



Navigating the Cryptocurrency Maze: A Comprehensive Analysis of Regulatory Frameworks in Malaysia

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ABSTRACT

Cryptography is widely used in modern communication to ensure secure data transmission, online banking, and e-commerce. The presence of digital currency aids in removing intermediaries and the associated processes and costs of the middle person or platform. At present, Bank Negara Malaysia is yet to recognise digital currency as a legal tender. Despite the benefits, there are hidden risks associated with the usage of digital currency. This study aims to provide an in-depth analysis of the existing regulatory framework for cryptocurrencies in Malaysia and proposes recommendations for enhancing regulatory effectiveness and promoting innovation in the digital asset space. This article examines the regulatory challenges faced by Malaysia in balancing the promotion of financial innovation through cryptocurrencies while ensuring adequate investor protection and market integrity. This study adopts qualitative research by doctrinal legal approach in analysing the current legal practice, the relevant statutes, and the viability of the Malaysian legal framework. Drawing insights from Malaysia's cryptocurrency regulatory framework, this study offers valuable lessons on effective governance strategies for digital assets in a rapidly changing financial landscape.

Keywords: Cryptocurrency, Digital Currency, Regulatory Regime.

INTRODUCTION

Cryptocurrencies such as Bitcoin, Litecoin, Ethereum and many others have become popular over the last few years. It can be regarded as a virtual or digital form of currency that is secured by cryptography, which is a practice of securing information using codes, ciphers, or other encryption methods (Kunaifi et al., 2022). It is widely used in modern communication to ensure secure data transmission, online banking, and e-commerce. Cryptocurrency creates a secure and decentralised medium of exchange that is not controlled by any government or financial institution (Zohuri et al., 2022). It is important to note that cryptocurrency is not backed by any physical commodity or asset, but rather its value is determined by supply and demand in the market. The term "crypto" refers to the use of encryption techniques to secure transactions and control the creation of new units. This means that all transactions that occur through cryptocurrency are verified through complex mathematical algorithms, which makes the system incredibly secure. The term "currency" refers to an agreed medium of exchange, and in this case, it exists virtually.

Cryptocurrency allows users to make transactions without the need for a third-party intermediary such as a bank, which makes the system decentralised and transparent (Lee, 2019). Cryptocurrency has gained immense popularity over the years, and its value has skyrocketed, making it an attractive investment option for many.

Cryptocurrency regulation in Malaysia is gaining urgency due to various factors. The necessity for regulating cryptocurrency in Malaysia arises from the country's aim to uphold its position at the forefront of financial and digital innovation (Zulhuda & Sayuti, 2017). Despite the appeal of cryptocurrency to young investors (Yusof et al., 2023), there are concerns surrounding consumer adoption (Abbasi et al., 2021; Ji-Xi et al., 2021). The potential emergence of issues related to cryptocurrency inheritance (Kamis & Wahab, 2022) and the imperative for Malaysia to maintain innovation in financial and digital domains further accentuate the requirement for regulatory frameworks. Research on conducting business with cryptocurrency in Malaysia underscores the

significance of providing insights to financial regulators to develop effective policies (Zubir et al., 2020). Furthermore, the comparison of financial technology regulation in Malaysia and Indonesia illustrates the differing approaches taken by neighboring nations (Diniyya et al., 2021). The urgency for regulating cryptocurrencies is also evident in the context of anti-money laundering (Al-Tawil, 2022) and the need to protect holders of cryptocurrency collateral (Wardoyo & Hapsari, 2023). The challenges posed by crypto businesses in terms of money laundering and regulatory compliance further emphasize the necessity for robust regulations (Wronka, 2021). The adaptive framing of sustainability and regulations, along with the importance of Sharia compliance in Islamic Fintech, contribute complexity to the regulatory landscape in Malaysia (Muryanto, 2022).

