's an excellent example for studying how to regulate crypto assets in an Islamic financial context.

Meanwhile, Indonesia is the largest country with the most Muslim population. It has a growing economy, a young population, and is quickly adopting digital technologies. These factors make Indonesia a key player in the crypto asset market in Southeast Asian. Understanding how Indonesia deals with crypto assets is important because it can provide insights for other countries particularly with a mix of Islamic and non-Islamic financial system.

Islamic finance follows rules from Islamic law, and Fiqh is a big part of this. Fiqh guides financial practices in Muslim-majority countries, including how to regulate crypto assets. Using a Fiqh perspective helps ensure that rules for crypto assets follow Islamic principles and ethics. This is important for people who want to use crypto assets while staying true to their faith.

In our study, we will look at how Malaysia and Indonesia regulate crypto assets, and we'll see if these regulations match with Islamic finance principles. We will find areas where they agree and where they may have different rules. Looking at these regulations from a Fiqh perspective will help us understand how to make rules for crypto assets that work well with Islamic principles. Our research will give valuable insights to policymakers, regulators, scholars, and people in the finance industry. It will help them make the right rules and guidelines that consider the challenges of regulating crypto assets while respecting Islamic principles. This approach helps bring harmony to regulations and contributes to economic growth in these countries and the broader Muslim-majority world.

Literature Review

Regulatory Frameworks for Crypto Assets in Malaysia and Indonesia

(Securities Commission Malaysia, 2020)

The Guidelines on Digital Assets in Malaysia, issued by the Securities Commission Malaysia (SC) under the Capital Markets and Services Act 2007, outline regulations for fundraising through digital token offerings, operationalizing initial exchange offerings (IEOs), and providing digital asset custody. Applicable to issuers, IEO platform operators, and digital asset custodians, the guidelines cover compliance with relevant laws, including those by Bank Negara Malaysia. Issuers must adhere to specific requirements for comprehensive white papers, approved by IEO operators and submitted to the

SC. IEO operators ensure platform fairness, transparency, and adherence to stated purposes. Custodians safeguard digital assets, meeting criteria like security measures and regular audits. Overall, the guidelines encompass digital token offerings, IEOs, and custodial responsibilities, establishing a regulatory framework for the growing digital asset landscape in Malaysia.

(Capital Market Malaysia, 2020)

In July 2020, the Shariah Advisory Council (SAC) of the Securities Commission Malaysia (SC) made a landmark decision regarding the permissibility of investing and trading in digital currencies and digital tokens within the country's capital markets. Specifically, the SAC recognized digital assets as legitimate assets from a Shariah perspective, provided they meet certain criteria. These include using the proceeds from digital token issuances solely for Shariah-compliant purposes and ensuring that the rights and benefits associated with the tokens align with Islamic principles. To further reinforce this stance, the SC issued guidelines on digital assets in October 2020, which aimed to foster responsible innovation in the field while mitigating potential risks and safeguarding the interests of market players. Notably, there are currently four digital asset exchanges (DAXs) operating in Malaysia – Luno, Tokenize Exchange, Sinegy, and MX Global – which have attracted over 450,000 accounts since their launch in 2019 and 2020. Additionally, the SC maintains a list of approved digital assets in Malaysia, including prominent cryptocurrencies such as Bitcoin, Bitcoin Cash, Cardano, Chainlink, Ethereum, Litecoin, Ripple, Solana, and Uniswap. By establishing clear regulatory frameworks and standards, Malaysia seeks to position itself as a leading hub for digital assets in the region.

(Susilowardhani, Sekar Bidari, & Nurviana, 2022)

The regulation of cryptocurrency in Indonesia is carried out by the Commodity Futures Trading Supervisory Agency (BAPPEBTI). Cryptocurrency that is allowed to be used in Indonesia is as a crypto asset, which is the subject of commodity futures trading. On October 2, 2018, the Ministry of Trade of the Republic of Indonesia recognized cryptocurrency as a commodity that can be used as the subject of futures contracts traded on futures exchanges, through Permendag No. 99 of 2018 concerning the General Policy for the Implementation of Crypto Asset Futures Trading. The regulation is then explained again in the Regulation of the Commodity Futures Trading Supervisory Agency Number 8 of 2021 concerning Guidelines for the Implementation of Physical Market Trading of Crypto Assets (Crypto Assets) on the Futures Exchange.

