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Cryptocurrency From A Shariah Perspective

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Cryptocurrency, sometimes called *crypto* or *crypto-currency*, is a digital currency, which acts as a medium of exchange that is encrypted and decentralised. It does not rely on any financial institutions to verify the transactions made. Briefly, transactions involving cryptocurrencies utilise a peer-to-peer (P2P) digital payment system. It is created using cryptographic techniques that enable payments to be sent and received securely. Some of the examples of cryptocurrencies that are available in the market today are Bitcoin, Ethereum, Tether, Binance Coin and XRP.

Shariah scholars, jurists and market practitioners have different interpretations and opinions of the permissibility of cryptocurrencies in Islam.

General Principle

As a starting point, Allah SWT said in the Qur'an:

"We have not revealed the Quran to you to cause you distress." (Surah Taha, verse 2)

The Quranic revelations are evidence that Islam does not intend to cause any hardship, burden or harm to the people. In Islam, the general guideline is that everything is permissible except for those that are expressly prohibited in the primary sources (Qur'an and Hadith) and secondary sources (i.e. Ijma' and Ijtihad) of Islamic law. There are no specific provisions in the Qur'an and Hadith that expressly prohibit the issuance and transaction involving cryptocurrencies. However, the primary sources prohibit certain practices or elements in commercial transactions (which may relate to transactions involving cryptocurrencies) such as the following:

- (a) Usury (*riba*).
- (b) Gambling (*maysir*).
- (c) Uncertainty (*gharar*).

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- (d) Fraud and other deceptive practices.
- (e) Theft or unlawful misappropriation of property belonging to others, and if the goods or services which are being exchanged in return for the cryptocurrency itself is haram (forbidden by Islamic law).

“Al-Mal” Criteria

Generally, Islam recognises the importance of *al-mal* which can be traded in return of another *al-mal* in order to sustain our life. The Qur’an provides that:

“Do not entrust the incapable ‘among your dependents’ with your wealth which Allah has made a means of support for you-but feed and clothe them from it and speak to them kindly.”*
(Surah Nisaa’, verse 5)

*Your wealth in Arabic is “amwalakum” which is derived from the word “al mal”.

However, one of the main concerns affecting the permissibility of cryptocurrency is whether cryptocurrencies can be recognised as assets/properties (*mal*) from a Shariah perspective. Briefly, some of the scholars’ opinions on the criteria to be fulfilled before something can be considered as *al-mal* are as follows¹:

- (a) Maliki school

“al-mal” can only be used by the owner and must be obtained by way of lawful methods.

- (b) Shafie school

“al-mal” is something which has value, whether it is goods that can be sold, benefited and the owner of the al-mal must be compensated in the event of damage by the person who caused the damage.

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¹ Mohd Izzat Amsyar Mohd Arif, Ruzian Markom and Asma Hakimah Ab. Halim, ‘Kontrak Muamalat Islam’.

(c) Hanafi school

“al-mal” is something that can be controlled (unlike things that cannot be controlled such as knowledge and health), directs human’s inclination towards it naturally and can be stored and can be used at the intended time.

Views Of Malaysian Scholars

On 29.11.2017, the Chairman of Shariah Advisory Council of Bank Negara Malaysia (BNM) and Securities Commission of Malaysia (SC) gave his opinion that bitcoin or cryptocurrencies are considered permitted (*harus*) subject to the following²:

(a) Compliance to riba’s rules (Riba’ rules)

Shariah requirements for trading of ribawi items are stated in the well-known hadith of the Prophet Muhammad (PBUH) related by ‘Ubadah ibn al-Samit, narrated by Muslim as follows: *“(Exchange of) gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt (shall be) in equal quantities and hand to hand (spot). If they differ in type, you may trade in them as you wish provided it is hand to hand (without deferment on either side).”* (willing buyer and willing seller basis);

(b) Timing

It is forbidden to exchange bitcoin with other currencies in a delayed manner. Bitcoin should be exchanged with other currencies on either:

- (i) Spot basis; or
- (ii) Delivery and settlement (T+2), which means the delivery and settlement for all normal transactions is 2 trading days after the transaction date (T).

