

**THE LEGALITY OF CRYPTOCURRENCY TRADE IN ACCORDANCE
WITH THE PRINCIPLES OF ISLAMIC BANKING LAW**

A BACHELOR DEGREE THESIS



By:

GAZIAMALIN

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**INTERNATIONAL PROGRAM
FACULTY OF LAW
UNIVERSITAS ISLAM INDONESIA
YOGYAKARTA**

2018

**THE LEGALITY OF CRYPTOCURRENCY TRADE IN ACCORDANCE
WITH THE PRINCIPLES OF ISLAMIC BANKING LAW**

A BACHELOR DEGREE THESIS Presented as the

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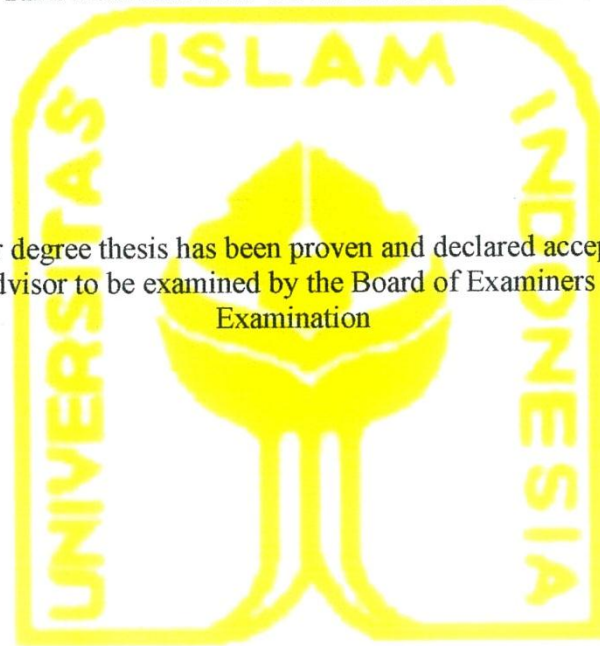
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*–When things are out of your hands and you know you've done everything you can,
have no regrets|| – Park Jaehyung*

*–Even if you didn't make it, it's not the end of the world as long as you know you've
tried hard, that's all that matters right?|| – Kang Younghyun*

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This thesis is dedicated to:

*My beloved Papa and Mama, My siblings Fira and Ian. Thank you for every pray
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ABSTRACT

Money is a part of human life that has an important role for human survival wherever he is. However, the creation of Cryptocurrencies makes the world stir up with the concept of digital money. For muslim users, Cryptocurrency does operate like buying and selling foreign currency in Islam called sharf, but for the validity of cryptocurrency it still raises questions, whether it is in accordance with the terms and conditions in sharf based on Islamic Banking Law. This research is a normative-conceptual approach with the process of collecting data from literature studies, whether it is from the books, journals, articles, documents, news, and also from national and international laws. In the process of analyzing data during the process of this research, it is applied the qualitative method of analysis. Which is done by describing the already gained data, knowledge and information through description or explanation which is assessed by the opinions of the experts, by laws, and also by the researcher's own arguments. The result of this research is that Cryptocurrency does suitable and fulfills the terms of the contract as well as buying and selling in Islam. Cryptocurrency can be categorized as a sharf if there are regulations that can regulate the cryptocurrency trade. With the existence of clear regulations, the element of gharar (uncertainty) can be avoided. Hence, the statements and regulations from the government and national shariah board are very necessary to provide legal certainty, especially for Muslims. The making of regulations is urgent because with regulations, Cryptocurrency users do not have the right and to avoid losses.

Keywords:

Cryptocurrencies, Islamic Banking Law, sharf

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CHAPTER I

INTRODUCTION

A. Background of Study

People across the globe don't expect that their entire understanding of currency will change into digital currency. The world of finance was shocked by the existence of a new payment system that began to spread throughout the world which known as Cryptocurrencies. Cryptocurrencies have soared in popularity since 2008, with more than 1,000 existed nowadays¹ and have bigger market value since its high popularity.

A pseudonym called Satoshi Nakamoto published a white paper in 2009 elucidating the concept, technology and source code for the implementation of blockchain.² For the first time, a system allows real-time exchanges of a digital asset between two unrelated entities without a central counterparty. Such transactions are subsequently recorded by network nodes in a public distributed database called blockchain.³

In recent years, human interest has grown in a new type of currency and known as Cryptocurrency. Cryptocurrency is a virtual medium of

¹ Sundeep Gatori, *Cryptocurrencies: Beneath the bubble*, UBS, 2017

² A Brief History of Cryptocurrency, in <https://medium.com/koinex-crunch/a-brief-history-of-cryptocurrency-889fed168555> (Accessed on 10 August 2018)

³ Matteo Biella, Vittorio Zinetti, *Blockchain Technology and Applications from a Financial Perspective*, Technical Report Version 1.0, UniCredit, February 26,2016, p.3

exchange and can be used to purchase goods and services and exchange for conventional currencies. It is virtual and exists only ledger entries in the peer to peer network.⁴The individuals looking for a digital platform to do securely transaction, anonymously, and outside of government influence. Since its popularity, the volume and usage of cryptocurrency has exploded. As the society become increasingly digital, financial services providers are looking to offer customers the same services to which they're accustomed, but in a more efficient, secure, and cost-effective way.⁵

The total of cryptocurrency market capitalization reached \$400 billion dollars in April 2018⁶ and getting higher until today, even though the entire cryptocurrency market has lost 20% of its value over the last 2 weeks⁷ from the market data on 8 August 2018. The most important cryptocurrencies in the market are Bitcoin (BTC), Ethereum (ETH), Ripple (XRP), Bitcoin Cash (BCH), EOS (EOS), Litecoin (LTC), Cardano (ADA), Stellar (XLM), MIOTA (IOTA), and NEO (NEO). These cryptocurrencies account for 80% of the total crypto market capitalization.⁸ Bitcoin is the first cryptocurrency that

⁴Ernie Teo, How Do Cryptocurrencies Work?, Singapore Management Industry, Inaugural CAIA-SKBI Cryptocurrency Conference 2014

⁵ Cryptocurrencies, <https://markets.businessinsider.com/cryptocurrencies> (Accessed on 10 August 2018)

⁶ <https://usethebitcoin.com/the-cryptocurrency-market-capitalization-is-getting-near-to-400-billion-dollars/> (Accessed on 10 August 2018)

⁷ <https://markets.businessinsider.com/currencies/news/bitcoin-and-cryptocurrency-prices-on-august-8-market-slump-continues-2018-8-1027441550> (accessed on 10 August 2018)

⁸ *ibid.*

introduced to the world and has the highest value in the market for nowadays among the others.

In the cyberspace, Bitcoin is widely known as a means of exchanging value between contracting parties in an open-flow system. It gives the contracting parties the ability to purchase, transfer and exchange values directly, and without intermediaries such as financial institutions or governmental intervention. Unlike traditional monetary schemes, Bitcoin is governed by built-in algorithm computer codes, which constitutes the building blocks of its digital cryptocurrency.⁹

The cryptocurrencies are the product of Blockchain Management System (BMS) and it is a self-contained system for transferring numerical values from one account to other account, it might seem impossible for lost in value during transit between accounts and doubles-spending within this transaction. In this way, a BMS can be seen as an accounting system. BMSs like Bitcoin exist as myriad copies of a piece of software that run on users' computers, communicate each other via the Internet, and have copies that are updated approximately every ten minutes of the history of every transaction that has been completed within the system since its inception. If anyone's transaction history different from others' it is considered to be incorrect and it

⁹Mohammad Mahmoud Ibrahim Tayel, *Can Bitcoin Be Self-Regulatory Legal Tender?: A Comparative Analysis of United States, European Union and Islamic Legal Systems*, Central European University, 2015

is replaced with a copy of the correct record. To subvert the system, one would need to control more than half of the entire network and to corrupt the record in precisely the same way across that majority.¹⁰ The basic foundation of BMS and Bitcoin is cryptography. Cryptography is the study of codes including writing codes, solving codes, and manipulating codes. It is known since ancient era, it is in a form of ciphers, a secret or disguised way of writing a code. In the beginning of digital computing era, Cryptography is being developed to raise the level of ciphers previously made by humans to be faster and modernly, and also it ensure the secure communications and also transactions.¹¹

While cryptocurrency has spread its existence to the whole world, there are so many responds from the legal perspectives. The regulations may be different among countries, it creates diversity about the presence of cryptocurrency. In Asia, Japan, as a country that leads the role of digital money has made the regulations as well as the Philippines. China, which initially became the favorite market for cryptocurrency was eventually banned and blocked online access to overseas trading platforms and cut off power to Bitcoin miners. In the American continent, U.S and Canada have regulated about cryptocurrency, even though they should consider the high-risk. In

¹⁰Charles W. Evans, Bitcoin in Islamic Banking and Finance, American Research Institute for Policy Development, June 2015

¹¹The Cryptography of Bitcoin, <https://www.pluralsight.com/guides/the-cryptography-of-bitcoin> (accessed on 31 May 2018)

Europe and Africa, the countries also stand in gray area about the existence of cryptocurrency.¹²

As a religion which brings peace thought, Islam regulated all life aspects of its adherents. The Qur'an as the main guide has set everything about life in the world that can be applied by all mankind. The Qur'an is the universal message of human being, every aspect of life as we know it has been codified and collected within it. There is always an answer for any question that had to be answered. As the practical guide in all Muslim affairs, Such as in social, cultural, political, legal, and also in economic.