(Widjaja, The Legal Status of Cryptocurrency in Indonesia, 2019)

Gunawan Widjaja's study found that the use of cryptocurrency for payment was legally prohibited in Indonesia. This means that any transaction involving cryptocurrency as a means of payment is not recognized as legal tender in Indonesia. The Bank of Indonesia (BI) has issued a regulation that prohibits the issuance of cryptocurrency for payment, which means that cryptocurrency cannot be legally treated as a digital asset. Furthermore, the study found that the involvement of Indonesian citizens in cryptocurrency investment can be treated as against public policy. This means that any investment agreement that involves cryptocurrency entered by Indonesian citizens is considered against public policy, even if the existence of the cryptocurrency is subject to foreign applicable laws. The study concludes that investment related to cryptocurrency is not recognized as legal in Indonesia and cannot be enforced in any court in the country.

Shariah Principles on Crypto Assets.

(Raza Rabbani, Khan, & Thalassinis, 2020)

The Sharia principles require that financial transactions be conducted in a transparent and ethical manner, with no exploitation or deception. Therefore, the transparency and traceability of blockchain transactions align with Sharia principles. However, the use of cryptocurrency raises concerns about its compliance with Sharia principles, particularly regarding *riba* (interest), *gharar* (uncertainty), and

maysir (gambling). The study suggests that Islamic FinTech organizations should be considered as partners by Islamic Financial Institutions (IFIs) rather than competitors. If IFIs want to increase efficiency, transparency, and customer satisfaction, they need to adopt FinTech and become partners with FinTech companies. The study believes that it can contribute positively to the understanding of FinTech based technology like cryptocurrency and blockchain from a Sharia perspective.

(Al-Butary, Abd. Majid Butary, & Widya, 2022)

There is a disagreement among Islamic scholars regarding the permissibility of cryptocurrencies in Islamic law in Indonesia, with some arguing that it is permissible (halal) and others arguing that it is prohibited (haram). The current global financial system mostly adheres to an interest-based economic system, and there are at least 3 factors behind the birth of Islamic finance, namely: ideological religiosity, pragmatic empiricism, and idealistic academics. The use of cryptocurrencies or cryptocurrencies is officially declared unlawful by the Indonesian Ulema Council (MUI) due to containing gharar, dharar, and being contrary to Law (UU) Number 7 of 2011 and Bank Indonesia Regulation Number 17 of 2015.

Challenges of The Crypto Assets as a Payment Transaction

(Raza Rabbani, Khan, & Thalassinis, 2020)

One of the significant challenges for crypto assets, as highlighted in the review, is their compliance with regulatory frameworks and traditional financial systems. The decentralized nature of crypto assets makes it difficult for regulators to monitor and control them, leading to concerns about illegal activities such as money laundering and terrorist financing. Additionally, the volatility and lack of stability of crypto assets make them a risky investment and hinder their adoption as a medium of exchange or store of value. Moreover, the lack of awareness and understanding of crypto assets among the public and financial institutions is another challenge. This skepticism about the legitimacy and safety of crypto assets can hinder their adoption and growth. Finally, the compliance of crypto assets with Sharia principles is another challenge, particularly for Islamic financial institutions

Methodology

The main data collection method for this study was qualitative content analysis, which is a research technique that is concerned with the interpretation and understanding of the meaning and context of recorded communication content. The data sources for this study included scholarly articles on regulatory frameworks for Crypto Assets in Indonesia and Malaysia, as well as official websites of relevant institutions in Malaysia and Indonesia, such as Security Commission Malaysia (SCM), Malaysia Central Bank (BNM), Majlis Fatwa Kebangsaan (e-smaf), (Bank Negara Indonesia (BNI), Badan Pengawas Perdagangan Berjangka Komoditi (Bappebti), Majelis Ulama Indonesia (MUI), and Youtuber that have 100K subscriber and above (assimalhakeem, 905K), (Nouman Ali Khan – Official – Bayyinah, 1.94M), (IFG, 100K), (Mufti Menk, 4.88M).

These data sources provided information on the concept and practice of Crypto Assets in both countries, the transaction and trading of Cryptocurrencies in Malaysia and Indonesia, the issues and opportunities of Crypto Assets, and the regulatory framework of Crypto Assets according to Shariah Principles. The study also referred to the fatwa issued by various state fatwa committees in Malaysia, which are the authoritative bodies for issuing religious rulings on matters related to Islam in their respective states. The fatwa provides guidance and clarification on the Shariah permissibility and compliance of crypto assets. The data were analysed conceptually to answer the research questions and objectives of this study. This analysis attempts to describe and explain crypto assets and their regulatory frameworks and critically analyse them from the perspective of Islamic principles.

