

## Cryptocurrency According to The Principles of Usul Al-Fiqh: A Critical Analysis by Mohd Daud Bakar

Mata Wang Kripto Menurut Prinsip-prinsip Usul Fiqh: Analisis Kritis oleh Mohd Daud Bakar

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Received: 24 January 2022 /Accepted: 15 March 2022

### ABSTRACT

*There are various views concerning the cryptocurrency issue. The majority of scholars and world Islamic bodies, such as Dar al-Iftā' al-Miṣriyyah (Egypt), Dar al-Iftā' al-Falasteeniyya (Palestine) and the Turkish Directorate of Religious Affairs, do not permit cryptocurrency for various reasons, including the existence of uncertainty (gharar), risk (khatar) and the fact that it facilitates (wasilah) the crime of fraud and money laundering. However, some Islamic financial and religious scholars do permit it. One scholar who views cryptocurrency positively and believes that it should be permitted is Mohd Daud Bakar, who is the Chairperson of the Shariah Advisory Council of Securities Commission Malaysia (SC) and former Chairperson of the Shariah Advisory Council for Bank Negara Malaysia (BNM). He is also former President of the International Islamic University (IIUM) and the chairperson or international Shariah advisor at various financial institutions around the world, including the S&P Islamic Index and Dow Jones Islamic Market Index (New York). His extensive experience of more than 25 years in this dynamic field has made him a leading and important reference expert. In 2015, in a report released by the Global Islamic Finance Report (GIFR), he ranked sixth among the world's 10 Islamic finance experts. This success has made him an expert, not only in the field of Usul al-Fiqh which is the core knowledge base of Islam, but also beyond the field of Islamic finance and law. This paper analyses the validity of Mohd Daud Bakar's views on cryptocurrencies within the scope of Usul al-Fiqh according to the 'illah, 'urf, sad zarai' and fath zarai' methods. This qualitative study had obtained data from Facebook Live video recordings, reports and articles, which were then analysed using the descriptive content analysis method. It can be concluded from an 'illah (legal operative cause) aspect that there is no acceptable 'illah for banning this currency. From the point of view of al-'urf, cryptocurrencies are acceptable and do not contradict the principles of Shariah. Whereas from the point of view of sad zarai', this study found no solid evidence that it could lead to deleterious circumstances other than mere conjecture and assumption, hence, the introduction of cryptocurrencies should be permitted or made accessible. He also suggested the use of the fath zarai' method, which is better suited for creating opportunities for innovation and creativity of financial products based on financial technology (fintech). Finally, he mentioned about the permissibility of cryptocurrency as a medium of exchange even if it does not become the legal currency of a country.*

*Keywords: Crypto; Usul al-Fiqh; Daud Bakar; Fintech; Currency*

### ABSTRAK

*Terdapat pelbagai pandangan dalam isu mata wang kripto. Majoriti ulama dan badan Islam dunia antaranya seperti Dar al-Iftā' al-Miṣriyyah, Dar al-Iftā' al-Falasteeniyya, Palestin dan Direktorat Hal Ehwal Agama Turki tidak mengharuskannya dengan pelbagai sebab antaranya ia mengandungi ketidakpastian (gharar), berisiko (khatar) dan memudahkan (wasilah) jenayah penipuan dan pengubahan wang haram (money laundering). Manakala sebahagian ulama dan cendekiawan kewangan Islam mengharuskannya. Antara yang mengharuskannya ialah Mohd Daud Bakar yang merupakan Pengerusi Majlis Penasihat Syariah Suruhanjaya Sekuriti Malaysia (SC) dan mantan Pengerusi Majlis Penasihat Syariah (MPS) Bank Negara Malaysia (BNM). Beliau juga merupakan mantan Presiden Universiti Islam Antarabangsa (UIAM) dan merupakan pengerusi atau penasihat syariah bertaraf antarabangsa di pelbagai institusi kewangan seluruh dunia termasuk S & P Islamic Index and Dow Jones Islamic Market Index (New York). Pengalaman luas lebih daripada 25 tahun dalam bidang ini menjadikan beliau rujukan utama dan penting dalam bidang yang dinamik*

