

## **E-WALLET IN MALAYSIA: A PROPOSED STRUCTURE OF CONTRACTS ACCORDING TO THE JURISTIC ADAPTATION (TAKYIF FIQHI)**

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Received Date: 19 October 2022 • Accepted Date: 17 December 2022

### **Abstract**

The rapid growth of the financial industry in line with technological development leads to the emergence of e-wallet. E-wallet is an instrument of payment of goods or services electronically without the need to use cash. The use of e-wallet although still in its initial stages in Malaysia, is still subject to Shariah analysis. This study would like to analyze several Shariah issues in e-wallet, which aimed to measure the Shariah compliance, as well as to come out with some suggestions to improve its implementation. Among the research findings are the use of e-wallet is subject to origin of ruling in commercial transactions which is permissible, thus the Shariah analysis of it focuses on the circumstances that would make it forbidden, and the possible contracts between all contractors which include the user, the bank and non-bank issuer, and the third party have been discussed in the study with taking into consideration of juristic adaptations, conditions, and implications. Two methods will be used in this research, firstly the inductive method in collecting data, and the second is the analytical method in analyzing the data.

**Keywords:** E-wallet, Shariah, Juristic Adaptation, Contracts, Malaysia

**Cite as:** Mustafa Mat Jubri Shamsuddin, Miszairi Sitiris & Saidatolakma Mohd Yunus. 2021. E-Wallet in Malaysia: A Proposed Structure of Contracts According to The Juristic Adaptation (*Takyif Fiqhi*). *Malaysian Journal for Islamic Studies* 6(1): 15-37

### **INTRODUCTION**

Among characteristics of Islam is its adaptability to a changing and growing environment. The technology aspect is considered one of the most rapidly changing and developing facets of time

and place. The Islamic stance on this technology is therefore very clear that it is a device or a medium by which people obtain their needs and wishes. Islam does not reject technology at all, and technology does not violate Islam at all. Technology has been used in many fields including Islamic finance or business. Most products or services based on the technology have been used in the financial and banking industries. The focus of this study is on one of those products or services, called e-wallet. It complements e-payment within e-business using e-money.

Considering this, this research examines Shariah compliance in the implementation of e-wallet as it involves contracts that need to be viewed in terms of conditions and consequences. In addition, its implementation that is quite different from Islamic banking and financial products and services, in terms of mode, content, revenue, benefits and risks, requires its own study to clarify the ambiguity surrounding the issue of Shariah compliance in this e-wallet.

## LITERATURE REVIEW

Earlier studies have explored the issue of e-wallet, among them an article entitled “*Analysis of E-Payment Applications: A Case Study of One of the Zakat Institutions in Malaysia*” which focused on the use of e-payment in paying zakat. While listing the online payment tools, the authors mentioned e-wallet as a payment option for online transactions. Among the findings of this research, the e-payment system is becoming more popular in Malaysia, even though the amount of Zakat collected, and the percentage of increment remains low compared to offline payment (Yaakub, 2016).

This issue also is discussed by a research paper entitled “*Moving into Cashless Society: Factors Affecting Adoption of E-Wallet*”. The study examined the factors that affect the adoption of e-wallet among undergraduates’ students in Universiti Tunku Abdul Rahman, Kampar. It concluded that the independent variables of convenience, social influence and speed have significance relationship towards adoption of e-wallet, and conversely, security has no significant effect on the acceptance of e-wallet (Xian, 2018).

Another study entitled “*Transforming Mobile Phones Into E-Wallets in Malaysia*”. This article provided a broad overview of the Bank Negara Malaysia (BNM)’s progress in accelerating Malaysia’s migration to e-payments, with a focus on key developments relating to mobile payments and its potential to transform Malaysia’s payments landscape. The authors mentioned that to spur greater adoption of mobile payments, the Bank introduced the Interoperable Credit Transfer Framework (ICTF) that establishes a shared payment infrastructure that connects bank and non-bank accounts while managing the resultant risks (Wei, & Tsu, 2018).

Regarding the Shariah issues in the adoption of e-wallet, there is an article entitled “*Some Shariah Considerations Concerning E-Wallet*” which pointed out some Shariah issues concerning the use of e-wallet. Among them, the users of e-wallet have no knowledge where the issuers place the deposit and as to whether the money is used for Shariah or non-Shariah compliant purposes. In addition, the practice of e-wallet involves various transactions and contracts between parties, which may include *ribā* (usury), *gharar* (uncertainty) and *maysir* (gambling) (Mohamad, 2019).

Like this, (Zulkefli, 2019) deliberated the Shariah issues in e-wallet in their article entitled “*Application of E-Wallet: A Preliminary Analysis from the Shariah Perspective*”. This

article analyzed the concepts used in the e-wallet from a Shariah perspective (*Takyīf Fiqhī*) and highlighted issues that are related to its application. It emphasized on the deposited money in the e-wallet, whether it should be considered as *Qard* (loan) or *Wadī'ah* (deposit). This reflects consequences of each contract so that it may not lead to prohibited actions such as *ribā* (usury). Azrul Azlan Iskandar Mirza in his article entitled “*E-Wallet Patuh Syariah?*” also investigated the Shariah issues in e-wallet. Basically, and after general considerations, the author agreed on the permissibility of e-wallet, but the Shariah issues rise in other circumstances. For instance, top up bonus promotion that may lead to *ribā* (usury), and lucky draw promotion that may involve *maysir* (gambling). The author admitted that there are issues in e-wallet including its technical process and modes of promotions that need to be scrutinized to make it compliant to Shariah (Mirza, 2019).

After going through these and other studies, e-wallet's adoption includes Shariah issues that need study and analysis. One of the major concerns is the technical process of implementing e-wallet between the parties, or specifically the type of contracts and transactions associated with it. Moreover, the other concerns that affect Shariah compliance in the application of e-wallet are the intentions or purposes of its use, and the effects or consequences of its practice.

## MEANING AND CONCEPT

Before looking at the issue of e-wallet from the Shariah point of view and identifying its problems and issues, we need to have an overview of the e-wallet itself.

### Definition:

Wallets are historically containers used to save money and carry it around when dealing with purchases, payments, or the like. The wallet was originally used to keep money, and after the existence of cash replacement such as a credit or debit card, it was also stored in the wallet (Mjølunes, 2003). The main difference between the traditional wallet and the e-wallet is in letter E, which is to indicate the meaning of the electronic, meaning that the wallet doesn't exist in the actual form.

At the beginning e-wallet was known as the Electronic Purse. According to Sharīf Muḥammad Ghinām (2003), Electronic Purse is a mode of payment or transaction through internet site in financial activities. It includes the use of a smart card that contains prepaid value to carry out the buying and selling transaction. Adlin Zulkefli and others (2019) mentioned while defining e-wallet that it is a digital tool (software of application) for consumers to store their payment methods. It allows an individual to make electronic transactions with an improved checkout and payment experience compared to keying in all payment credentials every time a purchase is to be made.