Results and Discussion

Understanding of Bitcoin Cryptocurrency

In this passage, we provide an initial overview of Bitcoin (BTC), serving as the groundwork for our subsequent comparison of various digital currencies. To begin with, Bitcoin can be characterized as an electronic payment system that was conceptualized and implemented by an individual or group of individuals using the pseudonym Satoshi Nakamoto in 2009. This seminal innovation has since become a cornerstone of the broader cryptocurrency landscape, providing a foundational framework for the development and evolution of other digital assets. The system of Bitcoin uses cryptography for its anonymity with decentralized currency system. Bitcoin uses peer-to-peer network or p2p. That allows Bitcoin to work independently without being controlled by any authority body or central bank, as stated on the official website of Bitcoin, (<https://bitcoin.org/en/>). The system is called a decentralized financial system. The network monitor transactions, trading, and Bitcoin issuance jointly. That shows that Bitcoin is an open source that allows everyone to participate and nobody who owns or controls the system. The restricted supply of Bitcoin is one of its main characteristics.

It has a limited supply to the clients. The total of Bitcoin is very limited which only located 21 million of Bitcoin in the world. This shows that Bitcoin will not lead on inflationary currency which different with fiat currencies which may be published by the central bank and high probability would lead to inflation every year. Bitcoin trades are conducted anonymously, with users associated only by their wallet addresses. Nobody may know the identity behind the wallet addresses. The only thing they may know is the code of wallet addresses when the transaction happens. This may lead to illegal activities that involved with a big amount money, such as money laundering buy and sell weapons, drugs, medicine trafficking and many more. But there are some arguments between experts according to its anonymity, it's been a crucial key point in the context of user's privacy and security. Even though the Bitcoin price is very volatile, the value or price may fluctuate over the years (Han & Zilling, 2023). In 2017, its value soared to close to \$20,000 per bitcoin, before crashing down to around\$ 3,000 in 2018. Despite this volatility, Bitcoin has gained wide acceptance as a lawful form of currency, with numerous businesses and individuals taking it as payment. Altogether, Bitcoin has revolutionized the expressway we think about currency and financial transactions. Its decentralized nature and limited supply make it a unique asset, but its volatility and eventuality for unlawful use have also expressed concerns.

Concept of Crypto Assets according to Shariah Perspective

The emergence of crypto assets has posed novel challenges and possibilities for the Islamic financial system. These digital assets, encompassing cryptocurrencies and blockchain-based financial instruments, present queries for Islamic scholars and the broader Muslim community regarding their adherence to Shariah law. Specifically, the classification of these assets as either Shariah-compliant or non-compliant hinges upon an evaluation of their alignment with fundamental Shariah principles, including the avoidance of activities deemed unlawful according to Islamic jurisprudence, such as interest payments, usury, money speculation, uncertainty, and gambling. In contrast, certain crypto assets lacking these forbidden elements may be considered Shariah-compliant. For instance, digital assets employed to facilitate halal trade and investment that conform to the legal framework established by Shariah law could potentially qualify as Shariah-compliant.

As the concept of digital assets within Islam continues to evolve, Islamic scholars continue to deliberate on the appropriate application of Shariah standards towards these assets. A crucial principle guiding this assessment pertains to the underlying value of digital assets. These assets must possess tangible value, preferably tied to commodities like gold or silver. Those lacking intrinsic worth are more likely to be deemed non-compliant with Shariah law. Another essential criterion involves ensuring that digital assets do not contribute to activities proscribed by Shariah law. In essence, a careful examination of each asset's features and functions enables categorization as either Shariah-compliant or non-compliant according to Islamic jurisprudence. According to this statement, digital assets are prohibited from being

utilized for purposes such as interest payments, speculative activities, and gambling, under the principles of Islamic finance. Despite the growing prominence of digital assets, there remains a lack of definitive guidance from Islamic scholars regarding their classification within the framework of Shariah law. Nevertheless, due to the increasing relevance of digital assets in modern financial systems, it can be expected that they will assume more significant importance within the Islamic financial landscape over time.

Regulatory Frameworks of Digital Assets in Malaysia

Digital assets are officially acknowledged as securities in accordance with the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 ("Prescription Order 2019"). (CMSA, 2019) This recognition falls within the scope of securities laws in Malaysia, provided that the specified criteria outlined in the Prescription Order 2019 are met. While digital assets manifest in various forms, the Prescription Order 2019 classifies them into two distinct types which are digital currency and digital token.