ini. Pada tahun 2015, dalam laporan yang dikeluarkan oleh Global Islamic Finance Report (GIFR), beliau menduduki tempat keenam dalam kalangan 10 pakar kewangan Islam dunia. Kejayaan ini juga meletakkan beliau sebagai pakar rujuk bukan sahaja dalam bidang Usul Fiqh iaitu ilmu teras beliau, bahkan melangkaui bidang kewangan Islam dan undang-undang. Kertas ini menganalisis keabsahan pandangan Mohd Daud Bakar tentang mata wang kripto dalam skop Usul Fiqh. Ini termasuklah kaedah illah, 'urf, *sad zarāi*' dan *fath zarāi*'. Kajian ini adalah kajian kualitatif dan data yang diperolehi melalui rakaman video Facebook Live, kertas laporan dan artikel dianalisis menggunakan metod analisis kandungan secara deskriptif. Kesimpulannya, dari segi illah, tiada illah yang tepat bagi pengharaman mata wang ini. Dari sudut al-'urf, mata wang kripto adalah diterima dan tidak bercanggah dengan prinsip syara'. Mana kala dari sudut *sad zarāi*', penulisan ini mendapati tiada bukti kukuh yang menyatakan ia membuka pintu kepada kemudaran melainkan hanya sangkaan dan andaian semata-mata, justeru ia tidak perlu disekat. Beliau turut mencadangkan penggunaan kaedah *fath zarāi*' yang lebih sesuai digunakan bagi membuka ruang bagi inovasi dan kreativiti dalam produk kewangan berasaskan teknologi kewangan (*fintech*). Akhirnya, beliau menyatakan keharusan mata wang kripto sebagai satu medium pertukaran sekalipun tidak mencapai tahap mata wang sah bagi sesebuah negara.

*Kata kunci:* Kripto; Usul al-Fiqh; Daud Bakar; teknologi kewangan; mata wang

## INTRODUCTION

Digital currencies, such as the cryptocurrency, is a major financial innovation in the era of advancements

in financial technology (*fintech*). There are two dominant views on the law on cryptocurrencies. One view permits it, while another view forbids it. Generally, one view that does not permit it is by Dar al-Ifta' al-Misriyyah (Egypt), which believes that cryptocurrencies contain high levels of uncertainty (*gharar fāhisyh*), gambling (*maisir*), and buyers are ignorant of its provider or publisher (*jahālah*) (Dar al-Ifta' al-Misriyyah, 2017). The Dar Uloom Deoband (India) authorities do not permit it because it does not possess the characteristics of a valid currency in Islam. Meanwhile, the Turkish Directorate of Religious Affairs stated that cryptocurrencies are prone to speculation and can be easily used for criminal activities such as money laundering and is not subject to inspection, verification as well as government supervision, thus, this could have deleterious effects on individuals or a country (Marjan, Rosydi 2020). Nevertheless, there are some Islamic financial scholars who permit the use of cryptocurrency as a digital currency (digital currency). They opined that it is permissible from a Syariah aspect because it fulfils the criteria of an asset (*mal mutaqaawam*), currency (*umlah*), and monetary value (*thamaniyyah*) (Marjan, Rosydi 2020).

One of the scholars who permit cryptocurrency is Tan Sri Dr Mohd Daud Bakar, former Chairperson of the Shariah Advisory Council of Bank Negara Malaysia and the Chairperson of the Shariah Advisory

Council, Securities Commission Malaysia (SC). He was the first to agree that cryptocurrencies should be permitted (Daud 2021). He is not only the person involved in the regulation and governance of Islamic finance, but his firm Amanie Advisors has been given the responsibility to regulate the *ethereum* cryptocurrency named Ether by a firm in Singapore (Daud 2021). Hence, this study will discuss his views on the cryptocurrency issue. Based on his background in the core knowledge of Shariah, namely Uṣūl al-Fiqh, Islamic law and finance, coupled with his position as a practitioner and even as an active player in this new industry, he certainly has a *locus standi* in expressing his views on this issue.

In short, the law related to the use of bitcoin currency is shown in the table below:

TABLE 1. Views of Prominent Ulama Concerning Crypto Currency

Crypto Currency	View of The Ulama
	Haram: Darul Iftaa' al-Misriyyah, Dar al-Ifta' al-Falasteeniyya, (Palestine), Turkish Directorate of Religious Affairs
	Permissible: Datuk Dr. Mohd Daud Bakar, Dr. Zaharuddin Abdul Rahman & Mufti Muhammad Abu Bakar.