Others define e-wallet similarly with some additional description, for instance Muhammad Hisyam (2019) illustrated it as a virtual wallet in which we do not need physical money to make payments or fund transfers. Marisa Karsen and others (2019) added that e-wallet is Mobile devices which can be used for payment (as a mobile payment) using micro-payment methods that must be supported by an authentication system to ensure the safety and comfort of every transaction. Likewise, Md Wasiul Karim and others (2020) mentioned that e-

wallet is as an application that allows an individual to make any e-commerce transactions by storing their credit card information. Another definition akin to this by Kasthuri Subramaniam and others (2020) that e-wallet is a software application that uses electronic devices such as computers or mobile devices for online transactions.

### Types:

E-wallet operates in different types according to several considerations. The table below describes the types of e-wallets in Malaysia:

Items	Types of E-Wallets
Forms of E-Wallet	<ol style="list-style-type: none"> <li>1. <i>Card-based</i>: it works on card network such as prepaid card.</li> <li>2. <i>Network-based</i>: accessible via internet, mobile phone or any other devices (BNM).</li> </ol>
Schemes of E-Wallet	<ol style="list-style-type: none"> <li>1. <i>Small scheme</i>: purse limit not exceeding RM200 and outstanding liabilities less than RM1 million.</li> <li>2. <i>Large scheme</i>: purse limit exceeding RM200 and outstanding liabilities more than RM1 million (BNM).</li> </ol>
Issuers of E-Wallet	<ol style="list-style-type: none"> <li>1. <i>Bank</i>: provided by commercial banks which is linked to the customers' debit or credit account maintained by the bank.</li> <li>2. <i>non-bank</i>: provided by a non-bank issuer (Mohamad, 2019).</li> </ol>

Table 1: Types of E-Wallets.

### Engaging Parties

From what we have gone through regarding the definition, structure, and types of e-wallets, we might realize that there are several parties involved in this application. They are as follows (Dospinescu, 2012):

#### 1. User

It refers to whom the e-money has been issued or any person who uses the e-money to make payments for purchases of goods and services (BNM). This person is considered an e-money user via e-Wallet, to make an e-payment to the seller of goods and to the service provider. He or she represent the first party in the adoption of e-wallet.

#### 2. Provider of Service

It refers to the term used by BNM which is reload agent, who is any person that accepts payment on behalf of the issuer for the purpose of adding monetary value to the e-money (BNM). However, on a wider scale, it refers to companies that cater for Internet services, as this kind of communication service is needed for the use of e-wallet. It represents the second party in the adoption of e-wallet.

### 3. Issuer of E-Money

According to BNM Issuer of e-money refers to any person that is responsible for the payment obligation and assumes the liabilities for the e-money being issued (BNM). But this more precisely refers to the provider of e-wallet, because not all providers or e-wallet will issue e-money, and not all issuers of e-money will offer e-wallet. E-money issuer is, in our opinion, the bodies which offer digital money as discussed earlier. It represents the third party in the adoption of E-Wallet.

### 4. Provider of E-Wallet

It refers to companies that provide a channel in the form of mobile application, website, or device, to add, store and use e-money for the purpose of e-payment. These companies create these kinds of channels to be digital wallets for users as discussed earlier. They represent the fourth party in the adoption of e-wallet.

### 5. Merchant

It refers to any person that accepts the e-money as payment for their goods and services (BNM). Merchants are sellers of goods or provider of services, and they accept e-money as payment via e-wallet. They represent the fifth party in the adoption of e-wallet.

These parties are interrelated in such a way that the operation of the e-wallet will work successfully. The following chart shows the relation between the five e-wallet parties:

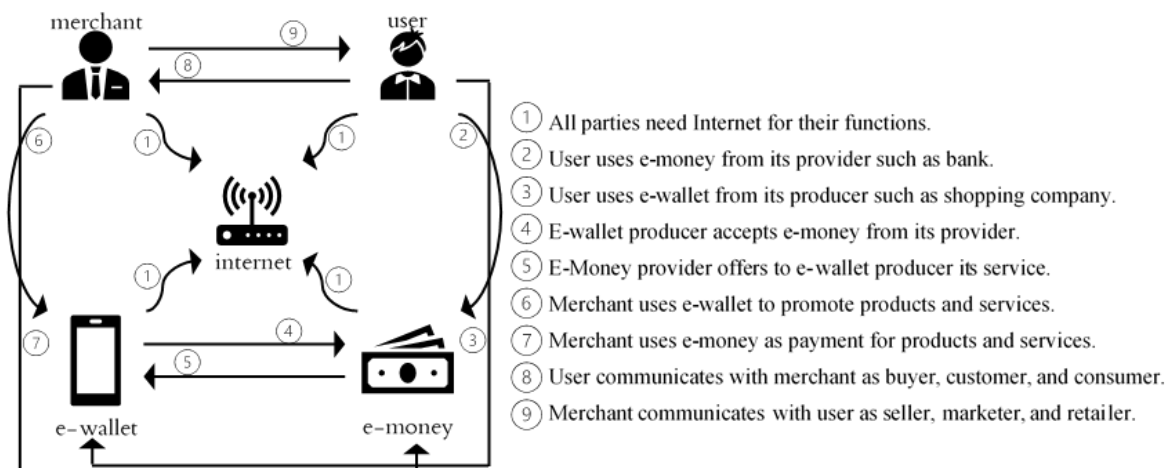


Chart 1: The inter-relation of engaging parties in the adoption of E-Wallet.

## SHARIAH ANALYSIS ON E-WALLET

Shariah analysis on e-wallet is fundamentally based on the principle that a Shariah verdict is only related to human actions and not related to objects or things (al-Zarkashī, 2000). The study of Shariah's point of view will therefore focus on how humans apply and interact with e-wallet, because it is incorrect to say that e-wallet is permissible or prohibited simply by reference to its definition.

However, it does not mean that it is pointless to know the meaning of e-wallet and its principle as discussed earlier, because that is considered as the basis of knowing its Shariah ruling as indicated in the maxim “*giving a ruling on a matter is a branch of understanding its meaning*” (al-Qarāfī, 1999).

### The Origin of Shariah Ruling on E-Wallet

To discover Shariah's verdict on the use of e-wallet, we must know the origin of its ruling (*aṣl al-ḥukm*) intrinsically, and then identify the conditions and circumstances that alter that origin. The origin of Shariah's ruling on e-wallet is that it is permissible (*mubāḥ*) for Muslims to adopt it in their financial transactions. The process of juristic discretion (*ijtihād*) will, therefore, be concerned with the causes which could take this issue out of its origin of ruling. We will then be concerned with the understanding of the guidelines and requirements that perpetuate the origin of permissibility in the use of e-wallet.

There are three foundations underpinning the Shariah point of view of e-wallet's permissibility. They are as follows:

- i. Commercial transaction (*mu'āmalāt*) originally is permissible: It is apparently in Islam that all transactions relating to wealth and property between people are permitted (al-Māwardī, 1999), except for some reasons. From our explanation of its definition and structure, e-wallet is classified as one of services offered in the financial sector and is therefore subject to this legal maxim of Shariah.
- ii. Custom (*ʿādah*) is authoritative: People's practices in their daily lives are generally based on a common interest (*maṣlaḥah*) that benefits all or most of them. Naturally, people do not engage with each other based on harms (*mafsadah*). Hence, in the process of determining Shariah rulings, custom could be relied upon, in which any practices that are familiar to people are authoritative (al-Suyūfī, 1990). From our presentation on its acceptance among people, the use of e-wallet has become part of today's transactions, due to its benefits and advantages. Since the Shariah does not limit the method of transactions to certain ways, the use of e-wallet could be included.
- iii. Technology is a means to certain purposes: E-wallet is part of Fintech, which is considered a means of achieving goals or tool for equipping processes. In this case, it is a means or tool in financial transaction, which is permissible. Thus, as it accomplishes the purpose of making transactions in financial activities, a complement to the permissible in Shariah is indeed considered permissible with some conditions (ʿIzz al-Dīn, 1991). It refers here to human actions towards e-wallet such as using, creating, etc.