The Prescription Order 2019 offers specific definitions for the terms "digital currency" and "digital token." According to this order, digital currency is characterized as a digital representation of value documented on a distributed digital ledger, whether cryptographically secured or not. It functions as a medium of exchange and is interchangeable with any form of money, including the crediting or debiting of an account. (CMSA, 2019)

On the other hand, digital token, as outlined in the same order, is defined as a digital representation recorded on a distributed digital ledger, whether cryptographically secured or otherwise. It is essential to note that any digital assets not documented on a distributed digital ledger do not fall within the scope of the Prescription Order 2019. Additionally, it is crucial to highlight that, in the current legal framework, privately issued digital assets lack recognition as legal tender or a valid form of payment instrument in Malaysia. (BNM, 2020)

Under the Prescription Order 2019, a digital currency is deemed to be a security for the purposes of securities laws if:

- a) it is traded in a place or on a facility where offers to sell, purchase, or exchange of, the digital currency is regularly made or accepted;
- b) a person expects a return in any form from the trading, conversion or redemption of the digital currency or the appreciation in the value of the digital currency; and
- c) it is not issued or guaranteed by any government body or central banks as may be specified by the Commission, is prescribed as securities for the purposes of the securities laws.

Meanwhile, a digital token is deemed to be a security for the purposes of securities laws if:

- a) the person receives the digital token in exchange for a consideration.
- b) the consideration or contribution from the person, and the income or returns, are pooled.
- c) the income or returns of the arrangement are generated from the acquisition, holding, management or disposal of any property or assets or business activities.
- d) the person expects a return in any form from the trading, conversion or redemption of the digital token or the appreciation in the value of the digital token.
- e) the person does not have day-to-day control over the management of the property, assets, or business of the arrangement; and
- f) the digital token is not issued or guaranteed by any government body or central banks as may be specified by the Security Commissions. (CMSA, 2019)

Digital Assets Custody

In fulfilling these liabilities, an Initial Exchange Offering (IEO) operator has the option to engage a Digital Asset Custodian (DAC) registered with the Securities Commission (SC) for securing digital assets. Alternatively, the IEO operator may choose to offer its own guardianship services. As per the Guidelines on Digital Assets, (Malaysia, 2020) a DAC is defined as a reality furnishing services like keeping, storehouse, holding, or maintaining guardianship of digital assets on behalf of another party. Similar services fall within the horizon of Capital Market Services Acts, as outlined in Section 76A of the Capital Markets and Services Act 2007. (CMSA, 2019) Importantly, a person who simply facilitates a system, allowing asset owner to singly manage their digital assets without any external control or any authority control, doesn't qualify as a DAC under the Digital Assets Guidelines, 2020. It's pivotal to punctuate that an IEO operator asking to offer guardianship services for digital assets held by token holders must hold enrolment as a DAC with the SC, in addition to being registered as an IEO operator. Under the Digital Assets Guidelines, an IEO operator also bears the following scores in relation to its investor's digital assets:

- a) to ensure that the token holders of digital assets are duly insulated and shielded from conversion or unknown use by any person;
- b) to establish and maintain a sufficiently and verifiably secured storehouse medium designated to store digital assets from investors; and
- c) to establish system and controls for maintaining accurate and over- to- date records of customer's digital assets held. (SC, 2020)

Digital Assets Trading

Binance, a prominent operator in the global cryptocurrency exchange arena, faced public reproach from the Securities Commission (SC) on July 30, 2021, (SC S. , 2021) for engaging in unlawful operations. In Malaysia, the licit trading of digital means is contingent upon exercising an SC- approved Digital Asset Exchange (DAX) platform. According to the Capital Market and Services Act 2007, (CMSA, 2019) specifically under the Sections 7(1) and 34(1), any entity aspiring to operate as a DAX operator in Malaysia must first obtain registration as Recognized Market Operators (RMO) with the SC to ensure compliance with legal conditions and with the Shariah Compliant.

In accordance with regulatory requirements, DAX operators are subject to strict restrictions when it comes to trading digital assets. Specifically, they must obtain prior authorization from the Securities Commission (SC) before engaging in any digital asset transactions. Furthermore, DAX operators are prohibited from extending financial support to their investors or participating in digital asset trades on their platforms. To ensure compliance with these regulations, DAX operators are mandated to develop a detailed conflict of interest management plan, implement an internal auditing system, identify potential operational risks, and maintain high levels of security and dependability in their operations. These measures aim to safeguard market integrity and protect investor assets. In addition, the Regulation of Digital Asset Exchanges (RMO) Guidelines require DAX operators to be transparent in their business dealings, maintain appropriate trading practices, and uphold market integrity by disclosing relevant information regarding their platform's architecture, order types, and how those orders interact. By adhering to these guidelines, DAX operators can foster trustworthy and secure environments for digital asset trading.