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² Datuk Dr. Mohd Daud Bakar, ‘30 Isi Penting Berkenaan Hukum Bitcoin Yang Dihuraikan Oleh Pakar Kewangan Islam Antarabangsa Dr. Mohd Daud Bakar’ (<http://www.mohddaudbakar.com/index.php/in-the-news/103-websites/141-30-isi-penting-berkenaan-hukum-bitcoin-yang-dihuraikan-oleh-pakar-kewangan-islam-antarabangsa-dr-mohd-daud-bakar>)

On the other hand, on 16.11.2018, the Mufti of Federal Territory gave his view that bitcoin and cryptocurrencies are not permissible as they do not comply with the Shariah requirements of money and are capable of inviting various harms to the financial system of a country³.

On 3.12.2019, the Mufti of Perlis had issued a fatwa explaining that the use of bitcoin as a medium of exchange is permitted on the basis that bitcoin has value derived from the following functions and benefits⁴:

- (a) It is accessible from a system where transactions can be made safely and accurately.
- (b) It can be stored and can be transferred to another party easily, immediately and economically.
- (c) It can be traded in the crypto market.
- (d) It is acceptable as a medium of exchange.
- (e) The use of blockchain technology is transparent and secured.

Resolutions Of The SC's Shariah Advisory Council (SAC) On Digital Assets

The SAC at its 233rd meeting held on 29.6.2020 and its 234th meeting⁵ held on 20.7.2020, resolved issues in regard to digital assets from Shariah's perspective.

- (a) SAC viewed digital currency as *mal* from two perspectives:
 - Digital currency based on technology without underlying assets. This category of digital currency is categorised as goods ('urudh) but it is not considered a currency from Shariah's perspective. It is also not grouped as a ribawi item.

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³ Mufti of Federal Territory, Malaysia, 'Bayan Linas Siri Ke-153: Hukum Penggunaan Mata Wang Bitcoin' (https://muftiwp.gov.my/en/perkhidmatan/artikel-soal-jawab/2773-bayan-linas-153-hukum-penggunaan-mata-wang-bitcoin#_ftnref33)

⁴ Jabatan Mufti Negeri Perlis, 'Fatwa Bitcoin' (<https://muftiperlis.gov.my/index.php/himpunan-fatwa-negeri/95-fatwa-bitcoin>)

⁵ Securities Commission Malaysia, 'Resolutions of the Securities Commission Shariah Advisory Council' (<https://www.sc.com.my/development/icm/shariah/resolutions-of-the-shariah-advisory-council-of-the-sc>)

Hence, it is not subject to the principle of currency exchange (*bai` al-sarf*).

- Digital currency backed by ribawi items. If the digital currency is backed by ribawi items such as gold, silver and currency, it is categorised as a currency from Shariah perspective. Hence, the trading of such digital currency is subject to the principle of *bai` al-sarf*. In another situation where it is backed by ribawi items other than gold, silver and currency, it is categorised as a usurious form of wealth (*amwal ribawiyah*) which will have to comply with Shariah's requirements of ribawi items.
- (b) The SAC considered digital token as *mal* under the category of *`urudh* (goods).
- In determining the Shariah status of a digital token, the following conditions must be fulfilled:
 - (a) The proceeds raised from the issuance of the digital token must be put to use for Shariah-compliant purposes;
 - (b) The rights and benefits attached to it must be Shariah-compliant; and
 - (c) If the proceeds under (a) and the entitlement of rights and benefits under (b) above are utilised in mixed activities of Shariah-compliant and Shariah non-compliant purposes, the current SAC resolution on sukuk proceeds and the business activities benchmark under the Shariah screening method for listed companies are applicable. If a digital token is backed by ribawi items, the Riba's rules shall apply to the trade of such digital token in addition to other Shariah requirements for trading.

The SAC has also resolved that investment and trading of digital assets on the Digital Asset Exchange (DAX) that fulfill the above requirements and registered with SC are permissible.

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Commentary

It is crucial to note that despite the fact that cryptocurrencies are regulated under the Malaysian laws on securities⁶, the Malaysian laws on banking and financial institutions currently do not recognise digital currency and digital tokens as legal tender or general payment instruments in Malaysia.

From a Shariah legal standpoint, cryptocurrency must meet the requirement that issuance and transactions involving cryptocurrencies must be conducted without any prohibited elements such as usury, gambling, uncertainty, cheating or other deceptive practice before it can be considered permissible.

Authored by Nur Shohidah Ramlee, an associate from the firm's Corporate practice.

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⁶ <https://www.rdslawpartners.com/post/deep-dive-digital-currency-in-malaysia>