## OBJECTIVE

This paper aims to analyse and discuss the validity of views that permit cryptocurrencies from the point

of view of an authoritative contemporary Islamic financial figure, Mohd Daud Bakar. This paper will specifically focus on the Usul al-Fiqh principles applied in the debate on the cryptocurrency issue according to his perspective.

#### BACKGROUND OF THE STUDY

According to Mohd Daud Bakar, cryptocurrencies are not against the Syara' and he has a strong argument that supports his view. His name does not need much mentioning in the Islamic financial world. In fact, he is considered a Shariah elite (Sloane 2017) and a role model for the younger generation, especially young executives in Islamic finance. His prowess in various branches of knowledge is evident. This can be seen in his frequent appearances in various mass media channels (both print or electronic), which has had a great impact and provided tremendous benefits to the community, especially in issues involving Shariah law. Besides that, his excellent command of English and Arabic makes him unique and more prominent compared to some middle eastern Shariah scholars who are less proficient in English (Zuraida 2020). His language skills are also an advantage to him because his command of English helps him understand various financial and banking terminologies. This is what makes him a top source of reference in contemporary Islamic finance issues in the Islamic world as well as the West (Daud 2021).

His perseverance in seeking knowledge since childhood has shaped his personality and expanded his corpus of knowledge. Even though he had obtained a Doctor of Philosophy (PhD) degree in Usul al-Fiqh, he did not stop there. When he discovered the field of Islamic finance around the 1990s, he was determined to study law (jurisprudence) at the University of Malaya (Daud 2016) on a part-time basis, which lasted approximately 7 years (1996-2002). He had to sacrifice every weekend to pursue his law degree. Thanks to his diligence and perseverance, as well as a solid knowledge and understanding not only on the fundamentals of Shariah, but also the field of law, he eventually became a reference expert in the field of contemporary Islamic finance (Daud 2021). This kind of capability in combining classical Islamic Jurisprudence Principles with contemporary issues are crucial to fulfil the need of society (Eficandra et. al. 2013). Cryptocurrencies are very closely related to financial technology (Fintech) and this requires an integrated set of expertise and skills. In this regard, Mohd Daud Bakar is the right person to provide views on the cryptocurrency issue because of his direct

involvement in this field, either as a Shariah advisor or practitioner.

Undoubtedly, he has filled the gap among authoritative Shariah scholars. This is consistent with the view of Bank Negara Malaysia's Director General of the Islamic Finance Services Board (IFSB), Dr Bello Lawal Danbatta, who said that although Malaysia had issued a draft governance framework for digital currency offerings, the big challenge is the capacity and qualification, including Shariah scholars who should help in this industry. However, the number of those qualified in this regard is still insufficient (Richard 2019). This is supported by Mustafa et. al (2020) which stated that Islamic Fintech need to keep itself at pace with the rapid development going in the conventional finance world in order to make it competitive.

Dr Lanbatta also stressed the importance of financial technology knowledge because those who lack the knowledge of how cryptocurrencies work will face difficulties in citing legal references or precedents as to whether cryptocurrencies are illegal or Shariah-compliant. They need to have a range of skills and knowledge to fully understand financial technology. He also wishes to see more hybrid Shariah scholars who have knowledge, not only in the field of finance, but also various aspects of technology, in addition to Islamic Shariah knowledge (Richard 2019).

In reference to the field of cryptocurrency, Mohd Daud Bakar took a leap step forward and led the way by forging a strategic venture with the founder and CEO of MyFinB, M. Nazri Muhd. Starting in 2015, MyFinB is a company that focuses on analysing market data using artificial intelligence (A.I), which is now a multimillion-ringgit business. The company has developed an expert system that is capable of thinking how renowned fund managers and analysts think, analyse and make assessments as a group and not individually (M. Nazri 2017). This will definitely result in a more comprehensive and accurate data analysis. After going through a series of discussions, Mohd Daud Bakar was not only appointed as a strategic partner in this company, but he was also made the chairperson of this company. Thus, with his comprehensive background and knowledge, it is not surprising that he possesses the authority to present views regarding the law of modern Islamic financial products, especially cryptocurrencies (Daud 2021).