Covering all spheres of life, Islam has a continuous doctrine of one another. The ultimate goal is to achieve the benefit of the people. In the field of banking and finance, Islam offers its own unique banking and finance system called as Islamic Banking and Finance. This growth financial system is based on the Holy Qur'an and Hadith where activities involving interest (*riba*), uncertainty (*gharar*) and gambling (*maysir*) are strictly forbidden. *Riba* 'is literally an addition (*Al-ziyadah*) in a transaction. *Gharar* is a way to gain profit in an incorrect way according to Sharia. While *Maysir* is gambling / chancy as a form of real speculation.¹³ In conducting financial transaction, it

¹²What the Worlds Governments are Saying about Cryptocurrencies, <https://www.bloomberg.com/news/articles/2018-03-26/what-the-world-s-governments-are-saying-about-cryptocurrencies> (Accessed on 3 June 2018)

¹³Agus Triyanta, *Hukum Perbankan Syariah : Regulasi, Implementasi dan Formulasi kepatuhannya terhadap prinsip prinsip Islam*, Setara Press, First Press, 2016, p. 45

should be intended or purposely to seek the pleasure of Allah SWT, also to prosper the earth and prepare for the afterlife.¹⁴

However, Islamic banking has various types of service products where one of them is buying and selling foreign exchange or called *al-sharf*. Islamic banking law already regulate about foreign exchange trading. In terminology, the meaning is the exchange of a currency from one form to another with the same type.¹⁵ Foreign exchange trading arises because of the international trade of goods or commodities interstate. With the existence of trade between countries, of course require a tool of pay, ie money in each country has its own provisions and different from each other in accordance with the supply and demand among these countries, resulting in the comparison of currency values between countries.¹⁶ Whereas in a number of activities to meet various purposes, it is often necessary to buy and sell currency (*Al-Sharf*), either between the same currency or the different types of money.¹⁷

The practice of buying and selling of foreign currencies based on *Sharia* is permissible, if it done on the basis of willingness between both of parties and in cash, and there should be no addition between similar goods (gold with gold or silver with silver) but if different types, such as gold with

¹⁴Veithzal Rivai, Arifiandy Permata Veithzal, and Marissa Greace Haque Fawzi, *Islamic Transaction Law in Business dari Teori ke Praktik*, (Jakarta : Bumi Aksara,2011), p. 202

¹⁵Agus Triyanta, *Op.Cit*, p. 63

¹⁶Veithzal Rivai, *Op.Cit*, p. 305

¹⁷Veithzal Rivai, *op.cit* pg. 307 which stated from Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia no: 28/DSN-MUI/III/2002, about Foreign Exchange (*Al-Sharf*)

silver or in currencies such as Rupiah and Dollar, they can be redeemed according to market rate and must be cash. The cash criteria in *sharf* practice is to avoid interest within transaction.

Based on the fatwa of the National Sharia Board Number 28 / DSN-MUI / III / 2002 on Al-Sharf, in the sale and purchase of currencies transactions principally shall be; not for speculation, there is a need for a transaction or in case of a transaction in the same currency the value must be the same and in cash (*at-taqaabudh*), and if it is of any kind, it must be done at the exchange rate apply at the time the transaction is made and in cash. The purpose of the necessity of cash in *al-sharf* contract is to avoid the existence of *gharar* which contained *Riba' fadl*. With foreign exchange transactions conducted in cash, the *gharar* in *al-sharf* agreement will be lost because the implementation is done directly and in cash.¹⁸

As the Islamic Banking and Finance continues to grow, more innovations will take place, and one of the recent innovations that have big impact amongst others is the developments of Cryptocurrency.¹⁹

With the development of cryptocurrency, it was created a new perspective for the Islamic finance that applying Shariah or Islamic Law. Shariah in

¹⁸Muhammad Sulhan, "Transaksi Valuta Asing (al-sharf) dalam Perspektif Islam" (accessed on 7 July 2018)

¹⁹ Cryptocurrency and Islam, <https://www.islamicfinder.org/iqra/cryptocurrency-and-islam/?language=id>, (accessed on May 30 2018)

finance basically has the two main purposes, first is how the practices to comply to the principles of Shariah. Second, how these initiatives fit into the broad purpose of Islamic finance which bringing good and avoiding harms form mankind.²⁰ With all the innovation and enhancement of cryptocurrency, Shariah should remain a guideline for the balance of Islamic finance practices in order not to erode the ever-evolving trend while sticking to the Islamic Law. With the growing popularity of cryptocurrency at this time, Islamic finance must be a reference for Muslim people in the world who are interested in cryptocurrency without leaving Islamic law value.

Then problems with Cryptocurrency which is the digital currency must be in what limits when its status is still in gray area in the fiat money category. Fiat money is backed up with government regulation and also legal to use by people, and it is different with Cryptocurrencies that digitally use and the legality is still questionable. With the development of Cryptocurrency at this time, it is necessary to ensure the legality of Cryptocurrency in Islamic banking law and *al-sharf* area as it should be to prevent the wrong and misuse of Cryptocurrency itself.

B. Problems Formulation

1. Does Cryptocurrency contradict to the Islamic Banking Law Principles?

²⁰Aznan Hasan, Shariah and Fintech Solution in Wealth Management, Institute of Islamic Banking and Finance, International Islamic University Malaysia (accessed on 31 May 2018)

2. Can Cryptocurrency trade be classified as *as-sharf* based on the Principles of Islamic Banking Law?

C. Research Objectives

1. To figure out whether the Principles of Islamic Banking Law is allowing cryptocurrency to be applied.
2. To analyze the Cryptocurrency trade based on the Principles Islamic Banking Law and its relation to *sharf*.

D. Definition of Terms

- I. *Islamic Banking*: all things concerning Sharia Bank and Sharia Business Unit, covering institutions, business activities, and ways and processes in carrying out its business activities.²¹
- II. *Cryptocurrency*: cryptocurrency is the digital media of exchange. Cryptocurrency use shared transaction ledgers and cryptography to create anonymous, secure, traceable, and potentially stable monetary system.²²

²¹Article 1 point 1 of Law no 21 year 2008 about Islamic Banking

²² Andrus Istomin, *What is Cryptocurrency ? Everything You Need to Know About Cryptocurrency ; Bitcoin, Ethereum, Litecoin, and Dogecoin*, 2017, p. 7

III. *Bitcoin*: bitcoin is a digital medium of exchange used by digital transacting parties. These transacting parties exchange value directly peer-to-peer without any financial or government interference. In order to ensure the legitimacy of Bitcoin's ownership, users participate together in a voting-like algorithm-based system known as proof-of-work. Which provides the emergent consensus of all transactions between the output and input chain. These transactions are finally recorded on the authoritative record of ownership known as the blockchain. It is publicly distributed and can be accessed by any users.²³ Bitcoin is the most known cryptocurrencies and has the largest market in the world.

IV. *Al-Sharf*: a sale and purchase agreement of a currency denominated in other currencies, a sale or purchase of a foreign currency of the same or similar type.²⁴ The practice of *al-sharf* is permissible if done on the basis of willingness between both parties and in cash, and there should be no addition between a similar item because the advantages between

²³Mohammad Mahmoud Ibrahim Tayel, *Can Bitcoin Be Self-Regulatory Legal Tender? A Comparative Analysis of United States, European Union and Islamic Legal Systems*, Central European University, 2017 (accessed on 8 July 2018)

²⁴Muhammad Sulhan, *Transaksi Valuta Asing (Al-Sharf) dalam Perspektif Islam* (accessed on 9 July 2018)

two similar goods can be classified as *riba al-fadl* which is clearly prohibited by Islam.²⁵

E. Theoretical Review

In this Sub Chapter, the researcher will discuss about *al-sharf* in the Islamic Law, Islamic Banking Law, International trade and also the development of Cryptocurrency.