Malaysia has no definite and specific interpretation concerning cryptocurrency. This indicates that Malaysia's stand over crypto is vague and unclear. This is strengthened by the current legal framework that is still in its infancy in order to cater significant issues within its ambit. Currently there is no specific law that governs cryptocurrency matters in Malaysia. However, the current legislations or laws governing crypto matters only be regarded as related legislation in which some of the provisions in the legislation covers crypto matters due to close proximity of its attributes. The said related legislations or laws are Anti-Money Laundering, Anti-

DISCUSSION

a. *Nature of Cryptocurrency*

Cryptocurrencies have emerged as a disruptive force in the global financial landscape, with significant implications for economies worldwide and Malaysia's economic landscape. Cryptocurrencies have gained increasing attention as a novel form of digital currency that operates independently of traditional financial institutions. The decentralized nature of cryptocurrencies, facilitated by blockchain technology, has revolutionized the way financial transactions are conducted. The development of cryptocurrency is expanding public choices and fostering new economies, as evidenced by the study by Mazambani & Mutambara (2019) predicting financial technology (FinTech) innovation adoption in South Africa, particularly focusing on cryptocurrency. Satoshi Nakamoto invented the first cryptocurrency which was Bitcoin in 2009 (Satoshi, 2008) and was active in the development of bitcoin until December 2010. Since then, cryptocurrency gained its popularity and as of 2023, there are more than 10,000 currencies available in the market. This significantly indicates that cryptocurrency is growing across the world.

Terrorism Financing & Proceeds of Unlawful Activities Act 2001 and Capital Markets and Services (Prescription of Security) & (Digital currency and Digital Token) Order 2019. Thus, this study is crucial to examine the regulatory regime governing cryptocurrency and proposes recommendations for enhancing regulatory effectiveness and promoting innovation in the digital asset space.

METHODOLOGY

The main objective of this study is to examine laws governing cryptocurrency in Malaysia and the extent to which these laws safeguard holders of cryptocurrency collateral. This study employed mainly qualitative research by doctrinal analysis. According to Sutton and Austin, qualitative research does not engage with statistical data analysis. This article analyses primary sources including the Central Bank of Malaysia Act 2009, Financial Service Act 2013, Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities 2001 (AMLA) and Capital Market and Service (Prescription of Security) & (Digital Currency and Digital Token) Order 2019. In addition to that, secondary sources will be used to strengthen the arguments or claims given in the study. Hence, articles from legal scholars, legal journals, governmental websites, and other reputable sources were used to support the finding of this study.

However, there must be noted that there is no standard definition of cryptocurrency. The term is ambiguous and being interpreted differently by researchers, financial professionals and the players in the FinTech industry. The European Central Bank regarded cryptocurrency as a subset of virtual currency. Based on the report of Virtual Currency Schemes 2012, virtual currency can be defined as an unregulated digital money that is issued and controlled by the developers and can be used and accepted among the members of a specific virtual community. The International Monetary Fund (IMF) also categorised cryptocurrency within the ambit of virtual currencies. According to their interpretation, virtual currencies are digital representations of value that are issued by private developers and denominated in their own unit of account. Even though it falls within the category of digital currencies, virtual currency differs from other digital currencies, for instance e-money, as it is not denominated in fiat currency and has its own account unit. The World Bank also has a similar interpretation to the IMF and European Central Bank in relation to the term cryptocurrency. But it highlights further that digital

currency based on the World Bank's interpretation is a digital representation of value that is denominated in their own unit of account which is differ from e-money, which is simply a digital payment mechanism, representing and denominated in fiat currency.

b. Regulatory Regime Governing Cryptocurrency in Malaysia

In Malaysia, the governance of cryptocurrencies is a multifaceted issue that involves various laws and regulations. The study by Kamis & Wahab (2022) sheds light on the loopholes in estate administration of cryptocurrency in Malaysia, highlighting the specific Acts that govern non-Muslim estates, such as the Civil Law Act of 1956, the Inheritance (Family Provision) Act of 1971, and the Distribution Act of 1958. These legal frameworks play a crucial role in regulating the inheritance and administration of cryptocurrency assets in Malaysia, ensuring transparency and compliance with established laws. Furthermore, the research by Katuk et al. (2023) delves into the challenges and solutions in cryptocurrency estate planning, emphasizing the importance of law in regulating the use and inheritance of cryptocurrencies. The study underscores the significance of regulations, rules, acts, or enactments that govern the utilization of cryptocurrency assets and their inheritance in Malaysia. This legal framework provides a foundation for addressing the complexities of cryptocurrency estate planning and ensuring the proper transfer of digital assets in accordance with established laws.