#### METHOD

This qualitative study collected data by conducting a content analysis on texts. Some of the texts, which

were his own writings and a memoir of himself, are the book “*Anak Desa ke Persada Antarabangsa*” (2018) and “*Kembara Ilmu Dari Sg. Korok ke St. Andrews*” (2021). These books contain a detailed background on his life from the time of his childhood to becoming an internationally renowned financial figure. As for the cryptocurrency issue, this study referred to several materials including video recordings of presentations made by Mohd Daud Bakar in a program organized by the Faculty of Information and Communication Technology, International Islamic University Malaysia on 29 November 2017 entitled ‘Cryptocurrency, Blockchain & Distributed Ledger Technology: Synergizing Technology & Shariah’, YouTube video of a seminar on Islam and Cryptocurrency organized by the Institute of Islamic Understanding Malaysia (IKIM) in 2018, a video shot at the Intermark Hotel, Kuala Lumpur in 2018, his writings, pertinent videos on Facebook and related websites. The data obtained were analysed descriptively to help make inferences from the findings.

## FINDINGS AND DISCUSSIONS

Based on the background and expertise of Mohd Daud Bakar in the field of Usul al-Fiqh, this study will comment on his view that permits cryptocurrency through arguments based on Usul al-Fiqh. This section begins by presenting the views and arguments of those who disapprove of cryptocurrencies as well as Mohd Daud Bakar’s counter-arguments against their views. Next, it will present some Usul al-Fiqh principles, such as *al-ūrf* and *fath zarāi*, which he had adduced as a reinforcement to his counter-argument.

### VIEWS THAT DO NOT PERMIT CRYPTOCURRENCIES AND COUNTER-ARGUMENTS BY MOHD DAUD BAKAR

#### \\Cryptocurrency Assists (Wasilah) In the Crime of Fraud

Those who disallow, do not permit or ban cryptocurrencies have put forward a number of arguments about their views. One argument is that cryptocurrency acts as a tool that assists in the commitment of fraud (scam), which usually causes huge losses. This is the basis for the ban by the Turkish Directorate of Religious Affairs (Habhajan 2017). According to Usul al-Fiqh principles, it is called

*‘illah*, or the standard reason and nature of a law (Adib 2021). Thus, in regard to the cryptocurrency issue, the *‘illah* for banning cryptocurrency is its nature, which contains the element of the perpetrator’s ignorance (*jahalah*) that facilitates the crime of fraud.

In this regard, Mohd Daud Bakar criticized some Islamic scholars and ulama who only see and evaluate certain aspects without applying a comprehensive point of view. For example, due to the issue of fraudulent crimes associated with cryptocurrencies, they continue to condemn it as illegal, although crimes involving fiat currencies are more rampant compared to cryptocurrencies. This is supported by the well-known crypto website in Malaysia called Intraday, that had submitted results from the analytical firm Chainalysis. The analysis showed that the number of illegal Bitcoin activities from 2017 to 2020 was less than 1%, while CipherTrace reported the number of Bitcoin trading involving crime at only 0.5%. This is lower than illegal fiat currency transactions, which recorded a higher number of cases of approximately 2% to 4% (Intraday 2021). However, there is no *fatwa* or view that forbids fiat currency. In this case, a dividing line needs to be drawn between cryptocurrency and the crime of fraud.

He also stressed that fraud does indeed occur frequently, even before the creation of cryptocurrencies; however, the element is to determine how to reduce or eradicate this crime (Daud 2018). This can be done with stricter enforcement and firmer empowerment of laws on criminals while simultaneously improving the security features (security system) in the financial transaction system. This view coincides with his position as the former Chairperson of the Shariah Advisory Council of Bank Negara Malaysia, who certainly has extensive experience in regulating and ensuring that the compliance of a financial product with the letter of the law. Muhammad Ashraf et. al (2020) supported his view by stating that transactions using cryptocurrencies based on algorithmic systems are more secure than credit cards. The cryptocurrency transfer mechanism is based on verification from sellers and buyers and this will prevent fraud and falsification of any subsequent transaction. In comparison, credit cards comprise numerous interested parties, credit card owners, sellers, seller’s subscription bank, credit card networks, banks that issue credit and service providers such as PayPal and so on. It is more likely for fraud to occur involving one or more of the parties in this network of transactions inherent in a multi-party mechanism. Hence, the cryptocurrency system is more secure and transparent

compared to the credit card system.