Regulatory Frameworks of Digital Assets in Indonesia

Presently, cryptocurrencies aren't recognized as legal payment instruments, so they're banned from being used as payment instruments in Indonesia. (Widjaja, Legality of Cryptocurrency in Indonesia, 2019) The central bank (BI) lately underscored that cryptocurrencies aren't a valid payment system. Banks are banned from easing the use of cryptocurrencies as a form of payment. This is in accordance with the provisions of Law No.7/2011 of Indonesia Currency ("Law 7/2011") (BI, 2011), which states that currency is money issued by Indonesia and every transaction that has the purpose of payment, or other obligations that must be fulfilled with money, or other financial transactions carried out in the

home of Indonesia must use Rupiah. Also, Article 23B of Indonesian Constitution authorizations that nearly all financial transactions in Indonesia be conducted in Rupiah, the country's only recognized currency (Government of the State of Indonesia, 2015). Only International transactions, government spending, and bank deposits are exempt. The Payment Service Provider (PJP) who violates it'll be subject to executive warrants in the form of a warning, temporary suspense of part or all its conditioning including the perpetration of cooperation, if cryptocurrency is used as a payment transaction instrument. In addition, any person who doesn't use rupiah in payment transactions or other financial transactions is subject to a maximum imprisonment of 1 (one) time and a maximum forfeiture of IDR 200 million (Bakker, Reerink, & Nurmansyah, 2015).

Crypto Asset for physical traders and crypto asset for physical market

In essence, a crypto asset physical trader refers to an individual or entity that has been granted authorization by the Commodity Futures Trading Supervisory Authority ("Bappebti") to engage in transactions involving digital currencies through various channels, including conducting buy and sell operations on their own account or serving as intermediaries for clients holding such assets (Bappebti, 2020). This category of traders operates within the confines of a designated physical market specifically established for the exchange of cryptocurrencies, which is overseen by a recognized futures exchange that has also received regulatory approval from the Bappebti. Notably, all transactions pertaining to this market must be executed electronically via the proprietary platforms possessed by these licensed physical traders, thereby ensuring compliance with the relevant regulations set forth by the authorities.

Functions of cryptocurrency

However, the Ministry of Trade through the Bappebti issued Perbappebti No. 7/2020 (SK/ Kep. Kepala Bappebti, 2020). With this regulation, the cryptocurrencies that we know today are not recognized as legitimate payment instruments in the territory of the Republic of Indonesia, but as crypto assets that can be traded on the crypto asset physical market. Article 1 paragraph (1) of Perbappebti No. 7/2020 states that Prospective Crypto Asset Physical Traders and/or Crypto Asset Physical Traders can only trade Crypto Assets in the Crypto Asset Physical Market that has been determined by the Head of Bappebti in the Crypto Asset List that can be traded in the Market Physical Crypto Assets (SK/ Kep. Kepala Bappebti, 2020). The buying and selling of cryptocurrencies in Indonesia are only permitted for investment reasons or for legally defined crypto assets, according to the laws of the country.

The Requirements of Cryptocurrency

In the scene of cryptocurrency trading, it is imperative to prioritize proper governance mechanisms to ensure fair and transparent price formation. The establishment of a physical market for crypto assets plays a crucial role in providing a platform for legally sound transactions while also promoting investor confidence. To achieve these objectives, it is crucial to safeguard customers' interests through stringent regulations that foster an environment conducive to innovation, expansion, and overall market growth to determine which digital currencies are suitable for trade, a systematic evaluation is conducted utilizing the Analytical Hierarchy Process (AHP) framework proposed by Bappebti. This process considers various parameters, including market capitalization, involvement in prominent international crypto exchange platforms, economic advantages, and comprehensive risk assessments covering potential threats such as money laundering, terrorist financing, and weapon proliferation. Eligibility is granted only to those cryptos that meet these rigid standards, ensuring they possess adequate liquidity, stability, and security features necessary for seamless transaction execution.