The regulatory landscape for cryptocurrencies in Malaysia has seen significant developments over the years. The book by Haron & Arsat (2022) discusses the regulatory advancements in 2018, where the Bank Negara Malaysia issued an official cryptocurrency regulation under the policy paper "Anti-Money Laundering and Counter Financing of Terrorism Policy for Digital Currencies (Sector 6)." This regulatory milestone signifies Malaysia's proactive approach to addressing the challenges and opportunities presented by cryptocurrencies, aiming to enhance transparency and combat illicit activities in the digital currency space. Moreover, the study by Schaupp et al. (2022) emphasizes the importance of a regulatory framework to ensure that cryptocurrency transactions align with laws governing traditional fiat currency. By establishing clear regulations and guidelines, Malaysia can foster a conducive environment for cryptocurrency adoption while mitigating risks associated with illegal activities. This regulatory approach aims to enhance consumer protection, promote financial stability, and facilitate the integration of cryptocurrencies into the Malaysian economy.

i. Central Bank of Malaysia Act 2009

This Act laid down the clarity on Bank Negara Malaysia's authority and power, provides a robust governance framework which offer a high degree of accountability and institutionalises the good practices to ensure the effectiveness of Bank Negara Malaysia. The highlight of this document pertaining to cryptocurrencies will be whether it is considered as a legal tender or vice versa. According to section 63 of the Act, it defined legal tender as only those currency notes and coins issued by the Bank Negara Malaysia. As evident, a Statement of Bitcoin dated on 3rd January 2014 mirrors the gist of provision of section 63. This reflects the power authorised by Bank Negara Malaysia and on par with section 10 of the Currency Act 2020. By looking to the interpretation itself, it can be concluded that cryptocurrencies do not fall within the ambit of legal tender. Nearly impossible to compare cryptocurrencies and electronic money as electronic money is recognised as a legal tender. On top of that, there is no other provisions consist in this document governs cryptocurrencies except the debate whether it is legal tender or vice versa.

ii. Financial Service Act 2013

As one of the statutes under the purview of Central Bank of Malaysia, Financial Services Act 2013 is an extensive legislation that amalgamate legislations concerning to banking, insurance, payment systems businesses and the overview of the money market and foreign exchange administration in Malaysia. The statute has consolidated and annulled the Banking and Financial Institutions Act 1989, the Insurance Act 1996, the Payment Systems Act 2003 and the Exchange Control Act 1953. In the debate between the academic scholars in cryptocurrency field, this document is used to determine whether cryptocurrency falls within the ambit of an instrument that is payable in nature. It must be noted that this Act does not define the words 'cryptocurrency' or 'digital or virtual currency'. However, the closest interpretation can be referred to definition of 'electronic money' stipulated under section 2(1) whereby "any payment instrument whether tangible or vice versa that stores funds electronically in exchange of funds paid to the issuer and able to be used as a means of making payment to any person other than the issuer". It is evident that the nature of cryptocurrency does possess functions that falls within the ambit of electronic money. However, electronic money and cryptocurrency are different as the electronic money represents fiat money that is kept in digital accounts and subject to Bank Negara Malaysia (Nawang, 2021).