Cryptocurrencies are also alleged to facilitate money laundering activities that can be used to fund activities that threaten the country and the world, such as terrorism, drug smuggling etc. (Daud 2018). This is the basis for banning cryptocurrencies according to the view of Turkey's Directorate of Religious Affairs. They believe in this view because the concept of anonymity in transactions related to this currency will make it difficult for authorities to track and monitor the parties involved and this could cause crimes of this nature to occur. It also opens the door for unhealthy financial practices, such as non-compliance to the "Know Your Customer (KYC)" policy (Marjan, Mohd Rusydi 2020). Therefore, they hold the view that cryptocurrencies should be banned as they contain deleterious elements, such as fraud, uncertainty and ignorance.

Mohd Daud Bakar criticised this view by saying;

It is true that cryptocurrencies are easier to transfer without being regulated by any authority because they are digital currencies, but the hash technology that is integrated into cryptocurrencies can also be activated (easily) to control and perform GPS tracking (Global Positioning System) to track each cryptocurrency movement. It is more efficient and discreet compared to the GPS monitoring of fiat money in terms of surveillance and traceability (tracking) (Daud 2018).

He also stressed that money laundering often occurs in fiat money transactions. This was supported by Khalijah et. al (2017). In fact, it also occurs in various other financial instruments, such as real estate, as well as in gold, silver and other transactions (Daud 2018). However, there is no view that advocates the ban on fiat currency or other instruments just because they are involved in criminal activities. Hence, this reasoning is not well substantiated for becoming the *'illah* required for banning cryptocurrency. Conversely, he emphasized that the digital currency method is akin to the concept of *maqāsid syari'ah* (Shariah objectives), which is *hifz al-māl* (preservation of property) when combating corruption and financial crime in modern times compared to the use of fiat money.

This is because the system that supports cryptocurrency contains elements of transparency and accountability, as mentioned by Mustafa et. al (2020) and strong security features; moreover, it is very difficult to hack because it requires a blockchain agreement for a transaction to materialize (Daud 2018). This is supported by Muhammad Ashraf et. al (2020), who stated that verification by both the seller and the buyer will prevent fraudsters (scam) or hackers from falsifying, delaying or making new transactions.

Thus, *hifz al-māl* or preservation of property is indeed manifested in cryptocurrency.

'Illah

1. Uncertainty (Gharar) And Risks (Khatar)  
Dar al-Iftā' al-Falasteeniyya (Palestine) stated that the issue of uncertainty (*gharar*) found in cryptocurrencies is the reason for its ban (Marjan, Mohd Rusydi 2020). Ibn Abidin defined *gharar* as the element of ambiguity that exists in the goods for sale (*al-mabi'*) (Nor Fahimah et. al 2021). On the other hand, al-Syirazi stated that *gharar* is protected by the situation and the end is eventually hidden (An-Nawawi n.d.). This element (*gharar*) is present in a cryptocurrency and it is not recognized as monetary value because it is contrary to the fundamentals of monetary value, while it is also not a commodity because it does not meet any human consumption desires. In addition, the condition of the cryptocurrency is unknown to its issuer, has no guarantor, as well as being too volatile and risky.

He answered questions on this matter in his capacity as chairperson to the panel of Shariah advisors at various leading financial institutions in the world, such as First Abu Dhabi Islamic Finance, Astana International Financial Centre (AIFC), Kazakhstan, as well as Shariah advisor to the S&P Islamic Index, Dow Jones Islamic Market Index (New York) and SEDCO Capital, Saudi Arabia (Amanie 2018). As a competent Islamic financial practitioner, he had criticized the views of some ulama and scholars who had claimed that cryptocurrency is illegal because it contains elements of ambiguity, uncertainty and risk (Daud 2017) although he found no such elements as alleged. This is because these currencies are issued through a very transparent and secure process as part of the e-wallet, which is regulated by the authorities (Mas'tura Razali et. al. 2021). Thus, cryptocurrency is spared from the element of *gharar* (ambiguity and uncertainty).

He also expressed astonishment at the confusion exhibited by some scholars who were unable to distinguish between *gharar* (ambiguity) and *khatar* (risk). Azlin and Nor Syahirah (2020) defined 'risk' as the possibility of facing losses on an activity that has been initiated or transpired. Whereas, according to al-Sā'aty (2010), scholars do not concur with the definition of risk (*khatar*) and uncertainty (*gharar*) but these two terms are often inter-linked. Nevertheless, he concluded that every uncertainty is a risk, but every risk is not an uncertainty. This is similar to the argument held by Mohd Daud Bakar, who believes

that *khatar* (risk) is something that cannot be avoided even in Shariah-compliant transactions, such as *muḍārabah*, *murābahah*, stock investment and even in the purchase of gold and foreign exchange. This is the nature of business (Daud 2017). In fact, it is considered to be a mechanism that allows one party to obtain profit in a transaction (*al-mubarrir li al-riḥ*) as in the *al-ghurm bi al-ghunm* method, whereby the profit obtained is commensurate with the damage or loss caused by the capital used (al-Sā'aty 2010).