1. The principle of *al-sharf*

Al-sharf is a transaction of foreign exchange based on Islamic Law. In Islam, money serves only as a medium of exchange, not as a commodity or merchandise. Therefore, the motive for money demand is to meet demand for transactions, not for speculation or trading.²⁶ The transaction of *al-sharf* is categorized as sale and purchase in *fiqh mu'amalah*²⁷. Basically, the practice of *al-sharf* shall be meet this principle:

A. Not for speculation

²⁵*ibid.*

²⁶Agus Triyanta and Ahmad Syaifudin Anwar, *Tinjauan Hukum Islam Terhadap Praktik Transaksi Valuta Asing : Analisa Perbandingan antara Indonesia dan Malaysia*, Universitas Islam Indonesia, 2012, p. 70

²⁷*ibid.*

- B. There is a need for transactions or savings
- C. If a transaction is made with similar currency then its value must be the same and in cash (*at-taqabudh*)
- D. If the type is different then it must be done with the exchange rate (exchange rate) that apply at the time
- E. the transaction is made in cash.²⁸

Fiqh ulama define *sharf* as trading money with similar or unsimilar money. In classical fiqh literature, this discussion was found in the form of buying and selling dinars with dinars, dirhams with dirhams, or dinars with dirhams. One dinar, according to *Syauqi Ismail Syahatah* (fiqh expert from Egypt), is worth 4.51 grams of gold. According to the majority of scholars (*Jumhur Ulama*), 1 dinar is 12 dirhams and according to *Hanafi school scholars*, 10 dinars are 12 dirhams. The difference in dinar prices occurs because of currency fluctuations in their respective times.²⁹

Ulama fiqh said that the basis for allowing the sale of this currency was the words of the Prophet Muhammad

²⁸Haris Junjuran, *Akad Sharf* in <https://www.scribd.com/doc/230193365/Akad-Sharf> (accessed on 9 July 2018) referring to the decision of the National Shariah Council Fatwa

²⁹Sutan Remy Sjahdeni, *Perbankan Islam dan kedudukannya dalam Tata Hukum Perbankan Indonesia*, Pustaka Utama Grafiti, Jakarta, Second Press, 2005

PBUH...,

"(Buy and sell) gold with gold, silver with silver, wheat with wheat, dates with dates, wine with wine, (if) one type (must) be the same (quality and quantity and carried out) in cash. If the type is different, then sell according to your will with the terms in cash."³⁰

"Do not you trade in gold with gold and silver with silver except the same, and do not sell silver or gold, one of which is occult (not in place) and the other is there."³²

The first *Hadith* emphasizes that the same type of currency exchange terms are the same quality and quantity and are carried out in cash where the payment must be made immediately and must not be owed. The second *Hadith* also emphasizes that currency exchange must be made in cash.³³

2. The Principles of Islamic Banking Law

The basic purpose of Islamic banking is to provide financial facilities by seeking financial instruments that are in

³⁰ What is meant by "cash" is that the payment must be made immediately and must not be owed.

³¹ HR Jamaah from Ubadah bin as-Samit, except Al-Bukhari)

³² HR Jamaah from Ibnu Umar

³³ *ibid*, The object exchanged or traded is at the place of sale and purchase.

accordance with Sharia provisions and norms.³⁴ The aim of Islamic banks in general is to encourage and accelerate the economic progress of a society by conducting banking, financial, commercial and investment activities in accordance with Sharia principles. It is the differences from conventional banks whose main purpose is to gain high profit.³⁵ Because of its Sharia nature, Sharia bank products are not the same as conventional bank products, namely the prohibition of using the bank's interest system, which is categorized as a ban using transactions that contain elements of gambling and uncertainty.³⁶

Broadly speaking, the basic principle of Islamic Banking is that it does not recognize the concept of interest in money and is based on contracts that have been regulated in the Islamic Agreement. So from the description, the basic principles of Islamic Banking consist of;

- a. *Mudharabah* principle is an agreement between two parties where the first party is the owner of the fund (*sahibul mal*) and the second party is the manager of the fund (*mudharib*)

³⁴ Sutan Remy Sjahdeni, *op.cit*, p. 21, from Handbook of Islamic Banking cited from Elias G. Kazarian, *op.cit*, p. 54

³⁵ Khotibul Umam, *op.cit* p.32

³⁶ *ibid*, p. 60

to manage an economic activity by agreeing the profit sharing ratio on the profit to be obtained while the loss arising is the risk of the owner as long there is no evidence that *mudarib* commits fraud or misconduct.³⁷

b. *Wadi'ah* principle is a deposit where the first party entrusts funds or objects to the second party as the recipient of the deposit with the consequences of the deposit can be taken back at any time, where the depositor can be charged a deposit.³⁸ Islamic scholars decision define *wadi'ah* by "representing others to maintain certain things in a certain way."³⁹

c. The Buy and Sell Principle (Al Buyu ') consists of:

1. *Murabahah* is a sale and purchase agreement between two parties where the buyer and seller agree on a sale price consisting of the purchase price plus the cost of purchase and profit for the seller. *Murabahah* can be

³⁷ Achmad Baraba, *Prinsip Dasar Operasional Perbankan Syariah*, pg.3, in <https://www.bi.go.id/Fid/Fpublikasi/Fjurnal-ekonomi/FDocuments/F278a9fb52727474583693a27108bc707bempvol2no3des99.pdf> (accessed on 16 Aug. 18)

³⁸ *ibid*, p. 4

³⁹ Sutan Remi Sjahdeni, *op.cit*, p.56

made in cash, it can also be paid through paid installment.

2. *Salam* is the purchase of goods with upfront payment and the goods will deliver later.
3. *Istishna* 'is the purchase of goods through an order and the process for making it is required in accordance with the buyer's order and payment is made in advance at a time or gradually.⁴⁰

d. Services consist of :

1. *Ijarah* is the activity of leasing an item in return for leasing income, if there is an ownership transfer agreement at the end of the lease term called *Ijarah mumtahiya bi tamlik* (same as operating lease)
2. *Wakalah*, namely the first party authorizes the second party (as a representative) for certain matters where the second party is rewarded in the form of fees or commissions.

⁴⁰ *op.cit*

3. *Kafalah*, namely the first party is willing to be the guarantor for activities conducted by a second party as long as it is agreed upon where the first party receives compensation in the form of fees or commissions (guarantee).

4. *Sharf* namely the exchange / buying and selling of different currencies with the immediate / spot delivery based on the price agreement in accordance with the market price at the time of exchange.⁴¹

e. The Virtue Principle is the acceptance and distribution of benevolent funds in the form of *zakat*, *infaq*, *shodaqah* and others as well as the distribution of *al-qardul hasan*, namely distribution and in the form of loans for the purpose of helping the poor with productive use without being asked to pay unless the principal repayment.

3. *Al-sharf* in Islamic Banking Law

Al-sharf in Islamic banking law is one of the operational services offered by Syariah Bank. Operational Services offered by Syariah Banking in Indonesia is basically

⁴¹ *ibid*, p.5

no different from the services offered by conventional banking, but by using Syariah contracts. The contracts used by these finance products mostly use the *wakalah* contract.⁴² Akad *wakalah* is a contract to authorize the assignee to perform a task on behalf of the authorizer.⁴³ *Al-sharf* is classified as contract-based on Services category.⁴⁴

Sharf contracts are practiced by Islamic banks in service products in the form of exchanging foreign currencies based on the selling rate and buying rate of a currency. The bank will get compensation in the form of the difference between the selling rate and the existing buying rate, plus administrative costs whose amount is determined in accordance with the bank's policy.