By referring to section 213(1) of the Financial Services Act 2013, there is a clear interpretation 'payment' as an act of transferring to, or placing to the credit of, a person, ringgit, foreign currency, financial instrument, gold, other precious metals, or other valuable consideration, whether

under an obligation or otherwise is very general and includes any form of 'valuable consideration'. According to Zalina (2016), since Bitcoin or any other form of cryptocurrencies have been used and been accepted as private means of transaction in exchange of goods or services, it qualifies to be within the interpretation of valuable consideration. Even so, the definition of cryptocurrencies in Malaysia is still in its position which is vague and unclear.

iii. Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA)

In February 2018, Central Bank of Malaysia issued cryptocurrency regulation under the policy paper entitled Anti-Money Laundering and Counter Financing of Terrorism Policy for Digital Currencies (Sector 6). This document outlines the essential criteria and standards that a financial institution must adhere to in order to enhance the visibility of operations involving digital currencies and establish efficient and strong anti-money laundering and counter-terrorism financing control measures to minimise the potential risks of financial institutions being exploited for illicit activities. It must be noted that, a reporting institution is defined as any person that provides the service or a combination of services of exchanging digital currency for money, exchanging money for digital currency, or exchanging one digital currency for another digital currency (Nawang, 2021). As far as the policy is concerned precisely under paragraph 4.1, it will be applicable on the reporting institutions in so long as they are carrying on the activities as per stated in Paragraph 25 of the First Schedule of Anti-Money Laundering Act and will be subjected regardless that the person does not have presence in Malaysia or vice versa. which 6.2 of Sector 6 provides interpretation of digital currency in which it refers to digital representation of value that functions as a medium of exchange and interchangeable with any money as per mentioned in Financial Services Act 2013.

The crucial part in this policy is stipulated under Part B which is the AML/CFT requirements. Generally, this part imposes requirements to the reporting institutions to obey when executing the activities. The reporting institutions in Malaysia are required to do thorough risk assessments on their clients to avoid the possible misuse of cryptocurrencies for money laundering and terrorist funding. This measure aims to enhance the transparency of digital currency operations in the country. This is in line with paragraph 8 of the policy. Besides, according to paragraph 9 of the policy, the reporting institutions are required to conduct customer due diligence (CDD) towards all the customers and the person conducting the transactions when they establish business relationship with the customer and when the reporting institutions

have any suspicion of Money laundering or financing terrorism. This is also known Know-Your-Customer (KYC) and said measures must not be contravene with CDD measures as specified by the Central Bank of Malaysia (Nawang, 2021). Reporting institutions are required to collect a trader's full name, address, date of birth and the customer's ID. However, in the case where the reporting institutions fail to comply with CDD, the said reporting institutions shall be prohibited from executing his business relation or perform any transaction in relation to a potential customer as provided in paragraph 14.1.

iv. Capital Markets and Services (Prescription of Security) and (Digital Currency and Digital Token) Order 2019

The Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 marked a significant regulatory development in Malaysia's approach to cryptocurrencies. This order, as discussed by, was issued by the Bank Negara Malaysia in January 2019 under the policy paper "Anti-Money Laundering and Counter Financing of Terrorism Policy for Digital Currencies (Sector 6)." The introduction of this order aimed to enhance transparency, combat illicit activities, and provide a regulatory framework for digital currencies, reflecting Malaysia's proactive stance in addressing the challenges and opportunities presented by cryptocurrencies. According to the order's interpretation under Regulation 2, digital currency is defined as "digital representation of value which is recorded on a distributed digital ledger whether cryptographically secured or otherwise, that functions as a medium of exchange and is interchangeable with any money, including through the crediting or debiting of an account". Whereas digital token is being regarded as "digital representation which is recorded on a distributed digital ledger whether cryptographically secured or otherwise".

It appears that under Regulation 3 of an order, digital currencies and tokens can be deemed as securities when they are regularly traded in a place where offers to sell, purchase, or exchange these currencies are made. This is especially so when an individual anticipates receiving some form of benefit, whether it is through trading, converting, or redeeming the digital currency, or through an increase in its value, and when the digital currency is not issued or guaranteed by any government body or central banks, as stipulated by the Security Commission. Additionally, these cryptocurrencies can also be considered as a form of commodity. It is worth noting that in order to purchase these cryptocurrencies, real money is required. This principle was recently reinforced in the case of Luno Malaysia Pte Ltd v Robert Ong Thien Cheng. In this case, the plaintiffs were operating a digital currency exchange, and the defendant was one of their clients.