Hence, if this reason is presumed to be the '*illah*' for banning cryptocurrencies, then, all goods and services inherent with the risk of sudden fluctuations will also be deemed illegal. Thus, the phenomenon of risk of loss or profit does not make a contract *halal* or *haram* as long as there is no fraud (*khilābah*) and dishonesty (*khidā'*) involved (Daud 2017).

Another '*illah*' underlying the policy of banning cryptocurrencies by Dar al-Iftā' al-Falasteeniyya (Palestine) and the Turkish Directorate of Religious Affairs is the absence of regulations by the authorities. This causes a high level of risk or vulnerability to fraud when using cryptocurrencies. In order to counter this argument, he stressed that most digital currencies are not legal tender because they were created for the purpose of transactions that are free from the control of any authority. Even so, Mohd Daud Bakar is of the view that this does not mean that digital currencies, such as cryptocurrencies, cannot be regulated by the proper authorities (Daud 2018).

In a Shariah-based analysis that does not involve current legislation, he explained that there is no Shariah principle that requires any currency used as a medium of exchange (*al-thaman*) to be recognized by the state in terms of its validity and certification based on the Shariah. Thus, even if it does not fully meet the characteristics of maturity, such as its ability to be a measure of value or a unit of account, the acceptance of cryptocurrency as a medium of exchange by a group of people (peer to peer) qualifies it to be recognized as Shariah-compliant and should be used to pay for goods and services (Daud 2017).

This view is substantiated because it is based on the view of Imām Mālik RA mentioned in *al-Mudawwanah* (1994), which states;

"... and if the people accept leather (as a medium of exchange) and treat it as money, surely, I will forbid the sale of leather for gold and silver as deferred payment..."

Accordingly, based on the words of Imām Mālik RA, although in essence a cryptocurrency is not based on the underlying asset and is not legitimately recognized by a country, it can be of monetary

value as long as both parties in a transaction (peer to peer) recognize it as a medium of exchange even if it is assessed that animal skins have essentially no substance in value. Even in cryptocurrency transactions, it needs to get the consent of a number of account holders so that it can be counted as a valid transaction. This is known as "the beliefs of society" (*al-mithāqiah al-ijtimā'iah*) (Daud 2021). He also stressed that any society can turn any tool or instrument, including a digital code, into a tool of exchange to be used among themselves. He gave an example of reward points (points) earned from the purchase of plane tickets that can be exchanged or redeemed with goods or even flight tickets. Similarly, in some countries, mobile phone top-ups that contain air time can be used to redeem or purchase certain goods or services (Daud 2017). It is also found in various online trading platforms. Therefore, this tool or instrument or code may be a substitute for an official currency in any transaction involving the exchange of goods or services; however, it is yet to be considered as a legal tender (Daud 2017).

In this regard, based on Mohd Daud Bakar's vast experience, capacity as a regulator and an expert in contemporary Islamic finance, he explained that this perception could be true if digital currency practitioners do not want their systems and operations to be linked to existing regulatory systems in any country. Nevertheless, to this day, a greater number of countries have recognized and even created their own digital currencies. Ndtv Business (2021) stated that El-Salvador is the first country to recognize Bitcoin as a legal currency. While, Petro cryptocurrency created in 2018 in Venezuela, has been recognized by the government's legitimate cryptocurrency (Jake Frankenfield 2021).

Next, Mohd Daud Bakar submitted the argument for *Usul al-Fiqh* to support the necessity of cryptocurrency.

#### *Sad Zarāi'* and *Faḥ Zarāi'*

Those who are of the view that cryptocurrencies should be banned tend to use the *sad zarāi'* argument. They argue that because the cryptocurrency is not regulated by the government and does not meet the characteristics of a currency stipulated by Islam, therefore, it could pose problems to a country's financial system. The lack of regulation can also lead to crime and fraud. Hence, this deleterious effect must be curtailed immediately or even banned outright. According to *sad zarāi'*, cryptocurrency should be

not permitted for the mutual benefit of parties in a transaction. Among those who have such a view is the Mufti of the Federal Territory who had presented the consented view through Fatwa No. 153 of 2018 (Zulkifli 2018).