Obligations of Physical Traders of Crypto Assets

Throughout the registration process, crypto asset physical traders must comply with specific conditions to ensure regulatory adherence. These conditions encompass notifying any changes to the system, business processes, and relevant regulations, demonstrating a commitment to disclose information in accordance with Bappebti regulations, participating in education and counseling for the advancement of crypto asset trading, and engaging in coordinated efforts with Bappebti and other authorities or ministries/institutions. Notably, Crypto Asset Physical Traders involved in these activities must adhere to provisions that restrict crypto asset customer eligibility to individuals, explicitly prohibiting business entities. Additionally, the sale of crypto assets generated by the respective Crypto Asset Physical Merchant, or its affiliates is expressly forbidden. To uphold transparency and oversight, Crypto Asset Physical Traders are obligated to provide read-only access to all systems used for Bappebti supervision and include the reference value of the crypto asset trading capitalization in use.

The issues may arise on Crypto Assets as a Financial Transaction Based on Shariah Perspective

Challenge of Shariah Compliant Crypto Assets

Shariah-compliant cryptocurrency faces several challenges that need to be addressed before it can be widely adopted by the Muslim community especially in Malaysia and Indonesia. One of the main challenges is the lack of a regulatory framework that ensures compliance with Islamic shariah regulations. This is because cryptocurrency is a relatively new technology, and there are no proper established guidelines for its use in Islamic finance.

Another challenge is the issue of anonymity and privacy in cryptocurrency transactions. While anonymity is a key feature of cryptocurrency, it can also be used to facilitate illegal activities such as money laundering and terrorism financing. This is a concern for Islamic financial institutions, which are required to comply with strict anti-money laundering and counter-terrorism financing regulations.

Another challenge is the lack of clarity on the status of cryptocurrency under Islamic law. Some scholars argue that cryptocurrency is not a legitimate form of currency under Islamic law, while others argue that it can be used if it complies with certain conditions, such as being backed by tangible assets.

Furthermore, the issue of volatility in cryptocurrency prices is also a challenge for shariah-compliant cryptocurrency. Islamic finance prohibits speculation and gambling, and the extreme volatility of cryptocurrency prices can be seen as a form of speculation. The unpredictable fluctuations in the value of digital assets can significantly impact the efficiency and reliability of transactions. Consider Bitcoin, the most widely recognized cryptocurrency, whose value has experienced dramatic swings, ranging from approximately \$100 to well over \$60,000 in recent years.

This volatility introduces a considerable challenge for participants in digital asset transactions. Determining the fair market value of digital assets becomes a complex task, making it challenging to establish a stable foundation for transactions. If the value of a digital asset surges significantly, the transactional value also increases, potentially impacting the parties involved. Conversely, a substantial decrease in the asset's value may result in a reduction in the transactional amount.

Moreover, the volatility of digital assets complicates the timing of transactions. Participants in digital asset transactions may find it challenging to predict and manage the timing of their transactions effectively. The dynamic nature of digital asset values adds an element of uncertainty, making it difficult to optimize the execution of transactions for maximum benefit.

Finally, the lack of awareness and understanding of cryptocurrency among the Muslim community is also a challenge. Many Muslims are still sceptical of cryptocurrency and view it as a speculative investment rather than a legitimate form of currency.

Overall, while shariah-compliant cryptocurrency has the potential to revolutionize Islamic finance, it faces several challenges that need to be addressed before it can be widely adopted. These challenges include the lack of a regulatory framework, issues of anonymity and privacy, the lack of clarity on its status under Islamic law, volatility in prices, and the lack of awareness and understanding among the Muslim community.

Opportunities can be taken to ensure the use of Crypto Assets align with Shariah Principles in Malaysia

To use cryptocurrency, people tend to use the hukm of necessary to use it without further their reading on these matters. The hukm necessary only for some situations. The utilization of cryptocurrency warrants careful considerations within a framework of key principles. First, the approval or authorization of cryptocurrency as a medium of exchange must align with and adhere to the stipulations of national laws and regulations. Second, a thorough and comprehensive assessment of the associated risks should precede the adoption of cryptocurrency, ensuring the stability and resilience of its value over time. Third, the primary role of cryptocurrency should be as a means of exchange for tangible goods and services, discouraging its employment for speculative purposes. Fourth, recognizing its potential as a hedge against foreign exchange rate fluctuations, cryptocurrency can play a pivotal role in reducing costs for importers and exporters engaged in transactions involving physical commodities. Finally, to uphold the integrity and security of cryptocurrency transactions, trading platforms must operate as legitimate and duly registered entities, mitigating the potential risks associated with fraudulent activities in the cryptocurrency space.