As far as the origin of the permissibility is concerned, the Shariah analysis of the use of e-wallet focuses on the situations that would make it forbidden. Since the rationale of why it is permissible is because it brings interest (*jalb al-maṣlaḥah*), thus, the reason of why it is prohibited is simply because it causes harm (*jalb al-maṣṣadah*). Precisely the harms that might occur during implementing e-wallet are as follows:

- i. Usury (*Ribā*): it refers to any conditional increase in the financial contract without legitimate exchange (Qal‘ahjī, 2010). It is clearly prohibited in Islam, as Allah says in the Quran: “*Allah hath permitted trade and forbidden usury*” (al-Baqarah: 275).
- ii. Gambling (*Maysir*): it refers to making possession of property dependent on chance or uncertain event (Qal‘ahjī, 2010). It is forbidden in Islam, as Allah says in the Quran: “*They ask thee concerning wine and gambling, say in them is great sin and some profit for men; but the sin is greater than the profit*” (al-Baqarah: 219).
- iii. Uncertainty (*Gharar*): it refers to ignorance or blindness in financial contract either concerning the price or the sale or the period of contract or the ability of consignment (Qal‘ahjī, 2010). It is prohibited in Islam, as Abū Hurairah narrated that the “*Prophet forbids the contract which contains al-gharar*” (al-Naysābūrī, 2006).
- iv. Fraud (*Ghabn*): it refers to buying something below its value or price, or deception of selling when one sells goods at an awfully expensive price (al-Sharbāsī, 1981). It is also forbidden in Islam, as Abū Hurairah narrated that the Prophet said, “*Whoever deceives us is not one of us*” (al-Naysābūrī, 2006).
- v. Deceiving (*Ghish*): it refers to showing what is not real and actual (Qal‘ahjī, 2010). It is akin to *ghabn* which is prohibited according to the earlier *ḥadīth*.

All the above is harm (*mafsadah*) to humans, either in the form of causing evil (*tahqīq al-mafsadah*) or in the form of eliminating interest (*tafwīt al-maṣlahah*). In the end, both forms contradict one of the supreme objectives (*maqāṣid*) of the Shariah, which is the preservation of wealth (*ḥifẓ al-māl*).

### Compliance to Shariah in the Adoption of E-Wallet

According to Rusnah Muhamad (2011) the concept of Shariah compliance from the perspective of Islamic Banking Institutions (IBIs) is when a bank avoids participating knowingly in transactions that transgress or bypass any Shariah regulatory requirement. Furthermore, according to BNM, Shariah compliance includes the compliance to Shariah rulings and decisions issued by SAC (Shariah Advisory Committee) as well (Bank Negara Malaysia. Shariah Governance Framework for Islamic Financial Institutions. p. 5. Retrieved from: <https://www.bnm.gov.my/index.php?ch=57&pg=144&ac=836&bb=file>). Thus, anything in Islamic finance from the Malaysian perspective is compliant to Shariah if it obeys Shariah rulings and conforms to Shariah committee’s guidelines.

The concept of compliance with Shariah includes two forms depending on the origin of matters. They are as follows:

- i. Compliance in the form of adherence (*muwāfaqah*) to Shariah rulings: it is for the condition which the origin of matter is prohibited, and the process of *ijtihād* would be concerned on identifying the requirements that make it permitted. This is applied in the subject matter of worships (*‘ibādāt*) as the effective cause of their rulings is generally not acquired by human mind.
- ii. Compliance in the form of non-violating (*‘adam mukhālafah*) Shariah rulings: it is for the condition which the origin of matter is permitted, and the process of *ijtihād* would

be concerned on scrutinizing the causes that make it prohibited. This is applied in the subject matter of customs (*‘ādāt*) as the effective cause of their rulings is generally acquired by human mind.

As mentioned earlier, the issue of e-wallet is subject to a second form of compliance, as its origin of the ruling is permissible. Therefore, the study of its compliance with Shariah is by looking to the side that it does not violate any of Shariah's rulings.

There are three concerns in the form of non-violating Shariah rulings, in which compliance with Shariah will be achieved only if these three have complied with it. They are compliance in the intention (*qaṣd*), compliance in the operation (*‘adā’*), and compliance in the end (*ma’āl*). If any of these three violates Shariah's rulings, this will create issues in the non-compliance of financial products or services.

In the case of e-wallet, the intention to use it must not infringe Shariah, nor must the performance and practice of using it contradict Shariah, nor must the result and effect of using it contravene Shariah.

### Shariah Compliance in the Intention of Using E-Wallet

In Islam, every action begins with the intention of doing so, as it will only be considered fruitful and meaningful deeds if associated with good intention. The Prophet has said: “*The reward of deeds depends upon the intentions and every person will get the reward according to what he has intended*” (al-Bukhārī, 2002). This *ḥadīth* implies that human beings should be granted rewards for their actions on condition that these acts are associated with good and right intention.

Al-Shāṭibī (2014) mentioned in his great book “*al-Muwāfaqāt*” that the intention of the Lawgiver with respect to the subject is that his intention in acts undertaken conform with the intention of the Lawgiver in legislation. This describes the Shariah compliance relating to the human intention, in which any human action must be with the intention that adheres to Allah's intention.

The intention of Allah is represented in His rulings, when He allows actions, the intention is either to bring benefit (*jalb al-maṣlaḥah*) to people or to prevent harm (*dar’ al-mafṣadah*) from them. If an individual carries out a permissible action, but the intention is either to bring harm (*jalb al-mafṣadah*) or to prevent benefit (*dar’ al-maṣlaḥah*), it is certainly contrasting with Allah's intention. Thus, this kind of intention is not Shariah's compliance, so that the action associated with it is not permissible, as failure to comply with Shariah in the intention leads to non-compliance in the action.

As far as the use of e-wallet is concerned, it is subject to the origin of the permissibility as mentioned above, and therefore the intention of Allah in this verdict is either to bring benefit or to prevent harm. If any person intends through using e-wallet causing accredited harm (*mafṣadah mu’tabarah*) either to himself, such as making sinful actions easier for him to do, or to others, such as stealing their money through hacking, his intention is not compliant with Shariah. Likewise, if someone intends blocking others from accredited benefit (*maṣlaḥah mu’tabarah*) such as preventing others from buying goods, his intention also is not compliant with Shariah.