*Sad zarāi'* is one decree that has not received mutual consent (*mukhtalaf fiḥ*). According to al-Qarafi, *sad zarāi'* means blocking the channels that can lead to *mafsadah* as a way to prevent the *mafsadah* on something (al-Qarafi n.d.). Conversely, al-Syātībī was of the view that it is meant to restrict something that should be permitted so as not to cause something that is not permitted from happening (al-Syātībī 2003). Those who are of the view that cryptocurrency should be decreed as illegal believe that it leads the way to *mafsadah* (damage). However, there is not enough data to confirm that the use of cryptocurrency is often or certain to lead to harm and damage; hence, it must be banned. However, this is only based on conjecture, assumptions or presumptions (Daud 2018).

As to why the *sad zarāi'* method is used in this fatwa, Mohd Daud Bakar stressed that in the Usul al-Fiqh discipline, there is a method that needs to be read together with *sad zarāi'* (closing the space/door to harm), which is *fath zarāi'* (opening the space/door). This method was once mentioned by al-Qarafi (Al-Tarzi n.d.). Al-Zuhaili was of the view that *fath zarāi'* means willing to perform *zarāi'* (*wasilah-wasilah*) if the result provides benefits (*maṣlahah*) because it is something that is required by *syara'* (al-Zuhaili 1986).

According to Mohd Daud Bakar, this point of view is often not taken into consideration when deciding certain issues or problems. Various Syariah innovations can be explored by adopting *fath zarāi'* (Daud 2018), such as creating opportunities for realizing goodwill or benefits by doing a new thing that will lead to some good or better results. This was supported by al-Qarāfi's statement on *al-zarī'ah*, which asserted that just as it is obligatory to close, it is also obligatory to open (IDE 2017), while al-Izz Ibn Abd al-Salam (1991) asserted that the law of each *wasīlah* is in accordance with its purpose (*maqāsid*).

Looking at his enthusiasm and dedication in having studied blockchain technology and cryptography, as well as having personally met the founder of Ether (the second most popular cryptocurrency after bitcoin), Vitalik Buterin (Daud 2021), Mohd Daud Bakar believes that cryptocurrency can be a better mechanism for combating financial crime compared to fiat currency. This is because cryptocurrencies are equipped with systems that can effectively prevent these crimes compared to fiat currencies.

Transparency and sophisticated technology inherent in the cryptocurrency system have the proven capability to track parties to a transaction, the owner and the source of the currency (Daud 2018). This is supported by the underlying systems in cryptocurrencies, namely blockchain and cryptography (Ahmad Kameel 2018), which are the most advanced and sustainable technologies that are extremely difficult to hack, as well as being proven to be robust and secure (Sardar 2018; Marjan, Rusydi 2020). This technology is also the dividing line between cryptocurrencies and other digital currencies (Hazik, Norhanim 2020). Figure 1 provides an illustration of the blockchain process in a cryptocurrency that is difficult to hack.

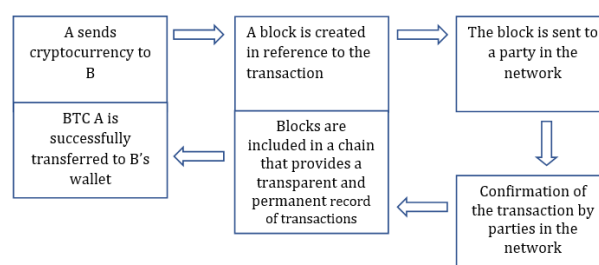


FIGURE 1. How blockchain functions

Source: Author's illustration adapted from azmirshah.com

Meanwhile, Dar al-Ifta 'al-Falasteniyya's claim (2017) that the currency is easily hacked is unfounded because although some incidents regarding cryptocurrency security have occurred, it has been proven that it does not occur in the blockchain system itself, rather management's negligence and breach of security parameters on "hot wallets" or online wallets have been cited as the cause of the breach and this was supported by Marjan and Rusydi (Marjan, Rusydi 2020).