Technical implementation of the *sharf* contract as a Shariah banking product in the service sector can be guided by SEBI No. 10/14 / DPbS dated March 17, 2008.⁴⁵ In the SEBI it is stated that the activities of fund distribution in the form of

⁴²Muhammad Sadi, *Konsep Hukum Perbankan Syariah: Pola Relasi Sebagai Institusi Intermediasi dan Agen Investasi*, Setara Press, Malang, 2015, p.73

⁴³ibid, p.79 cited from Endang Purwaningsih, *Hukum Bisnis*, Ghalia Indonesia, Jakarta, 2010,p.49

⁴⁴IMF Staff Discussion Note, *Islamic Finance: Opportunity, Challenges, and Policy Options* , 2015 cited from Hussain, Shahmoradi and Turk 2015

⁴⁵ See Surat Edaran Bank Indonesia No. 10/14/DPbS tentang Pelaksanaan Prinsip Syariah dalam Kegiatan Penghimpunan Dana dan Penyaluran Dana serta Pelayanan Jasa Bank Syariah

providing currency exchange services on the basis of the Sharf agreement, apply the following requirements:

- a. Banks can act both as parties who accept exchanges and those who exchange money from or to customers;
- b. Money exchange transactions for different currencies (foreign currencies) can only be done in the form of spot transactions; and
- c. In the case of money exchange transactions conducted on different types of currencies in money changer activities, the transaction must be made in cash at the exchange rate prevailing at the time the transaction is made.⁴⁶

4. International Trade

International Trade is the exchange of goods and service across international borders or territories.⁴⁷ International trade cannot be separated from the desire of a country to meet the needs that are not in its own country. Various theories about modern international trade have been put forward to regulate

⁴⁶ Khotibul Umam, *Perbankan Syariah: Dasar-Dasar dan Dinamika Perkembangannya di Indonesia*, Rajawali Press, Jakarta, 2016, p. 182

⁴⁷ International trade, in repository.uobabylon.edu.iq/2010_2011/6_2160_237.pdf (Accessed on 4 September 2018)

the performance of a country in an effort to meet its needs. There are two basic types of trade between countries:

- a. First of all, in which the receiving country itself cannot produce the goods or provide the services in question, or where they do not have enough.
- b. Second of all, in which they have the capability of producing the goods or supplying the services, but still import them.⁴⁸

5. The Development of Cryptocurrency

Under development in some form or another since 1983, cryptocurrencies are digitally code scripts that attempt to replicate the official government currencies that we use today. However, while transactions through official government currencies are tracked by central clearing houses or banks, cryptocurrency transactions are tracked by blockchain, a publicly-viewable, digital ledger. The backbone of the cryptocurrency network is made up of 'miners': individuals or syndicates who use highly-efficient networks of computers to solve complex mathematical sequences in exchange for

⁴⁸ Jim Sherlock and Jonathan Reuvid, *The Handbook of International Trade: A Guide to the Principles & Practice of Export*, GMB Publishing, 2008, p. 3

transaction fees and, in some cases, newly created cryptocurrency.⁴⁹

This distributed, rather than centralized, set-up creates a number of advantages over government-backed currencies. First, by allowing transactions to be made directly between two parties, rather than through an intermediary, blockchain could make transacting quicker and cheaper. Second, raising funding in cryptocurrencies is also more straightforward than through a traditional initial public offering (IPO). This has helped spur growth in the initial coin offering (ICO) market. Finally, the pseudonymous nature of cryptocurrencies (the accounts transacting are known but the owners are not) and non-governmental nature of the currencies, means that cryptocurrencies have also gained traction among people concerned about privacy, among those politically opposed to government management of currencies, and as a medium of exchange on the online black market.⁵⁰

⁴⁹ Sundeep Gatori, *Cryptocurrencies: Beneath the bubble*, <https://www.ubs.com/content/dam/WealthManagementAmericas/cio-impact/cryptocurrencies.pdf> (accessed on 9 July 2018)

⁵⁰ *ibid.*

F. Research Methods

I. Sources of Data

The source of the research data consists of secondary data. Secondary data is data obtained from primary, secondary and tertiary legal materials. Secondary legal materials are materials that do not have binding authority juridically, such as: draft legislation, literature, and journals. Tertiary legal materials are complementary to secondary data, such as dictionaries and encyclopedias.

II. Data Collecting

The process of collecting data in the making of this research was done through both library studies by collecting as many as possible knowledge and information from the books, jurisprudences, awards, journal, articles, documents and news, as well as from national and international laws.

III. Data Approach

The approach in this research is using normative approach. Which will be centering on statute approach, conceptual approach, analytical approach, historical approach, comparative approach and philosophical approach.

IV. Data Analysis

In the process of analyzing data during the process of this research, it is applied the qualitative method of analysis. Which is done by describing the already gained data, knowledge and information through description or explanation which is assessed by the opinions of the experts, by laws, and also by the researcher „s own arguments.

G. Systematic Writing

I. Chapter 1

Chapter one contains an introduction a background of the thesis, which includes these following parts: the context of the study, statement of problems, research objectives, theoretical frameworks, research procedures and system of writing.

II. Chapter 2

Chapter two contains the theoretical reviews regarding of *al-sharf* in Islamic Law, Islamic Banking Law, Cryptocurrency and International Trade. Definition and elements related to Cryptocurrencies will explained especially its relation to *sharf*.

III. Chapter 3

Chapter three contains of; first, the analysis of cryptocurrencies in Islamic Banking Law, whether it is applicable and in accordance with Islamic Banking Law.

Second, the analysis of Cryptocurrency and the relation to *sharf* principle in Islamic Banking Law.

IV. Chapter 4

Chapter four provides the conclusion and recommendation that are made based on the previous analysis.

CHAPTER II

**GENERAL OVERVIEW OF THE SHARF PRINCIPLE AND THE
DEVELOPMENT OF CRYPTOCURRENCIES AND ITS RELATION TO THE
PRINCIPLES OF ISLAMIC BANKING LAW**

A. General Overview on Islamic Banking Law

1. Definition on Islamic Banking Law

Islam is full of prescribed forms and rituals governing all aspects of life and worship.⁵¹ Because Islam is a view or way of life that governs all aspects of human life, there are no aspects of human life that are detached from Islamic teachings, including economic aspects.⁵² In making a living to carry out life in this world, economic activities will not be perfect without a banking institution. Banking is a vital aspect of this modern life, therefore Islam also regulates banking, although not in detail. Economic aspects included in the chapter *muamalah*, the Prophet Muhammad PBUH does not regulate in detail about this problem. The Qur'an and Sunnah only provide basic principles and philosophy, and affirm the prohibitions that must be shunned. Thus, all of that must be done is to identify things that are prohibited

⁵¹ Maha-Hanaan Balala, *Islamic Finance and Law : Theory and Practice in a Globalized World*, I.B Tauris Co Ltd, London-New York, 2011, p. 17

⁵² Adiwarman A. Karim, *Bank Islam : Analisis Fiqih dan Keuangan*, Fifth Edition, Ninth Press, Jakarta : PT RajaGrafindo Persada, 2013, pg. 15

by Islam. Besides that, everything is permissible and we can do as much innovation and creativity as possible.⁵³

Banks are financial intermediary institutions or commonly called financial intermediaries. That is, the bank institution is an institution in its activities related to money matters. Therefore, the bank's business will always be associated with the money problem which is a smooth tool for the occurrence of major trade. Bank activities and businesses will always be related to commodities, including:

1. Move money
2. Receive and repay money in a checking account
3. Discount money orders, order letters and other securities
4. Buy and sell securities
5. Buy and sell checks, money orders, trade papers
6. Providing bank guarantees.⁵⁴

To avoid the operation of banks with interest systems, Islam introduces the principles of *muamalah*. Syariah Bank was born as one of the alternative

⁵³ *Ibid.* pg 15

⁵⁴ Setia Budhi Wilardjo, "Pengertian, Peranan dan Perkembangan Bank Syariah di Indonesia", Value Added, Vol. 2, No. 1, September 2004- Maret 2005, Fakultas Ekonomi Universitas Muhammadiyah Semarang, 2004, p. 2

solutions to the problem of conflict between bank interest and usury. Islamic Banks are banks that in their activities provide or impose rewards on the basis of Shariah, namely buying and selling and profit sharing.⁵⁵ Shariah Banking activities are primarily to implement laws that are in accordance with what is taught by the Islamic Religion to be applied to the banking sector and financial related activities. The definition of Islamic Banking Law can be seen from the writings made by the scholars about Islamic Banking:

Islamic banks are financial institutions that implement the objectives and implement Islamic economic and financial principles in the banking sector. Islamic Banks according to the General Secretariat of the Organization of Islamic Conference (OIC), stated as follows: "... The Islamic Bank is a financial institution where the rules and procedures must obey the commitments of Islamic Shari'ah principles and are prohibited from accepting and giving interest for all transaction executed ..."⁵⁶

Islamic bank is: "... a company which carries on Banking business. The Islamic Banking business means banking business whose aims and operations do not involve any element which is not approved by religion of

⁵⁵ Hamzah Hafied, Muhammad Nasir, *Lembaga Keuangan Syariah : Teori dan Penelitian Empiris*, First Edition, First Press, PT Umitoha Ukhuwah Grafika, Makassar, 2013, p. 1

⁵⁶ Ali & Sarkar, 1995, cited from Veithzal Rivai, *Islamic Banking & Finance : Dari Teori ke Praktik Bank dan Keuangan Syariah sebagai Solusi dan Bukan Alternative*, First Press, BPFE Yogyakarta, 2012, p. 94