As stated in the recent studies on the use of e-wallet, the users' intentions are not contradicting Shariah. According to Md Wasiul Karim and others (2020), perceived usefulness, perceived ease of use and privacy and security have positive and significant relationship with behavioral intention to use e-wallet. Another study conducted by Akmal Nashreen Abd Malik and Sharifah Nurafizah Syed Annuar (2019) stated in its hypotheses that there is a positive relationship between perceived usefulness, perceived ease of use and trust, and intention to use e-wallet. The similar finding is presented by Chua Chang Jin and others (2020), where their study shows that perceived usefulness, and perceived ease to accept have significant relationship with behavioral intention to use E-Wallet.

To sum up, the users' intentions in the use of e-wallet are not contradicting the intention of Allah which is to bring benefit to humankind and preserve it. The intentions of using e-wallet are because of its usefulness, ease, privacy, security, and trust, which comply with Shariah in the form of non-violating the intention of Allah.

### **Shariah Compliance in the Operation of Using E-Wallet**

The operation here refers to the actual process of implementing the e-wallet, which includes its structure, types, parties involved, and rewards. Each of these parts must be compliant with Shariah in a sense that they do not contradict any of its rules and objectives.

### **Shariah Analysis on the Structure of E-Wallet**

The adoption of e-wallet demands e-money, to conduct e-payment and to carry out e-business. This structure must therefore also be studied to identify its compliance with Shariah in a sense that the ruling of one part will have an impact on others.

The juristic rational for this is that e-money is complementary to e-wallet, and e-wallet is complementary to e-payment and e-business. The explanation for this is as follows:

- i. *Shariah ruling on e-money*: E-money is subject to the origin of permissibility as it is classified under the financial matters (*mu'āmalāt*) in Shariah. According to some studies such as Muhammad Ridwan Firdaus (2018) and Shaymā' Manşūr (2015), e-money is compliant with Shariah as it is considered as a new form of conventional money. In contrast, according to Bāsim al-'Aqābī and others (2008), e-money is not money, rather than a means of payment, which is the right of the user to make the payment to the issuer. Based on our presentation of the meaning of e-money, it is legally and practically very much like conventional money, and therefore they are both similar in their Shariah ruling, which was originally permissible. There is therefore no Shariah issue pertaining to e-money as it is complementary to e-wallet. But, if e-money becomes forbidden due to some reasons such as from usury or stealing, the use of e-wallet is prohibited as well. This is based on the legal maxim "*whatever should not be utilized, should not be possessed*", (al-Suyūṭī, 1990) which means the prohibited e-money cannot be used for any purposes, thus it cannot be possessed by adding it to e-wallet, and the use of e-wallet is forbidden due to this reason.
- ii. *Shariah ruling on e-payment*: E-payment is part from the financial matters (*mu'āmalāt*)

in Shariah specifically in the way of conducting contracts. As its origin of permissibility based on the legal maxim "*unrestricted action is interpreted by what is common*", (al-Sarakhsī, 1993) which means that there are no certain restrictions on the way of payment in Shariah, it depends on what is common among people. Thus, e-payment nowadays is considered widespread practice in doing payment in various financial activities. The use of e-wallet is complementary to perform e-payment, which is permissible in general, thus there is no Shariah issue on this matter. But, if e-payment becomes prohibited because of impermissible purposes such as involving in gambling or bribery, the use of e-Wallet is also prohibited. This is hinge on the legal maxim "*whatever leads to impermissible is considered prohibited*", ('Izz al-Dīn, 1991) which means if the use of e-wallet leads to the using e-payment in prohibited actions, the e-wallet is prohibited because of this.

- iii. *Shariah ruling on e-commerce*: E-commerce or e-business is representing financial matters (*mu'āmalāt*) in its largest scale; thus, it is subject to the origin of permissibility as well. If the financial activities in e-commerce are compliant with Shariah without involving such forbidden actions like prostitution, wines, and gambling, it remains permissible. So, the use of e-wallet that supports the growth of e-business is permissible for this reason, based on the legal maxim "*the means are subject to the rulings of their ends*", ('Izz al-Dīn, 1991) which means the e-wallet is permissible as it complements e-business which is permissible.

In conclusion, the structure of e-wallet is compliant with Shariah, as all involving elements are permissible in condition that they persist in the origin of permissibility. Based on this structure, the use of e-wallet is considered prohibited in three circumstances:

- i. If the e-money that used in the e-wallet is impermissible.
- ii. If the e-payment that done by the e-wallet is impermissible.
- iii. If the e-business that the e-Wallet involved in is impermissible.

### **Shariah Analysis on the Parties in E-Wallet**

The form of a contract is the most important thing in the financial transactions between the parties in Shariah. Thus, the Shariah analysis on the parties involved in e-wallet focuses on the contracts (*'uqūd*) between them to measure to what extent does each contract comply with Shariah's rulings and requirements?

#### **The User and the Internet provider**

This provider supplies Internet services for social communication and connection to people in the form of networking. When the user subscribes internet service for adopting e-wallet, the payment for this is considered a fee (*'ujrah*), and the contract is lease contract (*'aqd al-'ijārah*), or specifically it is service contract (*'ijārah al-khadamāt*). For example, a user has subscribed internet with a company, and he paid RM50 for a monthly subscription. So, user and company are the contractors (*'āqidān*), internet is the service (*manfa'ah*), payment is the fee (*'ujrah*), and

one month is the period (*'ajal*). They are therefore subject to Shariah rulings and regulations in leasing contract.

### The User and the Bank E-Wallet

This bank provides e-money which is digital money for financial transactions, and the same time it offers e-wallet which is digital wallet for keeping and managing this money.

- (a) **The contract between user and bank for e-money:** Users save their money in deposit account of the bank, and the amount represents digital money. Deposit accounts in Islamic banks are usually based on either *wadī'ah* (safekeeping) or *muḍārabah* (profit-sharing) or *qarḍ* (loan) (Abdullah & Chee, 2010). For payments purposes, these accounts are connected to debit card. Meanwhile, the use of credit card in Islamic banks is typically based on *īnah* (sale and repurchase), *tawarruq* (buy and resell) and *'ujrah* (fee) (Noor & Azli, 2009). When the user adds an amount of e-money to his digital wallet that belongs to the bank, the situations are:
- If the customer uses online transfer or debit card, the juristic adaptation (*takyīf fiqhī*) is that he requests from the bank to allocate some amount from his deposited money for the use of wallet. The analogy (*qiyās*) here is if the customer can withdraw his money from the account as the bank is considered as trustee, it is also allowed for him to allocate some amount to his e-wallet.
  - If the customer uses credit card, the juristic adaptation (*takyīf fiqhī*) is that he lends an amount of money from the bank and requests the creditor to deposit the money into his e-wallet. Instead of giving the loan (*qarḍ*) directly to the debtor, the bank deposits it into his e-wallet account which is under the bank itself. This indicates that the money in his wallet is the loan that he borrowed from the bank, and the creditor (*dā'in*) is still that bank.
- (b) **The contract between user and bank for e-wallet:** The contract between the two is either the same contract with the e-money contract, or it is considered a new contract, but it does not have to be different.
- For the first juristic adaptation, when someone put money into his wallet which is deducted from his bank account from the first contract between him and the bank, and there is no consent from both or anyone of them to have a new contract, this indicates that they are retaining the first contract. The explanations are as follows:
    - In the *wadī'ah* contract, the depositor entrusted his money to bank as keeper, on conditions that the depositor can anytime withdraw the money, and the bank may use the money without any risk of loss. The deposited money in his wallet is part from this money, and contract between both is *wadī'ah* as the first contract.
    - In the *muḍārabah* contract, the depositor entrusted his money to bank as partner (*muḍārib*), on conditions the depositor can anytime withdraw the money, and the bank can invest the capital in Shariah-compliant sectors with agreed profit sharing. The deposited money in his wallet is part from the capital, and contract between both is *muḍārabah* as the first contract.