In recent years, an abundance of scholarly attention has been focused on Bitcoin due to its widespread popularity as a cryptocurrency. However, there exists the possibility that alternative cryptocurrencies may exhibit distinct outcomes compared to Bitcoin. While acknowledging the legitimacy of state authority in setting monetary frameworks, this perspective does not necessarily advocate for the purchase of Bitcoin. Rather, it engages in a critical examination of its underlying principles without undermining the sovereign's prerogative to establish financial fundamentals. An additional suggestion worth considering is the utilization of gold coins as an alternative means of exchange. This line of inquiry arises from the need to address various queries related to the application of cryptocurrencies and identify the optimal digital currency suited to the existing economic context. A suitable substitute currency should possess all essential attributes of money, such as durability, portability, divisibility, and acceptability.

Guidelines for Crypto Assets according to Shariah Principles

Prohibition of Interest (Riba)

The concept of "prohibition of interest" (riba) in Islamic finance prohibits any transaction involving the payment or receipt of interest, deeming it an unethical practice that unfairly benefits one party at the expense of another. In contrast, Islamic finance employs profit-sharing mechanisms, where both parties share the risks and rewards of a financial agreement. This approach is grounded in the belief that interest-based transactions promote inequality and exploitation, going against the principles of justice and fairness in economic dealings. Considering these principles, the emergence of decentralized digital currencies like cryptocurrency presents an interesting parallel to the prohibition of interest in Islamic finance. Cryptocurrencies differ significantly from conventional fiat currencies in their operational framework, as they eschew reliance on central banks and interest-bearing loans. Instead, these digital assets utilize complex mathematical equations and peer-to-peer networks to execute exchanges without intermediary mediation. This unique design eliminates the possibility of charging interest fees, aligning with the principles of Islamic finance, which emphasizes fairness and justice in financial dealings. Although the nascent nature of cryptocurrency technology presents several hurdles, including regulatory uncertainty, volatility, and scaling issues, its decentralized structure and lack of interest-based transactions offer a promising alternative to traditional financial frameworks from an Islamic

perspective. By embracing this innovative technology, Muslim individuals and organizations can participate in global financial markets while upholding their moral values and avoiding practices perceived as unethical under Islamic law.

Prohibition of Uncertainty (Gharar)

The principle of "prohibition of uncertainty" or "*gharar*" is strictly adhered to, as it mitigates against fraudulent practices and ensures transparency in transactions. This fundamental tenet dictates that all parties involved in a financial deal must have full knowledge and understanding of its terms and conditions prior to participation. In stark contrast to popular perceptions, the crypto market has been subject to unfounded criticism regarding its supposedly inherent instability. This perceived volatility can be attributed largely to excessive speculation, rather than any fundamental shortcomings within the underlying technology itself. It is crucial to acknowledge and separate these two factors to gain a more accurate understanding of the current state of the market. Therefore, when applied openly and without ambiguity, the Islamic banking principle of *gharar* may align with the use of cryptocurrencies.

Prohibition of Gambling (Maysir)

The concept of *Maysir* (prohibition of gambling) serves as a crucial tenet, underscoring the importance of prudent financial dealings devoid of excessive risk-taking or speculative ventures. This includes the avoidance of any investment mechanisms that resemble chance-based activities, such as gambling. The emergence of cryptocurrencies has sparked deliberation regarding their alignment with these principles, as they often involve substantial levels of speculation. While some contend that the high degree of speculation involved in cryptocurrency trading amounts to gambling, others argue that it represents a valid investment vehicle capable of fostering economic progress and development. Consequently, there exists an ongoing discourse surrounding the applicability of the prohibition of gambling in Islamic finance vis-à-vis cryptocurrencies. Ultimately, the resolution of this debate hinges upon careful consideration of both sides' perspectives, with due regard for the underlying ethical and moral considerations inherent within the framework of Islamic finance.

Asset-Backed Financing

In accordance with the principles of Islamic finance, all financial transactions must be grounded in tangible assets as a means of mitigating risk and promoting transparency. While cryptocurrencies like Bitcoin do not intrinsically possess an underlying asset class, they may nonetheless be integrated into asset-backed financing frameworks. By pegging cryptocurrencies to physical commodities such as gold or other valuables through structured financing agreements, it becomes possible for these digital currencies to adhere to the fundamental tenet of asset-based financing within the context of Islamic finance.

Conclusion

This study undertakes an exhaustive examination of the regulatory frameworks guiding digital currencies in Malaysia and Indonesia from an Islamic perspective. Utilizing qualitative content analysis, the investigation illuminates the legal and ethical complexities surrounding digital currencies, particularly with regards to Shariah compliance. By establishing a Shariah-compliant framework for digital currencies, this research has the potential to facilitate innovation, adoption, and economic growth while promoting financial inclusion and technological advancement. The findings of this research are significant due to their relevance to the general public, policymakers, and scholars interested in understanding the moral and legal ramifications of digital currencies. Furthermore, they contribute to the propagation of knowledge regarding ethical and responsible monetary practices, ultimately advocating for the development of a culture of ethical finance and prudent digital currency usage. Notably, the implications of this study extend beyond its immediate scope, providing valuable insights that could shape broader economic development initiatives in predominantly Muslim countries. Additionally, this research serves as a potential model for similar nations grappling with the challenge of regulating digital currencies according to Islamic principles.