Islam ...⁵⁷

There are two types of definition, namely Islamic banks and banks that operate under Islamic Sharia principles. Islamic Banks are banks that operate with Islamic Sharia principles and banks whose operating procedures refer to the provisions of the Qur'an and Hadith. While the banks that operate in accordance with the principles of Islamic Sharia are banks that operate in accordance with the provisions of the Islamic Sharia, especially those concerning the procedures for Islamic prayer.⁵⁸

2. Historical Approach in Islamic Banking Law

The origin of Islamic finance dates back to the dawn of Islam 1,400 years ago. Historical books written during the early years of Islam indicated that during the 1st century of Islam (AD 600), some forms of banking activities existed that were similar to modern banking transactions.⁵⁹ During that time there were bankers called *sarraffin* or *sayarifah* or *jahabidh* (*dawawin al-jahabidhah*) in the Islamic Empire. The term *sarraffin* was used to refer to financial clerks, experts in matters of coins, skilled money examiners, treasury receivers, government cashiers, money changers, or collectors to designate the well-known, licensed merchant bankers in those

⁵⁷ Islamic Banking Act 1983, Part 1 Act A1307, Laws of Malaysia

⁵⁸ Antonio and Purwaatmaja, cited from Amir Machmud and Rukmana, *Bank Syariah : Teori, Kebijakan dan Studi Empiris di Indonesia*, Penerbit Erlangga, Jakarta, 2012, p. 9

⁵⁹ Ahmad Alharbi, Development of the Islamic Banking System, Journal of Islamic Banking and Finance, Vol. 3, No.1, pp. 12-25, June 2015, American Research Institute for Policy Development, p. 13, in http://www.cbos.gov.sd/sites/default/files/wathaig_book_03.pdf (accessed on 21 August 2018)

times.⁶⁰

Beginning with the decline of the Islamic Empire from about the 12th Century BC, the rule of the *sarraffin* began to weaken. Their loss of power within society can be attributed to several internal and external factors. This allowed Western influence to increase throughout Islamic countries, especially through colonization. Under European influence, many Islamic countries began to adopt a Western banking model in the 19th century. This started by opening branches of foreign banks or by establishing banks within countries. For instance, in Egypt, the first conventional bank opened its doors in 1856 under the name Bank of Egypt. This bank was a branch of an English bank but was closed in 1911. The National Bank of Egypt was established in 1898 by Ralph Suarez and Constantine Salvagos (Jewish businessmen) with an English partner; the bank is still in operation today.⁶¹

This trend continued in all Islamic countries until the middle of the 20th century, when the calls to establish Islamic financial institutions gained momentum with the independence of some colonized Islamic countries. In Islamic societies, scholars have three opinions regarding the European banking model:

1. All bank activities are halal (adhere to shariah). Supporters of this opinion,

⁶⁰ *Ibid*, Chachi, Origin and development of commercial and Islamic banking operations, cited from Ahmad Alharbi

⁶¹ *Ibid*.

such as the founders of Bank of Egypt, use weak arguments to present their points of view.

2. Bank activities are haram (contradictory to shariah principles) but necessary. Some scholars argue that banks play an important role in the economy and therefore they see no harm in establishing banks based on the European Model, even though some of their activities are haram. This argument is strong because it is based on one of the basic Islamic juristic rules: *al-drurat tubeah al-mahdurat* (necessity knows no law).

3. Bank activities are necessary, but *riba* is not necessary for bank operations. Supporters of this opinion argue that Islamic jurisprudence has many forms of contracts that allow Muslims to avoid *riba* and can be implemented by banks. Among Muslims worldwide, this is the most acceptable of the three arguments because many people are not using banks regularly.

In general, it can be said that the first and second opinions had the loudest voices in the mid 1900s due to the political and social climates of the times. In addition, the Western banking model was well established and no Islamic alternative existed; this was because Muslims did not have enough knowledge about the Islamic banking practices from the golden age of

Islam.⁶²

However, in the 1940s, the third opinion gained momentum, especially on an intellectual level. This trend continued in the 1950s and 1960s, when the first Islamic banks in the modern history were established. This implies that modern Islamic banks have undergone three phases of development.⁶³

The first Islamic bank which explored by the scholar is banks in Mit Ghamr, Egypt, in 1963. It considers to be the first banks without interest in Islamic society⁶⁴ with capital supported by King Faisal of Saudi Arabia. At that time, generally rural residents in Egypt were not willing to deal with banks, because they were still considered to develop usury by lending money. Then with the interest-free operation of the Islamic bank Mit Ghamr, it was welcomed by the community with great enthusiasm and success.⁶⁵ With the success of the Islamic bank Mit Ghamr, the existence of Islamic banks was increasingly recognized by researchers and other Muslim communities and the creation of the first Islamic Commercial Bank, called the Dubai Islamic bank, was established in March 1975. Since then Islamic banks began to be established in various countries including Islamic countries . The development

⁶² *Ibid*, Nasser S, The Relationship between Central Banks and Islamic Banks, cited from Ahmad Alharbi

⁶³ *Ibid*. p.14

⁶⁴ *Ibid*.

⁶⁵ Mairijiani, Analisis SWOT Perkembangan Bank Syariah di Negara-negara Muslim, Jurnal Hukum Islam (JHI) Volume 10, No 1, June 2012, p. 212, in <http://e-journal.stain-pekalongan.ac.id/index.php/jhi> (accessed on 23 August 2018)

of Islamic banks cannot be separated from the efforts carried out by the Organization of the Islamic Conference (OIC) which since 1970 has issued many recommendations and encouraged its member countries to improve the economy of the people in their respective countries.⁶⁶

Presently, Islamic banks offer the complete range of banking facilities and their subsidiaries offer leasing, nominee services, family and general *takaful* (insurance), trust funds and stockbroking facilities. The Islamic banking system runs parallel to the conventional system. In January 1994, the Islamic inter-bank market was introduced consisting the inter-bank trading in financial instruments, inter-bank investments and inter-bank cheque clearing system.⁶⁷

With the Development of Islamic finance, so it no longer be dismissed just as a phenomena in Islamic history but it will give big impacts to the global society. In the past, Islamic Bank is just an unknown bank with the interest- free based but as for today, as a consequence of broad changes in the political-economic environment, a new generation of Islamic Financial institutions, more diverse and innovative, is emerging as the doctrine is undergoing a new

⁶⁶ *Ibid.* Arief, Abd. Salam, Bank Islam : Suatu Alternatif Pemberdayaan Ekonomi Umat, 2004 cited from Mairijiani, 2012

⁶⁷ Mei Pheng Lee and Ivan Jeron Detta, *Islamic Banking & Finance Law*, Pearson and Longman : Malaysia, 2007, p. 13

aggiornamento or renewal.⁶⁸

3. Philosophical Approach of Islamic Banking Law

Islam has a very clear vision and mission for its people where everything has its own rules so that it can run properly. The Qur'an and Sunnah are real guidelines for Muslims in order that the life of the World can be in accordance with and in line with the guidance of Allah SWT and Prophet Muhammad PBUH. Every verse and speech are a clue that Muslims avoid the things that are hated by Allah SWT. Everything that happens related to worship and muamalah has been regulated in the Qur'an, including about buying and selling and usury.

Riba has been known since the time of the Qur'an's descent to PBUH Prophet Muhammad. In the period of the Qur'anic decline, the common livelihood of the Arabs was trade, because the barren nature of the conditions made it impossible to develop agricultural livelihoods, for example. The city of Mecca and its surroundings, is a cross-trade between one region and another. Even Mecca was the target of trade. So it is not surprising that the Quraysh community, in particular, had a trading system that developed at that time. Including the usury system has become part of a trading system that has been passed down through generations, mainly among Jews and most of the

⁶⁸ Ibrahim Warde, *Islamic Finance in the Global Economy*, Edinburgh University Press, Bookcraft : Great Britain, 2001

Quraysh merchants, including some friends before the verse which prohibits it.⁶⁹

After Islam came, he regarded usury as a bad element that damaged society economically, socially and morally. Therefore, Al-Qur'an forbids Muslims from taking or consuming usury.⁷⁰

Riba in all its forms is prohibited even in the verses of Al-qur'an concerning the last ban on usury, namely the word of Allah SWT in Surah Al-Baqarah (2: 278-279) expressly stated as follows:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِن كُنتُمْ

مُؤْمِنِينَ ﴿٢٧٨﴾

فَإِن لَّمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِّنَ اللَّهِ وَرَسُولِهِ ۗ وَإِن تُبْتُمْ فَلَكُمْ

رُءُوسُ أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ ﴿٢٧٩﴾

–O you who have believed, fear Allah and give up what remains (due to

⁶⁹ M. Quraish Shihab, *Membumikan al-Qur'an*, First Press, Mizan : Bandung, 1992, p. 258, cited from Rukman Abdul Rahman Said, *Konsep Al-Quran Tentang Riba*, Jurnal al-Asas, Vol. III, No. 2, October 2015, p. 60

⁷⁰ *Ibid.* p.60

you) or interest, if you should be believers. And if you do not, then be informed of a war (against you) from Allah and His Messenger. But if you repent, you may have your principal – (thus) you do no wrong, nor are you wronged.¶

The theory of Islamic banking is based essentially on the premise that interest, which is strictly forbidden in Islam, is neither a necessary nor a desirable basis for the conduct of banking operations, and that Islamic teachings provide a better foundation for organizing the working of banks.⁷¹

The practice of *riba* according to Islamic term, has been there from the start of modern banking. Western countries start the modern banking due to the world demand about financial matters.