Due to a mistake, the plaintiffs had transferred 22.6 Bitcoins instead of 11.3 Bitcoins to the defendant's account. Upon discovering the error, the plaintiffs requested that the defendant return the extra 11.3 Bitcoins, but the defendant refused. As a result, the plaintiffs filed a lawsuit against the defendant, seeking the return of the 11.3 Bitcoins or their equivalent monetary value. The court ultimately ruled that the defendant was ordered to return the additional 11.3 Bitcoins that had been wrongfully transferred to the plaintiff.

Regulation 4 of Order 2019 states that once digital currencies and tokens are deemed as securities, the operators must obtain a Capital Markets Services License under Section 58 of the Capital Markets and Services Act 2007 (CMSA) in order to carry out regulated activities as outlined in Schedule 2 of the same Act. This means that operators dealing with digital currencies and tokens must comply with the regulations set by the Security Commission and obtain the necessary license to carry out their business activities. Section 58 of the CMSA states that no person, whether principal or agent, shall carry on business in any regulated activity unless they possess a Capital Market Services License or are a registered person. Failure to comply with the specified conditions may subject the operators to a fine of up to RM10 million and/or a maximum imprisonment of 10 years. This regulation is in place to ensure that operators dealing with digital currencies and tokens adhere to the rules and regulations set by the regulatory authorities, thus promoting transparency and accountability in the industry. In summary, obtaining a Capital Markets Services License is crucial for operators dealing with digital currencies and tokens as it allows them to carry out their business activities in a regulated environment and ensures compliance with the relevant laws and regulations. Failure to comply with the specified conditions may result in severe penalties and legal consequences.

The Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 represents a pivotal step in Malaysia's regulatory journey towards cryptocurrencies. By establishing clear guidelines and frameworks, Malaysia aims to foster a conducive environment for cryptocurrency adoption, enhance financial integrity, and address emerging challenges in the digital currency space.

c. Recommendation

Undoubtedly, cryptocurrencies regulations in Malaysia are still in its infancy and several loopholes are clearly visible. As the main evident, there is no provisions discussing over the protection and the awareness concerning cryptocurrencies to the consumer. This has contributed to the Malaysian's stand over

cryptocurrencies in which it is not prohibited practices in Malaysia but individual who pursuing it need to bear the risk individually. Thus, a different approach must be made to have an adequate cryptocurrencies regulatory framework, indirectly a new stand over it can be upheld.

A concise regulatory framework concerning cryptocurrencies by relying to some best practices from a blockchain leading country such as Singapore is to be taken into consideration. Question rise is on why Singapore and its best practices concerning cryptocurrencies? First and foremost, Singapore has made a proactive yet caution approach over the regulation governing cryptocurrencies matters in its nation. According to an article written by Zubir (2022), solely on these two factors together with other initiatives such as Global eTrade Services (GeTS) strengthen the status of the said nation to be one of the advanced countries as far as the blockchain development industry is concerned. Second, due to the nature of each nations legal system as both are Commonwealth Countries, it is highly persuasive to adopt legislation with a slight amendment between Malaysia and Singapore. By looking at section 3(1) of the Civil Law Act, the provision allows common law to be used when there is a lacuna in the local law provided that the common law must suit the local circumstances. Besides, it must be noted that Malaysia and Singapore each are members of the ASEAN Community. Adopting laws or policies from Singapore would achieve the objectives stipulated in the ASEAN Master Plan Connectivity 2025 precisely on regulatory excellence. The initiative indirectly creates a harmonized law and decreases the probability of the law concerning cryptocurrencies being miscomprehended by an individual.