- In the *qard* contract, the depositor lent his money to bank as borrower, on conditions the depositor can anytime withdraw the money, and the bank can use the money and will return the same amount. The deposited money in his wallet cannot be taken from this money, if the creditor requests from the debtor (bank) to allocate some amount from the loan to his wallet, this causes Shariah issue as the creditor gains such benefits from the debtor upon his request of allocation some amount to the wallet. This is subject to the legal maxim “*every loan entailing benefit is usury*” and it is prohibited, thus, a new contract is must here.
- In the credit card contracts, where the customer borrowed from the bank, on condition the debtor will return the same amount of loan during the agreed period by the agreed means and form of payment. The *qard* contract in which the customer as debtor and the bank as creditor continues when the former requests the latter to put the loan in his wallet. This is permissible as the benefit comes from the creditor, and it is not subject to the previous legal maxim. But the Shariah issue here is, the creditor at the end also will gain some benefits as the debtor subscribes the creditor’s e-wallet. According to some Shafiite scholars, if the creditor makes a condition which benefits both parties, and the benefit for the debtor is much more, it is permissible (al-Sharawānī, 1983). This applies more here, as the creditor does not make a condition on the debtor to use the loan for subscribing e-wallet. Thus, they do not need a new contract for this situation.
- For the second juristic adaptation where a new contract applies, there are two conditions, firstly the formation of new contract is not compulsory, and secondly the formation of new contract is mandatory.
  - For the first condition where having a new contract is not compulsory, it refers to situations that continuing the first contract will not create any Shariah issues. The reason of having new contract here is the difference of conditions (*shurūṭ*) in the first contract and the new one, that affect implications, duties, and rights on the contractors, such as charging fees and giving rewards. Therefore, the user upon depositing his money to e-wallet from his account using online banking, debit card or credit card, enters a new contract with the bank.
  - For the second condition where having a new contract is mandatory, it refers to a situation that continuing the first contract will lead to *ribā dayn*. The reason of having a new contract here is to avoid impermissible consequence (*ma’āl*) in continuing the first contract. Thus, the user who is also the creditor in the first contract withdraws an amount of his money from the bank who is also the debtor, based on a condition in the first contract that the user may take his money. Then, the both must form a new contract with the amount deducted from the loan, according to the new conditions set by the bank for using e-wallet.

## The User and the Non-Bank E-Wallet:

The non-bank e-wallet refers to companies that offer e-wallet services, but they do not issue e-money like the previous one. The focal point here is the nature of relation between this company and the user, and the e-money issuer.

(a) **The contract between user and e-wallet issuer:** The practical picture of relation between both parties is that the user adds an amount of e-money to e-wallet account provided by the issuer. In return, the issuer caters for the user utilities such as e-payment for goods and services, promotions and rewards, money transfer, online shopping, etc. This implies that the fund deposited by the user in e-wallet is for the services offered by the issuer. Thus, the contract between them is under the exchange contracts (*'uqūd al-mu'āwāqāt*), as it is close to *ijārah* or *ju'alah*. But the user can use the fund for services provided, in which this makes the contract is subject to the charitable contracts (*'uqūd al-tabarru'āt*), as it is close to *wadī'ah* or *wakālah*. There are two factors to be considered in deciding the type of contract between them:

- The user's intention: As deliberated earlier, the people's intentions of using e-wallet illustrate that they are aiming usefulness of e-wallet in keeping, managing, and using their money. The purposes of paying the issuers, or lending money to them, or giving it for investment are not among the user's intentions in subscribing e-wallet. However, the Shariah issue appears here when the user intends gaining gifts, promotions, discounts, cashbacks, points, or rewards in monetary form or other that offered by the issuer with certain conditions. Based on this description the possible contracts are as follows:
  - i. *Wadī'ah* contract: The *takyīf fiqhī* for this contract as safekeeping contract is that the customer deposit the fund into e-wallet's account, on conditions that the issuer of e-wallet keeps the money based on *wadī'ah yad dāminah* (saving with guarantee) (BNM, 2010) and the user can use it at any time as well as the issuer. It is permissible as it has been applied in IFIs as one of Islamic banking products in deposit accounts.
  - ii. *Wakālah* contract: The *takyīf fiqhī* for this contract as agency contract is that the user appoints the issuer of e-wallet as the agent (*wakīl*) of keeping and managing the fund for the payment purposes, on conditions that the user can use it at any time and the issuer on behalf the owner keeps and manages it, and in return it may request for some charges based on *wakālah bil 'ujrah* (fee based agency) (<https://www.bnm.gov.my/index.php?ch=57&pg=137&ac=499&bb=file>). It is permissible as it has been applied in IFIs as one of Islamic banking services in financing.
  - iii. *Mudārabah* contract: The *takyīf fiqhī* for this contract as profit-sharing contract is that the user is capital owner gives the fund to the issuer which is capital manager for the purpose of investment with the agreed portion of profit, on conditions that the user may withdraw the capital, and the investment will be based on remaining capital (BNM, 2010). It is permissible as it has been applied in IFIs as one of Islamic banking products in investment.

- iv. *Qard* contract: The *takyīf fiqhī* for this contract as loan contract is that the user is creditor who lend an amount of money to the e-wallet issuer, which is debtor, on conditions that the creditor can use the loan and the debtor must provide services. In addition, the lender may earn incentives and profits from the debtor beside the loan. It is prohibited as it is a form of *ribā* according to the legal maxim “*every loan entailing benefit is usury*”.
  - The issuer’s conditions: Since the issuers of e-wallet are providers of the service the conditions typically come from them. These conditions are originally permissible and sound unless they are contradicting Shariah rulings and objectives (Ibn Taymiyyah, 1987). These conditions will point out the features that identify the type of contract. They are as follows:
    - i. Bindingness (*luzūm*): If the terms require the user to be bound to the contract, such as not allowing him to withdraw entire deposit from his e-wallet or limiting the minimum period of subscription to the e-wallet, they indicate that the contract between them is considered to be a binding contract (*‘aqd lāzim*). A binding contract is a contract that none of the contractors has any right to revoke (*faskh*) the contract except with the mutual consent (al-Zarkashī, 1985), and the bindingness is the origin for exchange contracts (*‘uqūd al-mu‘āwadhāt*) (al-Sarakhsī, 1993), as it may exist also in some charitable contracts (*‘uqūd al-tabarru‘āt*) such as endowment (*waqf*) (al-Anṣārī, n.d.).
    - ii. Guarantee (*ḍamān*): If the contract terms assign the issuer's guarantee on the fund, such as being liable for money loss, they indicate that the issuer is a guarantor (*ḍāmin*) for the deposited fund. It thereby grants the issuer the right to derive profit from the fund based on the legal maxim “*any gain should be accompanied with liability*” (Al-Māwardī, 1999; Al-Zarkashī, 2000; Al-Suyūṭī, 1990).
    - iii. Benefiting (*intifā‘*): If the terms of the contract allow both parties to take benefit of each other, such as the issuer is permitted to use the fund or charge such fees, and the user is given certain rewards or incentives, they mean that both contractors are entitled to enjoy their rights under these terms.
- (b) **The contract between e-money issuer and e-wallet issuer:** Since the issuer of e-wallet relies on the issuer of e-money for its service as it does not provide e-money, the nature of contract between both may affect the contract between user and e-wallet issuer. Before knowing the form of contract between the two issuers, we need to identify to permissible contracts between the user and the e-money issuer for the transferring deposit from the bank account to e-wallet account. The explanation is as follows:
- The permissible contracts between the user and the bank for its service of adding fund to e-wallet account: Regarding the previous discussion concerning the contracts between the user and the bank e-wallet, it is equally relevant with some differences here.
    - i. In the situation of having new contract is not compulsory for the bank to provide this service, the existing contracts between the two parties are permissible. This includes *wadī‘ah*, *muḍārabah*, *‘īnah* and *tawarruq* for both debit card and credit