“Among the followers of Islam, the institution of interest has always been regarded as highly ignoble because the Holy Qur'an strictly prohibits interest based transactions in all forms. In the early history of Islam the injunction relating to prohibition of interest was strictly observed, but with the decline of the hold of religion and spread of Western influence, financial practices based on interest began to permeate Muslim societies as well. In the period of colonial domination of Muslim countries by Western powers, the interest based system became solidly entrenched. It is this string of historical circumstances, Muslim scholars argue, which has led to the present-day dominance of interest in financial transactions all over the globe. Had the societies developed in a different fashion and paid greater heed to the injunctions of religion, the development of the financial system would have surely taken a different course, and we could have had in actual operation an

⁷¹ Ziauddin Ahmad, *Islamic Banking : State of the Art*, p. 1, in www.irti.org/English/Research/Documents/IES/148.pdf (Accessed on 21 August 2018)

alternative system free of interest but fully meeting the needs of modern society”.⁷²

Although not all admitted frankly but it was fully realized that a capitalist-based economic system and interest base as well as placing money as a traded commodity even on a large scale turned out to have serious implications for the destruction of fair and productive economic relations.⁷³ One of the objectives of the existence of Islamic banks is to keep using banking institutions that are very useful for human society and do not conflict with the fundamental teachings of the Qur’an and the Sunnah as a useful service of financial intermediation but not using the interest based mechanism in the process of financial intermediation.⁷⁴ Therefore, an interest-free banking mechanism was established. Islamic Banking is based on philosophical and practical reasons. The philosophical reason is the prohibition of usury in financial and non-financial transactions⁷⁵ and the practical reason is that the interest-based or conventional banking system contains several weaknesses.⁷⁶

The existence of a common misperception with the presence of the Islamic Bank as a middle ground, or a combination of a capitalist-based economy is actually difficult to avoid. First, the idea of an Islamic economic system

⁷² *Ibid.*

⁷³ Ahmad Baraba, *Op Cit*, p. 2

⁷⁴ Ziauddin Ahmad, *Op Cit*, p. 1

⁷⁵ Based on the tafsir of Surah Al-Baqarah : 275 about Riba

⁷⁶ Zainul Arifin, 2002 : 39-40, cited from Amir Machmud and Rukmana, *Bank Syariah : Teori, Kebijakan dan Studi Empiris di Indonesia*, Penerbit Erlangga, Jakarta, 2012, p. 5

emerged amidst the flow of westernization and the flow of ideology of capitalism. Second, there are similarities between the Islamic economic system and the capitalist economic system so that the Islamic economic system is considered a comedy or part of the capitalist economic system.⁷⁷ Even so, the Islamic economic system is an original economic system originating from the values of Islamic teachings. Islamic economic system is built on the basic belief that nature and all its contents including human beings are the creation of Allah SWT and as creatures and *khalifatullah fil ardh*, humans are obliged to carry out two main tasks, namely to believe in Allah and prosper the world in the ways He commands. Likewise, the Islamic economic system is based on the belief that Prophet Muhammad PBUH was an apostle and messenger of Allah, carrying good tidings, as well as *uswatun hasanah* for all humans.⁷⁸

These beliefs have consequences on understanding that every effort to organize the economy must be in accordance with the provisions of Allah SWT as contained in the Qur'an. Likewise, on a detailed level, efforts to organize the economy must be based on examples that have been shown by Prophet Muhammad PBUH as contained in his Sunnah. Islamic economic system thinkers propose two main norms that can represent the core teachings of Islam in the economic field, these two norms are *maslahah* and *al adl*.

⁷⁷ Amir Machmud and Rukmana, *Op.Cit*, p. 3

⁷⁸ *Ibid*.

Maslahah is related to the absolute value of the existence of goods, services, or actions, including economic policies, all of which must meet the criteria that lead to the realization of the objectives of Shariah (*maqashid al-shariah*), namely the protection of religion, soul, mind, property, and descent. Meanwhile, it is fair to relate to the relative interaction between one thing and another, one individual to another or a particular community with another society.⁷⁹

Islamic banks' objectives and philosophies, therefore, need to be in line with the revelation in the Quran and Hadith. An Islamic bank is to be guided by the philosophies of Islamic business because:

1. These philosophies are to be used by the management or policy makers of the banks in the process of formulating corporate objectives and policies, and
2. These philosophies indicate whether the Islamic banks is upholding true Islamic principles.⁸⁰
4. The Principles of Islamic Banking Law

Islamic Banks are banks that are based on Islamic Sharia, meaning that they must comply with the provisions contained in the *Qur'an* and *Sunnah*. Islamic Shari'ah or Islamic law is not limited to narrow understanding. Islamic

⁷⁹ *Ibid.*

⁸⁰ Mei Pheng Lee and Ivan Jeron Detta, *Op.Cit*, p. 15

Shari'ah is a practical action of the commands in the Holy Qur'an and the words of the Prophet (hadith) and aspects related to human life such as social, economics, and politics.⁸¹ Furthermore, the Principles of Islamic Bank are:⁸²

- a. Prohibition of usury (*riba*). Riba is expressly prohibited by Islamic law and is considered haram (not permitted). Islam prohibits Muslims from accepting and giving usury for any reason, such as a loan charged with interest.
- b. Capital participation. In here, Islamic banks act as providers of capital to be investors from borrowers. Banks and borrowers share the risk of part of profit. This concept of risk sharing distinguishes Islamic banks from conventional banks.
- c. Money as a potential capital. In Islam, money is only a medium of exchange and as a means of valuing goods. Money does not have its own price, and for that it is not permissible to increase the value of money through the interest payments that banks usually charge creditors. Money is treated as potential capital. This is the actual

⁸¹ Veithzal Rivai, *Islamic Banking & Finance : dari Teori ke Praktik Bank dan Keuangan Syari'ah sebagai Solusi dan bukan alternative*, First Press, Yogyakarta, p. 94

⁸² *Ibid.* p.95-96

capital when combined with other resources in productivity activities.

- d. Prohibition on Gharar (uncertainty). The Islamic financial system does not recommend stockpiling and prohibiting transactions containing *gharar* and *maysir*. *Gharar* means that the uncertainty caused by the lack of knowledge about a product that causes more risk.
- e. Good faith from contract binding (*contract*). Islam holds the obligations in the contract and the *akad* statement as sacred. *Akad* is needed to reduce the asymmetric risk information and moral hazard.

All activities that run within the Islamic Bank are based on the Qur'an and hadith. Thus, everything that is forbidden in the Qur'an and hadith must be avoided.

5. Transaction that Prohibited by Islamic Banking Law

The cause of the prohibition of a transaction is due to the Haram of the substance (*haram li-dzatihi*), Haram other than the substance (*haram li ghairihi*) and the invalid / incomplete *akad*. The following is a summary of the haram classification of a transaction.

Table 2.1 The Classification of Haram

Unclean Substance	Unclean besides the substances	<i>Akad</i> is invalid / incomplete
1. Pigs 2. <i>Khamr</i> (liquor or alcoholic beverages) 3. Carcass 4. Blood	1. <i>tadlis</i> 2. <i>taghrir</i> or <i>gharar</i> 3. <i>ikhtikar</i> 4. <i>ba' i najasy</i> 5. <i>riba</i> 6. <i>maysir</i> 7. <i>risywah</i>	1. Non-fulfillment of the terms and conditions 2. <i>Ta'alluq</i> happened 3. there is a 2 in 1 contract

Source : Adiwarmarman A. Karim, *Bank Islam : Analisis Fiqih dan Keuangan, Fifth Edition, Ninth Press, PT RajaGrafindo Persada, Jakarta, 2013*

a. Unclean Substance

This transaction is prohibited because goods or services transacted are also prohibited. For example, liquor, carcasses, pigs and blood. Although the contract has been fulfilled, but if the object contains unclean substance, the transaction remains unclean.

b. Unclean besides the substances

- 1) *Tadlis* (fraud), can occur in 4 things, namely quantity, quality, price and delivery time. *Tadlis* occurs if the transaction contains incomplete information because it will cause a situation where one party does not know the

information that is known to another party (unknown to one party) or asymmetric information. For instance, a seller who hides the defect of the item offered, or utilizes the ignorance of the buyer of the market price so that the price rises dramatically. *Tadlis* violates the principle of willingness (*an taradin minkum*).