References

- Al-Butary, B., Abd. Majid Butary, M., & Widya, H. (2022). Crypto currency in the perspective of the Fatwa DSN MUI in 2021. *Proceedings of International Conference on Science and Technology*, Lembaga Penelitian Pengabdian kepada Masyarakat dan Dakwah Islamiyah, Universitas Islam Kuantan Singingi, Indonesia, 112–118.
- Bappebti. (2020). Penetapan daftar aset kripto yang diperdagangkan di pasar fisik aset kripto. Bank Negara Malaysia (BNM). (2020). BNM and SC's joint response on "policy confusion over cryptocurrencies".
- Government of the State of Indonesia. (2015). The 1945 Constitution of the Republic of Indonesia. Jakarta: The Office of the Registrar and the Secretariat General of the Constitutional of the Republic of Indonesia.
- Hamdani, L. (2020). Zakat blockchain: A descriptive qualitative approach. *Jurnal Ekonomi dan Bisnis*, 492–502.
- Han, & Zilling. (2023). The analysis of Bitcoin's price fluctuation. *BCP Business and Management*, 489–496.
- Okhuese, & Victor, A. (2017). READS capital schemas group. Retrieved from https://www.researchgate.net/publication/320616742_INTRODUCING_CRYPTOCURRENCY
- Raza Rabbani, M., Khan, S., & Thalassinis, E. (2020). Fintech, blockchain and Islamic finance: An extensive literature review. *International Journal of Economics and Business Administration*, 65–86.
- Securities Commission Malaysia (SC). (2020). Guidelines on digital assets.
- SK/Kep. Kepala Bappebti. (2020). Penetapan daftar aset kripto yang dapat diperdagangkan di pasar fisik aset kripto. *Peraturan Badan Pengawas Perdagangan Berjangka Komoditi*, Nomor 7.
- SK/Kep. Kepala Bappebti. (2020). Penetapan daftar aset kripto yang dapat diperdagangkan di pasar fisik aset kripto. *Peraturan Badan Pengawas Perdagangan Berjangka Komoditi*, Article 1 paragraph (1).
- Susilowardhani, Sekar Bidari, A., & Nurviana, R. (2022). Regulation and the future of cryptocurrency in Indonesia. *International Journal of Economics, Business and Accounting Research (IJEBAR)*, 6(3), 1–10.
- Widjaja, G. (2019). Legality of cryptocurrency in Indonesia. *Advances on Business Research International Journal*.
- Widjaja, G. (2019). The legal status of cryptocurrency in Indonesia. *Advances in Business Research International Journal*, 5(3), 76–80.
- Bakker, T., Reerink, G., & Nurmansyah, E. (2015, August 27). Regulation on mandatory use of Rupiah and prohibition of dual price denomination. ABNR Counsellors at Law. Retrieved from <https://www.abnrlaw.com/news/regulation-on-mandatory-use-of-rupiah-and-prohibition-of-dual-price-denomination>
- Capital Market and Services Act (CMSA). (2019, January 8). Capital Market and Services Act 2007. Retrieved from <https://www.sc.com.my/api/documentms/download.ashx?id=8c8bc467-c750-466e-9a86-98c12fec4a77>
- Capital Market Malaysia. (2020, July). Digital asset exchange. Retrieved from <https://www.capitalmarketsmalaysia.com/digital-digital-asset-exchange/#:~:text=Members%20of%20the%20public%20cannot,%2C%20Ripple%2C%20Solana%20and%20Uniswap>
- Securities Commission Malaysia (SC). (2020, October 28). Guidelines on digital assets. Retrieved from <https://www.sc.com.my/regulation/guidelines/digital-assets>
- Securities Commission Malaysia (SC). (2021, July 30). SC takes enforcement actions on Binance for illegally operating in Malaysia. Retrieved from <https://www.sc.com.my/resources/media/media-release/sc-takes-enforcement-actions-on-binance-for-illegally-operating-in-malaysia>
- Bank Indonesia. (2011). Indonesia currency (Law 7/2011) (17/3/PBI/2015).