card accounts. The *takyīf fiqhī* here is that the service of transferring the user's fund to e-wallet is analogically comparable to the service of withdrawal which is allowed in debit account. For the credit account, the service is not considered a form of *ribā* as it comes from the creditor to the debtor, and not vice versa.

- ii. In the situation of having new contract is compulsory in the case of *qard* contract between the user and the bank, as the service comes from the debtor (bank) to the creditor (customer) which is considered a form of *ribā*. It is prohibited for the bank to offer this service unless it is done in a separated new contract.
  - iii. In the situation of having new contract is under the conditions of the bank, where the bank requests from the user to form a new contract for this service. The most suitable new contracts for this service between the customer and the bank are *ijārah* or *wakālah bil 'ujrah*.
- The possible contracts between the bank and the e-wallet issuer for the service of transferring the user's fund: The significant question in this is the one that concerns the user's contract and thus affects the Shariah verdict on the adoption of the e-wallet. Regardless of the type of contracts between the two issuers, there are three sequels following the transfer of fund from the bank to the e-wallet. The first two are transmissions of the duty of being collateral (*dāmin*) and the right of deriving benefit (*intifā'*) from the bank to the e-wallet issuer. The third is retaining the right of demanding debt (*dayn*) from the user to the bank as it is still the creditor.
    - i. The service of money transfer with charging fee: If the e-wallet issuer demands such payment for this service, and the fee is taken from the user's deposited money in the bank, the contract between them is *ijārah*. Likewise, if the fee is paid by the bank, the contract between the issuer and the bank is *ijārah* as well.
    - ii. The service of money transfer without charging fee: If there is no financial implication in this service, it is considered as free service (*hibah al-manfa'ah*).

### The User and the Third Party:

This refers to the non-bank e-wallet which, as stated earlier, deposits funds of the users into the third-party account. The form of contract between the issuer and the third party determines the type of contract between the customer and the third party.

- (a) **The contract between e-wallet issuer and third party:** The previous explanation of the contracts between the user and the non-bank e-wallet issuer implies that the latter is permitted to use the user's funds with certain conditions. At the same time, the issuer needs to keep and manage an enormous amount of deposited funds from the customers, without imposing fees and charges although giving incentives and rewards. Therefore, the issuer puts the fund into the third-party account to bear the costs and expenses, that supposedly derives profits and incomes. The possible and suitable contracts are *muḍārabah* (profit sharing), *mushārah* (partnership) and *wakālah bil istithmār* (investment agency) (BNM. (2016). Wakalah. <https://www.bnm.gov.my/index.php?ch=57&pg=137&ac=499&bb=file>). This is only valid if the issuer receives the fund from its owner based on *wadī'ah* or *wakālah*. While if the fund is received based on

*muḍārabah*, the issuer is considered as investment partner (*muḍārib*) who only works for investment on behalf of the capital owner with predetermined portion of profit.

- (b) **The contract between user and third party:** There is no obvious connection between these two parties as they do not involve in any direct contract. Even though, it does not mean the user is not liable to the third party's contract with the e-wallet issuer, because the capital or the fund comes from the user. As mentioned earlier, it is essential to the user to know the Shariah compliance status of the third party's financial activities, so that he does not commit in prohibited actions. Furthermore, the rewards, gifts or incentives given by the e-wallet issuer to the customer might be earned from these kinds of impermissible investments. In conclusion, the legal maxim "*anything leads to impermissible is considered prohibited*" can be applied here to ensure that the relation between these two parties must be based on permissible actions.

## JURISTIC ADAPTATION (TAKYĪF FIQHĪ)

Malaysian authorities which responsible for the Shariah issues in the adoption of e-wallet have expounded their stands on this matter, together with the rules and regulations.

### Bank Negara Malaysia:

In the year 2008, BNM has issued a guideline on electronic money (e-money) under the payment systems (BNM. Guideline on Electronic Money (E-Money). [https://www.bnm.gov.my/microsite/ps/gl\\_016\\_3.pdf](https://www.bnm.gov.my/microsite/ps/gl_016_3.pdf)). Even though the guideline is for e-money, it includes indirectly the guidelines for e-wallet as well. This appears clearly within the guidelines on issuers of e-money and the duties of merchants and agents in dealing with e-money.

In addition, BNM has issued a list of e-money issuers including banks and non-banks (BNM. List of Regulatees. [https://www.bnm.gov.my/index.php?ch=ps&pg=ps\\_regulatees](https://www.bnm.gov.my/index.php?ch=ps&pg=ps_regulatees)), which indicates that they are the issuers of e-wallet. Among the essential guidelines imposed by BNM to the issuer of e-money which relate to the application of e-wallet are an issuer of e-money shall not (BNM. Guideline on Electronic Money (E-Money). [https://www.bnm.gov.my/microsite/ps/gl\\_016\\_3.pdf](https://www.bnm.gov.my/microsite/ps/gl_016_3.pdf)):

- i. issue the e-money at a discount, i.e., issue e-money that has a monetary value greater than the sum received.
- ii. use the money collected to extend loans to any other persons.
- iii. extend credit to the user, or pay interest or profit on the e-money balances, or anything else that would add to the monetary value of the e-money; and
- iv. associate, link or use the e-money scheme or platform to conduct illegal activities.

The effort of BNM in issuing the guidelines on e-money implies that the use of e-money is permitted, thus the adoption of e-wallet using e-money also is allowed and accepted in financial transactions and contracts in Malaysia.



## Shariah Advisory Council

Shariah Advisory Council (SAC) of Bank Negara Malaysia was established in May 1997, it serves to advise BNM on any Shariah issues relating to Islamic financial business, activities or transactions made by the Bank ([http://www.sacbnm.org/?page\\_id=3351#1510301992335-c254d885-9903](http://www.sacbnm.org/?page_id=3351#1510301992335-c254d885-9903)).