- 2) *Taghrir / gharar* is an uncertain condition, a situation where there is incomplete information due to both parties' uncertainty. *Gharar* happens when if we treat something that should be certain becomes uncertain.
- 3) *Ikhtikar* or market engineering in supply. Market engineering in supply occurs when a producer / seller takes profits above normal profit by reducing supply so that the price of the product he sells rises in order to become a single player in the market (monopoly).
- 4) *Ba'i najasy* or market engineering in demand. This happens if a buyer creates a fake request as if there are indeed many requests for a product so that the selling price of the product will rise. The method varies, ranging from spreading issues, making purchase orders, and anything

that creates market sentiment to buy the product. After the price of the product rises according to what he wants, he will sell it for profit. Usually market engineering in demand occurs in the stock exchange, forex, and others.

5) Riba or interest. Riba is an addition to a price without the right size and is contrary to Islamic Sharia. Riba has 3 types:

a) *Riba al-fadhl*, that is usury arising from the exchange of similar goods that do not meet the criteria for the same quality (*mistlan bi mistlin*), the same quantity (*sawa-an bi sawa-in*) and the same time of submission (*yadan bi yadin*).

b) *Riba nasi'ah*, that is usury arising from debts that do not meet the criteria for profit arising together Risk (*al ghunmu bil ghurmi*) and the results of the business appear together with the cost (*al-kharaj bi dhaman*). Transactions such as this contain an exchange of obligations to bear the burden, only because of the passage of time. The point is that usury rice treats everything that is uncertain to be

certain. *Riba nasi'ah* occurs in conventional banking transactions namely deposit interest, savings, current accounts, and others. Conventional banks establish a fixed base at the beginning of a transaction, whereas customers who borrow from banks do not always have a fixed profit.

c) *Riba jahiliyah* is a debt that is paid in excess of the loan principal because the borrower is unable to repay the loan at the stipulated time.

6. *Maysir* or gambling. Gambling is a game that places one party to bear the burden of another due to the game. Another term of gambling is speculation.⁸³

7. *Risywah* or bribery. Bribery is an act of giving something to another party to get something that is not their right. Bribes are carried out by both parties voluntarily.

The unclean beside the substance's classification violates the principle of "*la tazhlimuna wa la tuzhlamun*" which is not to tyrannize and not be punished. But unfortunately, there are still many transactions in this classification that are still practiced in our lives until now. Even though Allah SWT has said in Sura Al-Maidah

⁸³ <https://www.islampos.com/inilah-perbedaan-riba-gharar-dan-maysir-43269/> (Accessed on 15 September 2018)

يَأْتِيهَا الَّذِينَ ءَامَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلٍ
 الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ ﴿٩٠﴾

O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful.

c. *Akad* is Invalid or Incomplete

Although not included in the classification of *haram li dzatihi* and *haram li ghairihi*, a transaction can be considered invalid if the contract is invalid and incomplete. Factors that cause an invalid contract are:

- 1) Pillars and requirements are not met. Pillars in a sale and purchase transaction must have parties, objects and *ijab kabul*. Then there are requirements. Different conditions with harmony. Requirements play a role in completing the law. An example is the legal requirement (*mukallaf*).

- 2) *Ta'alluq*, which is a transaction that occurs in two contracts that are mutually linked, the validity of contract 1 depends on the contract 2.
- 3) Two in One is a condition where a transaction is accommodated by two contracts at once, so that it can create *gharar* about which contract should be used. In the terminology of *fiqh*, this event is called *shafqatain fi al-shafqah*.

B. General Overview on Sharf in Islamic Banking Law

1. Definition of Sharf

Sharf is buying and selling foreign currencies based on Islamic law.

According to Language, Sharf has several meanings:

- a. Strengths and additions. From this meaning, Sharf is positioned as a worship of *naflah* (sunnah) because it is an addition to worship which is *fard* (obligatory). Mentioned in a hadith by Bukhari :⁸⁴

"The guarantee of Muslims (in providing security to non-Muslims) is one, (must be maintained even if only) comes from one person. Those who

⁸⁴ Musthafa Dib Al-Bugha, *Buku Pintar Transaksi Syariah : menjalin Kerja Sama Bisnis dan Menyelesaikan Sengketanya Berdasarkan Panduan Islam (Fiqh Al-Mua'wadhah)*, First Press, PT Mizan Publika : Bandung, 2010, p.41

*betray a Muslim, for him the curse of Allah, the angels, and all men. God will not accept sunnah or fardu worship from him.*⁸⁵

- b. The word al-sharf in the hadith above is the nafilah or sunnah, while the word al-adl is the *fard*, so that is to say that Allah is not pleased with the *fard* and sunnah worship he is doing. God will not reward the two deeds.
- c. Refuse (*al-rad wa al-daf*), move and turn away (*al-naql wa al-tahwil*). In the Qur'an mentioned:

وَإِذَا مَا أَنْزَلَتْ سُورَةٌ نَّظَرَ بَعْضُهُمْ إِلَى بَعْضٍ هَلْ يَرِيكُمْ
مِنْ أَحَدٍ ثُمَّ انصَرَفُوا صَرَفَ اللَّهِ قُلُوبَهُمْ بِأَنَّهُمْ قَوْمٌ لَا
يَفْقَهُونَ ۝١٢٧

–And whenever a surah is revealed, they look at each other.
[saying].|| Does anyone see you?|| and then they dismiss

⁸⁵ *Ibid*, cited from HR Bukhari in kitab Al-I'tisham, chapter “Ma Yukrahu min Al-Ta’ammuq wa Al-Tanazu” fi Al-ilm wa Al-Ghuluw fi Al-Din wa Al-Bida”, no 6870. HR Muslim in kitab Al-Hajj, chapter “Fadl Al-Madinati wa Du’a Al-Nabi Saw. Fiha bi Al-Barokah”, no 1370.

themselves. Allah has dismissed their hearts because they are a people who do not understand.¶

While *sharf* according to the term is the exchange of two types of valuables or buying and selling money with money. This transaction is called *sharf* because it is typical that every party that transacts hopes there is profit or because it is typically returned in a similar form and often changes hands. This transaction may be termed as '*bai*' (buying and selling) or *sharf*.⁸⁶

Sharf transaction law is changed and permitted by the Shariah. The law is reviewed in terms of the nature of the *syar'i*, the same as the law of buying and selling transactions in general, plus some conditions. *Sharf* transaction skills are found in many traditions and *atsar* of friends and are also based on *ijma'* of Muslims.⁸⁷ All Islamic scholars agree fully on *sharf's* permissiveness, as has been practiced by people since the Prophet Muhammad PBUH until now, without objection from anyone.⁸⁸

2. The Contract and Criteria of *sharf*

⁸⁶ *Ibid*, p. 43

⁸⁷ *Ibid*.