In addition, the argument based on Usul al-Fiqh adduced by Mohd Daud Bakar when supporting the necessity for cryptocurrency is *al-ibāḥah al-aṣliyyah*. The *al-aṣlu fi al-asyā' al-ibāḥah* method refers to something that is permitted as long as there is no decree that forbids it (Suyūti 1981). In the field business transactions (*muamalat*), in particular, some methods mention that the original law related to business transactions (*muamalat*) matters and the stipulation of conditions when contracting is permitted unless there is a decree(s) to the contrary (Al-Suyuti 1983, Ibn Nujaym 1999). Thus, just as various contemporary transactions are allowed in *syara'* as long as they do not contradict the Syariah, hence, there is no reason for cryptocurrency to be prohibited.

## Al-‘Urf

Another Usul al-Fiqh argument used by Mohd Daud Bakar is *al-‘urf*. Al-Jurjani (2004) defined *al-‘urf* as a practice that underlines the soul, which is witnessed by the mind and accepted by human nature, while Abdul Karim Zaidan (2006), and Mustafa al-Zarqa (1998) defined *al-‘urf* as the customs and practices of a given society, whether in words or deeds.

Concerning the issue of cryptocurrencies, Mohd Daud Bakar argued that every currency that is accepted and certified by a community, country or at the international level is a Shariah-compliant currency. Its measure is *al-‘urf*, i.e., current practices and acceptance. *Al-‘urf* is one of the techniques used in the formation of Islamic law (Daud 2017). These methods and techniques are widely used in current transactions in the absence of specific decrees (revelation or *wahyu*), such as the payment of stock dividends based on the book value of shares and not the current value (market value) and also the provision of a warranty for certain products (Daud 2017). Referring to the *al-‘urf* classification, the acceptance of cryptocurrency by 221 million users worldwide as of June 2021 (Crypto 2021) makes it a special *‘urf*. In order to ensure that this *‘urf* is accepted, the criterion is that it cannot contradict any decree or text (*nas*) of the Qur’an and Sunnah (Adib 2021). Cryptocurrency has been accepted by the business community and it is beginning to be recognized in some countries as a valuable digital asset and even useful for those who do not have access to the mainstream financial system (Daud 2017). Hence, there is no firm argument for banning this currency.

## CONCLUSION

Rapid development of the current financial industry demands high levels of competencies and skills as it runs at a very competitive pace. The ability of Shariah scholars to come up with solutions to various problems and provide legal precedents is essential to ensure that Muslims can enjoy a variety of products and facilities driven by financial technology (fintech). The role of versatile and authoritative Shariah scholars, such as Mohd Daud Bakar, has filled this gap as best as possible.

After examining arguments presented by Mohd Daud Bakar, it strongly suggests that he has a unique capability to examine arguments, and reconcile previous Usul al-Fiqh methods with the use of contemporary Islamic financial context.

He possesses quality and expertise that is probably unprecedented in comparison with other scholars. Therefore, with his expert background in the field of Usul al-Fiqh, which is the fundamental field of knowledge in Islam, coupled with being an experienced lecturer, advisor and practitioner of Islamic finance, as well as his position as the Executive Chairperson of Amanie Advisors who is directly involved with ether cryptocurrency or Ethereum, his views are indeed authoritative in nature. His role as former Chairperson of the Shariah Advisory Council of Bank Negara Malaysia and Chairperson of the Shariah Advisory Council of the Securities Commission (SC) also influences the permissibility to deal with cryptocurrencies in Malaysia based on certain conditions and parameters. This creates avenues for Islamic finance to become more competitive, especially in the context of products driven by financial technology (fintech).

## AUTHORS’ CONTRIBUTIONS

“Conceptualization, Othman Sahalan. and Muhammad Adib Samsudin.; methodology, Othman Sahalan.; software, Othman Sahalan.; validation, Othman Sahalan. and Muhammad Adib Samsudin.; formal analysis, Othman Sahalan. and Muhammad Adib Samsudin.; investigation, Othman Sahalan. and Muhammad Adib Samsudin.; resources, Othman Sahalan. and Muhammad Adib Samsudin.; data curation, Othman Sahalan.; writing—original draft preparation, Othman Sahalan.; writing—review and editing, Othman Sahalan. and Muhammad Adib Samsudin.; visualization, Othman Sahalan.; supervision, Muhammad Adib Samsudin.; project administration, Othman Sahalan. And Muhammad Adib Samsudin.; funding acquisition, Muhammad Adib Samsudin. All authors have read and agreed to the published version of the manuscript.”, please turn to the CRediT taxonomy for the term explanation. Authorship must be limited to those who have contributed substantially to the work reported.

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