In the SAC's 201<sup>st</sup> Meeting and 26<sup>th</sup> Special Meeting on 29<sup>th</sup> and 30<sup>th</sup> January 2020, SAC has come out with Shariah rulings on e-money as a Shariah compliant payment instrument. The outcome of the meetings is that electronic money (e-money) is a permissible payment instrument under Shariah, provided that the e-money must be structured based on appropriate Shariah contract(s) to preserve the rights and obligations of the contracting parties (<http://www.sacbnm.org/?p=4735>).

Specifically, SAC has rationalized the permissibility of e-money by relying on its juristic adaptation (*takyīf fiqhī*) of combining several contracts with some rules and regulations. The crucial guidelines are as follows (<http://www.sacbnm.org/wp-content/uploads/2020/06/SAC-Statement-emonney-final.pdf>):

- i. Shariah contract between the user and the issuer is agency contract (*wakālah*). The issuer acts as an agent to make payment on behalf of the user (*wakīl bi ad-daf'i*) to the merchant.
- ii. The funds are kept in a Shariah compliant trust account/dedicated deposit account and are managed by the issuer.
- iii. Shariah contract between the issuer and the merchant is the contract of services with fee (*'ijārah al-khadāmāt*) or the contract of incentives (*ju'ālah*).
- iv. The user is allowed to invest the funds and utilises the return, and this can be construed as a loan (*qard*) from the user to the issuer.
- v. There is no issue of *qard jarra naf'an* (loan entailing benefit) in the practice of rewards offered by the issuer based on some conditions.

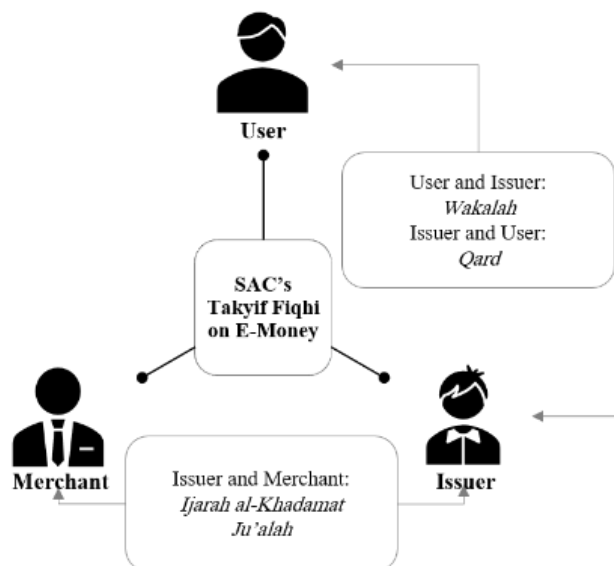


Chart 2: Summary of SAC's takyīf fiqhī on e-money.

### Juristic Adaptation (*Takyīf Fiqhī*) on the Contracts in E-Wallet:

This study has investigated several contracts tying between user and issuer in the use of e-wallet, together with their conditions and implications. According to SAC's ruling, the applicable contract is agency contract (*wakālah*) based on the issuer's role to intermediate payment and the e-money is kept in a trust account established by the issuer for settlement to merchant or refund to the user (<http://www.sacbnm.org/wp-content/uploads/2020/06/SAC-Statement-emony-final.pdf>). The authors would like to suggest that the *wadī'ah* contract should be applied here so that the issuer either bank or non-bank keeps the users' e-money in the trust account, and the user can withdraw it anytime and ask the user via agency contract to do the payment on behalf of the user.

With reference to what is allowed for the issuer towards the user for its services, it hinges on the nature of contracts between issuer and user. This study also has examined several possible contracts, which authorize the issuer to utilize the funds and to charge fees for providing e-wallet service. Regarding to utilizing the user's money in the account, it is allowed in the BNM's guideline for the purpose of investment (BNM. Guideline on Electronic Money (E-Money). [https://www.bnm.gov.my/microsite/ps/gl\\_016\\_3.pdf](https://www.bnm.gov.my/microsite/ps/gl_016_3.pdf)), and the issuer if is doing so can utilize the return of investment, which is subject to *qard* contract (<http://www.sacbnm.org/wp-content/uploads/2020/06/SAC-Statement-emony-final.pdf>). It does not contrary to the *wadī'ah* contract as suggested earlier, which can be construed as *wadī'ah yadd dāminah* that considered *qard*. (BNM, 2010). As regards to the charging fees, the contract of fee-based agency (*wakālah bil 'ujrah*) may be applied, as the *wakīl* (issuer) determines an amount of fee to be paid by the *muwakkil* (user) (<https://www.bnm.gov.my/index.php?ch=57&pg=144&ac=406&bb=file>) for the service of payments to the merchants.

Besides of being mediator between the user and the merchant, the issuer has other ties with the merchant, as the former charges the latter some payments for its services of providing a business platform in e-wallet. As ruled by SAC, this is subject to *'ijārah al-khadamāt* or *ju'alah* (<http://www.sacbnm.org/wp-content/uploads/2020/06/SAC-Statement-emony-final.pdf>), where the merchants agree to accept payments via the issuer's e-wallet, and the issuer alleviates the process of payments from the users. It is better that the fees either based on *'ijārah* or *ju'alah* are charged upon every payment of transaction, with the aim of avoiding taking fees without any countervalue.

Apparently, there is no direct contact between the user and the merchant, as the issuer intervenes between them. Though, the contract joins them is either sale contract (*bay'*) or lease contract (*'ijārah*), depends on the nature of purchased items either goods or services. Therefore, the contract is subject to the rulings of sale or lease, and any kind of pursuits from the issuer that rescind these rulings in the e-wallet is not allowed.

### Juristic Adaptation (*Takyīf Fiqhī*) on the Rewards in E-Wallet:

The Shariah analysis on this issue is depending on the juristic adaptation in which the issue of rewards is referred to the Islamic concepts and rules in financial transactions.