Prior to the enactment of a particular law, a cost-benefit analysis is conducted as part of the standard procedure. In his paper, Bolturk (2023) states that this analysis would assess the expenses associated with deploying a product and evaluate the advantages it will provide. Most regulatory entities incorporate analysis into their decision-making process to ensure accountability for actions in accordance with legislation. Applying the principle of evaluating whether implementing a new regulation would be the most appropriate solution for addressing this issue, the conclusion would be that it is not recommended. Considering the need to evaluate two distinct statutes, namely the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 and the Capital Markets and Services Act 2007, this task will need a significant amount of time and expenses without yielding substantial benefits. Furthermore, it is unfeasible to propose that Malaysia should establish a particular legislation regulating cryptocurrencies, given Malaysia does not acknowledge them as a valid form of currency. Previously, Deputy Finance Minister Shahar

Abdullah stated that the motion to legalise it has not been discussed in Parliament. Therefore, it is advisable to revise the existing restrictions on cryptocurrency in Malaysia by adopting the laws and best practices of Singapore.

Thus, this paper highly recommends the Government of Malaysia to amend the Capital Markets and Service (Prescription of Security) & (Digital currency and Digital Token) Order 2019 and treat it as the main regulation governing cryptocurrencies in Malaysia. The rationale is that the said provision possesses a nature of having the attributes and authority governing the digital currency or digital token which indirectly will be a concrete basis to be the main statute governing cryptocurrencies. The regulations in the Anti-Money Laundering and Counter Financing of Terrorism Policy for Digital Currencies (Sector 6) incorporated in the newly suggested Capital Markets and Service (Prescription of Security) & (Digital currency and Digital Token) Order 2019. Even recommends being merged into a concise regulation, it is insufficient as it will only govern the nature of cryptocurrencies as well as the duties of the reporting institutions. This leaves another lacuna over the protection of the consumer. Thus, the Singapore Guidelines on Provision of Digital Payment Token Services to The Public need to be taken into consideration. This document laid down several duties to the digital token provider to not make any advertisement concerning digital payment tokens that visualize a high risk to the consumer. In addition to that, Singaporean practice of ensuring safekeeping of consumer assets, segregating personal assets from customer's asset, and putting a certain amount as deposit to a financial institution could be incorporated in the newly suggested Capital Markets and Service (Prescription of Security) & (Digital currency and Digital Token) Order 2019. Indirectly, it imposes a greater duty on the reporting institutions. In short, the new regulation will govern both the service providers and the consumers.

In addition to implementing a concise regulatory framework, this study suggests that Malaysia should develop its own digital currency, following the example of Singapore. Typically, a special token is issued on a one-to-one basis in return for money to facilitate interbank transactions without any interest. Alonso (2020) suggests that it might serve as a substitute for the existing legal tender currency due to its ability to provide transparency and facilitate fast transactions. The project could be advantageous for consumers to participate in digital currency or digital token transactions. Nevertheless, it is crucial to prioritise the examination of the legal standing of bitcoin.

CONCLUSION

There shall be no doubt that the current condition of cryptocurrency legislation in Malaysia is at an early level, indicating that the legal system is still in its infancy phase. At this first phase, consumers who interact with these currencies face increased risks of fraud and many types of threats. Moreover, the existing regulatory structure in Malaysia for overseeing matters pertaining to cryptocurrencies appears to be insufficient. It lacks some provisions necessary for ensuring a secure and properly controlled setting. To tackle these challenges, a proactive approach could involve in implementing successful initiatives and adopting best practices from Singapore, that has made substantial progress in regulating the cryptocurrency industry. Malaysia can acquire valuable insights as well as benefits to improve its regulatory system by studying and implementing Singapore's regulatory strategy. Moreover, Malaysia should evaluate the potential for revising its laws or, at the very least, formulating clear principles to govern cryptocurrencies. The digital currency ecosystem should establish unambiguous standards that are both extensive and succinct, which should function as definitive rules. Implementing this measure would not only mitigate the dangers connected with fraud and threats, but also facilitate the establishment of a robust and forward-thinking legislative framework for cryptocurrencies in Malaysia.

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