- (a) **General Juristic Adaptation:** The Juristic adaption on the rewards in e-wallet considers three aspects:
- i. The e-money is money: As discussed earlier, e-money that used in e-wallet is considered money in its juristic adaptation, so that it is permissible to be applied as value (*thaman*) in financial contracts. This determines the juristic adaptation on the rewards in e-wallet, as these rewards are granted to the users because of their consumption of e-wallet using the e-money. Therefore, these rewards are based on the use of e-money in e-wallet, in which e-money is juristically deemed as money.
  - ii. The reward is gift (*hibah*): the point that the reward is based on e-money does not mean that the reward is the exchange (*'iwaq*) of e-money, because this e-money is totally utilized in other financial transactions. Thus, the reward is juristically regarded as gift (*hibah*) which refers to a transfer of ownership of an asset without any consideration (BNM. (2016). Hibah. <https://www.bnm.gov.my/index.php?ch=57&pg=137&ac=515&bb=file>). It is consequently bound by the rules of gift in Shariah which include that the reward must be valuable property (*māl*) (al-Kāsānī, 1986), and the gift is not void because of defective terms (Al-Sarakhsī, 1993).
  - iii. The contract is charity (*tabarru'*): based on previous argument which the reward is considered gift, the contract between the conferrer and recipient is classified as charitable contract (*'aqd al- tabarru'*). Therefore, it is juristically subject to the rules of charity in Shariah, and among the rules that the giving of reward is not compulsory (*lāzim*) (Ḥaydar, 1991), and there is no guarantee (*ḍamān*) in charity (Al-Sarakhsī, 1993).
- (b) **Shariah Issues Based on Juristic Adaptation:** the juristic adaptation of rewards in e-wallet creates some Shariah issues that must be avoided so that the adoption of e-wallet complies with Shariah standards. Among these issues:
- i. Usury (*ribā*): this critical issue happens in the loan contract (*qarḍ*) when the e-money in the e-wallet is considered as loan to the issuer, and the issuer grants rewards to the user who is the creditor. These rewards either monetary or non-monetary are prohibited, notably in this situation where the debtor promises such rewards to the debtor. This relies on the legal maxim of “*every loan entailing benefit is prohibited*” (Ibn Nujaym, 1999).
  - ii. Gambling (*maysir*): in another situation, the user might involve in gambling activity while enjoying the rewards, when he uses monetary rewards in contesting in a draw for prizes. Mostly, the issuer grants points to the user as rewards for the use of e-wallet, but in some conditions, the issuer restricts the use of these points for contesting in a draw in which the contestant may get the prize or may not. This is clearly subject to the gambling activity which is strictly prohibited in Islam.
  - iii. Uncertainty (*jahālah*): the third Shariah issue pertaining to the rewards in e-wallet is the deceiving matter. This refers to uncertain gift (*hibah al-majhūl*) when the issuer promises to give rewards to the users without describing the exact thing, and the user subscribes e-wallet just because of these unknown rewards. It is prohibited to make the gift unspecified to the recipient (Ibn Qudāmah, 1968), especially in this situation where the reward is because of financial contract between parties.

## PROPOSED STRUCTURE OF CONTRACTS

To conclude previous explanations, discussions and arguments, the authors would like to recommend the proposed structure of combined contracts in Shariah-complaint e-wallet which is as follows:

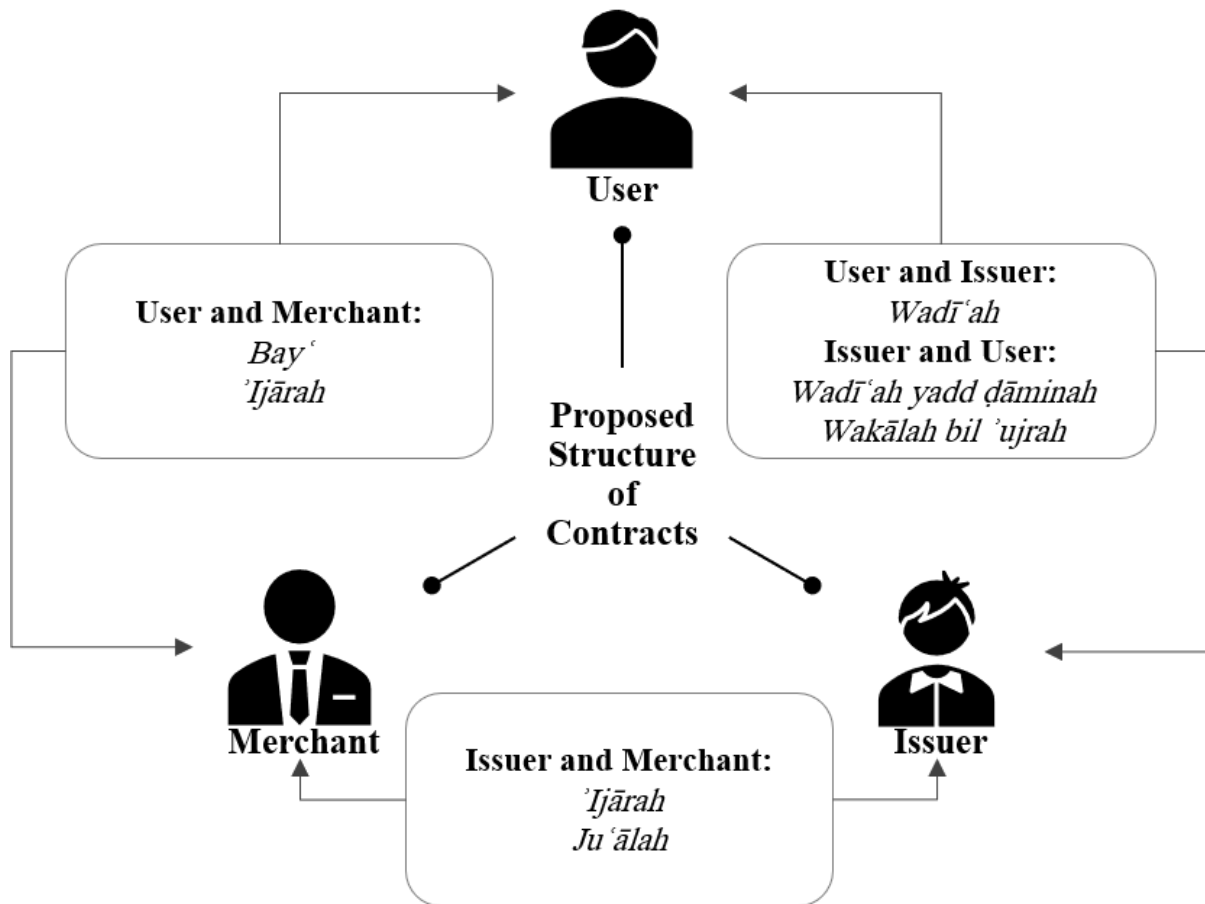


Chart 3: Proposed Structure of Contracts in E-Wallet

- i. The contract between user and issuer is *wadi'ah*, meanwhile the contract between issuer and user is either *wadi'ah yadd dāminah* or *wakalah bil 'ujrah*.
- ii. The contract between issuer and merchant is either *'ijarah* or *ju'alah*.
- iii. The contract between user and merchant is either *bay'* or *ju'alah*.

## CONCLUSION

The analysis in this research leads to the following findings, that the e-wallet is similar in its core function to the conventional wallet, which is to keep money, while the former differs from the latter in its forms, structure, processes, conditions, and consequences. The use of e-wallet is subject to origin of ruling in commercial transactions which is permissible, thus the Shariah analysis of it focuses on the circumstances that would make it forbidden. The three concern of intention (*qaṣd*), operation (*'adā'*), and result (*ma'āl*) in the use of e-wallet must not be infringe Shariah rulings and objectives. The possible contracts between all contractors which include the user, the bank and non-bank issuer, and the third party have been discussed in the study

with taking into consideration of juristic adaptations, conditions, and implications. Shariah issues that might happen in the granting rewards in e-wallet are usury, gambling, and uncertainty. The implementation of e-wallet in Malaysia is governed by several acts which includes the four acts for e-money, the six acts for issuer, and three Shariah acts and rulings. The crucial issues surrounding e-wallet application in Malaysia are structural operation, bank and non-bank issuer, use of credit card, contracts between parties, placing the fund, and granting rewards. Proposed structure of combined contracts in Shariah-complaint e-wallet consists of *wadī'ah*, *wadī'ah yadd dāminah*, *wakālah bil 'ujrah*, *'ijārah*, *ju'alah* and *bay'*.

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