⁸⁸ International Shari'ah Research Academy for Islamic Finance (ISRA), *Sistem Keuangan Islam : Prinsip dan Operasi*, First Press, PT RajaGrafindo Persada : Jakarta, 2015, p. 260

Sharf transaction is a transaction based on Islamic law, so in its application it has been arranged in such a way as not to violate the provisions and rules in Islamic Law, especially in Islamic Banking Law. *Sharf* transactions in Islam must meet the following criteria:

- a. There are *Ijab-Qabul*, namely the Agreement to Give and Receive
 - a) The seller hands over the goods and the buyer pays cash
 - b) *Ijab-Qabul* is carried out by word of mouth, writing, and messenger
 - c) Buyers and sellers have full authority to carry out and carry out legal actions (acting mature and healthy thinking).⁸⁹
- a. Fulfill the requirements to become the object of buying and selling transactions
 - a) Sacred property and not unclean
 - b) Can be used
 - c) Can be handed over
 - d) Clear goods and prices
 - e) Sold or purchased by the owner himself by his power with the permission of the owner
 - f) The goods are in his hands if the goods are obtained in return.⁹⁰

⁸⁹ Veithzal Rivai, *Op.Cit*, p. 306

⁹⁰ *Ibid.*

According to *fiqh* scholars, the requirements that must be met in buying and selling currencies are as follows:

- a. The traded exchange rate must be controlled, both by the buyer and by the seller, before the two are separated. Mastery can be in the form of material or legal control. Material mastery, for example direct buyers receive US dollars that are bought and the seller directly receives rupiah. As for legal control, for example payment by check. According to *fiqh* experts, this requirement is needed to avoid the occurrence of *riba An-nasi'ah* (addition to one of the means of exchange). If both are separated before mastering each exchange money based on the traded exchange rate, then, according to them, the contract is cancelled because the mastery conditions of the *sharf* transaction object are not fulfilled. Separating the body in this case must be truly separated as befits a separation between a person who goes and who lives. If this separation is done by going home together, according to the farewell expert, it has not been considered perfect, because it still allows things that are not desired by Islamic law.⁹¹
- b. If the currency that is traded is of the same type, then buying and selling the currency must be carried out in the same type of currency which has the same quality and quantity, even though the model of the currency is

⁹¹ Sutan Remy Sjahdeni, *Op. Cit*, p. 89

different. For example, between the rupiah currency Rp.5,000 (five thousand rupiah). Or banknotes are exchanged for coins or vice versa.

- c. In *sharf*, it is not permitted in the contract to have the right to grant the terms for the buyer. What is meant by the terms and conditions is the right to vote for the buyer to be able to continue buying and selling the currency after the previous sale and purchase or not to continue the sale, which is agreed upon when the previous transaction takes place. The reason for not permitting the terms of the requirement is in addition to avoiding usury, also because the right of *khiyar* makes the legal contract of sale and purchase become incomplete. Whereas one of the terms and conditions for buying and selling *sharf* is the exchange of exchange that is exchanged according to the exchange rates of both parties. In the event that the *sharf* agreement is promised a condition, then the condition is invalid. Unlike the case with *khiar ru'yah*⁹² and *khiar aib*.⁹³ These two forms of enlightenment do not violate Islamic law because they do not hamper ownership and control of the object of sale and purchase. Therefore, if one party uses it, then the *sharf* contract remains valid.⁹⁴
- d. In the *sharf* contract, there should not be a grace period between the exchange of interchangeable currencies, because for the validity of the

⁹² *Khiar Ru'yah* is the right to vote for the buyer to cancel the sale and purchase when the buyer has seen the item to be purchased, while when the contract is underway he has not seen the item at all.

⁹³ *Khiar Aib* is the right to vote for the buyer to cancel the sale and purchase contract due to a hidden defect in the item purchased.

⁹⁴ Sutan Remi Sjahdeni, *Op.Cit*, p. 90

sharf the mastery of the contract must be applied in cash⁹⁵ and the act of giving each other must have taken place before the two parties who made the sale and purchase of the currency split up. As a legal consequence, if one of the parties requires a grace period, the *sharf* contract is invalid, because it means there is a suspension of ownership and control of interchangeable *sharf* contract objects.⁹⁶

3. Prohibited in *sharf*

- a. Exchange more exchange items or spend them before the goods are received. It is illegal to exchange the exchange items again with other items before the item is actually in hand. For example, someone exchanged a hundred silver dirhams with a gold bracelet. Before both or one of them really accepts.
- b. Transactions are done without *khiyar*. In this foreign exchange transaction, it is not permissible for a party to enter the transaction at the beginning of the transaction. If two people make foreign exchange transactions by stipulating the conditions that both of them or one of them may do *khiyar*⁹⁷ for one or two days, for example, this *sharf* transaction is not valid because it is not fulfilled one of the legal

⁹⁵ The purpose of having to be done in cash is that it must be done immediately and must not be owed.

⁹⁶ Sutan Remi Sjahdeni, *Op.Cit*, p. 91

⁹⁷ *Khiar* is the right to determine the choice between continuing the contract or not after the contract is made.

requirements for a foreign exchange transaction, namely *taqabudh*⁹⁸ *Khiyar* causes ownership not yet fixed. If ownership has not been fixed, the provisions of *taqabudh* will be lost. Therefore, this foreign exchange transaction becomes invalid because it is missing one of the conditions.⁹⁹

4. Types of Transaction in *sharf*

a. SPOT Transaction

That is the transaction of buying and selling foreign exchange for delivery at the time (over the counter) or the settlement at the latest within two days. The law is permissible, because it is considered cash, while the two days are considered as a process of settlement that is unavoidable and is an international transaction

b. FORWARD Transaction

That is the purchase and sale transaction of foreign exchange whose value is determined at the present time and is applied for the future time, between 2x24 hours to one year. The law is haram, because the price used is the agreed price (*muwa'adah*) and the delivery is carried out later, even though the price at the time of delivery is not necessarily the same as the agreed value, unless it is carried out in the form of a forward agreement for unavoidable needs (*lil hajah*)

⁹⁸ Taqabudh is the handover of goods when the transaction takes place.

⁹⁹ Mustafa Dib Al-Bugha, *Op.Cit*, p.46

c. SWAP Transaction

That is a contract of buying or selling foreign exchange with spot prices combined with purchases between the same foreign currency sales and forward prices. The law is unclean because it contains elements of speculation (*maysir*)

d. OPTION Transaction

That is a contract to obtain rights in order to buy or the right to sell which does not have to be done on a number of foreign currency units at a certain price and term or end date. The law is haram because it also contains elements of speculation.¹⁰⁰

C. The History and Development of Cryptocurrencies

Money is a standard measure of price, namely as a medium to measure the value of commodity prices and services.¹⁰¹ Money is also a medium of exchange used by individuals to exchange commodities and services.¹⁰² Money is very influential in human life to fulfill their needs. However, since childhood we have known different types of money, namely coins and paper

¹⁰⁰ Khotibul Umam, *Perbankan Syariah : Dasar-dasar dan Dinamika Perkembangannya di Indonesia*, based on Fatwa No. 28/DSN-MUI/III/2002 about Sharf

¹⁰¹ Azmi Rajab, *al-iqtishad al-Syasi*, p. 20, cited from Ahmad Hasan, *Mata Uang Islami : Telaah Komprehensif Sistem Keuangan Islam*, First Press, PT RajaGrafindo Persada : Jakarta, 2005, p. 12

¹⁰² Ahmad Hasan, *Op.Cit*, 13

money. The first coin came from precious metals used for jewelry and beauty, then people turned to metal to be used as a medium of exchange and a unit of price. Bronze, iron, gold and silver are components for making coins. Over time, people began to use banknotes that were in fact lighter and more flexible. The cost of printing fiat money is cheaper than coins.

Until now people only knew that this type of money was only coins and paper money. But with the development of technology and human knowledge to create something different from the past, new types of money have emerged, one of which is Cryptocurrency. Cryptocurrency is a digital currency that we can have of course in the digital world and has the same value as coins and paper money. To define the cryptocurrencies, we can analyze this simple definition:

“A virtual currency is a digital representation of value that can be digitally traded and functions as a medium of exchange, a unit of account and/or a store of value, but does not have legal tender status in any jurisdiction. It is not issued or guaranteed by any government, and fulfils these functions only by agreement within the community of users of the virtual currency. It is distinct from fiat currency or “real currency”, which is the physical money that makes up a country’s legal tender, and distinct from e-money, which is a digital representation of fiat currency”.¹⁰³

The first thing that comes from hearing the cryptocurrency sentence is

¹⁰³ Allen & Overy, *Virtual Currencies : Making the Possibilities*, 2015, p. 3

digital money, and that's the truth. In the real world, people buy and sell by meeting directly and doing it right away. What if you buy and sell at a distance? we can use a bank that is generally used by the community. Cryptocurrency is basically a part of buying and selling but is in the digital world that has its own rules. Before explaining more about how cryptocurrency works, keep in mind that cryptocurrency is used as a digital means of payment in a distributed network in the absence of trusted third party.¹⁰⁴ The most important part of Cryptocurrency is that it is not issued by a central bank, nor it is protected by regulation or law, making it impervious to government interference.¹⁰⁵ It is kind of something new in our financial system, but it is not impossible to be applied in this rapid change of technology.

Before the invention of cryptocurrency, it was impossible for two parties to have digital transactions without third parties intermediary. The double spending problem arises because people have no choice without the additional charge from the bank. Until recently, the double spending problem

¹⁰⁴ Jonathan Chiu and Thorsten Koepl, The Economics of Cryptocurrencies : Bitcoin and Beyond, 2017, p. 3, in <https://www.chapman.edu/research/institutes-and-centers/economic-science-institute/files/ifree-papers-and-photos/koeppel-april2017.pdf> (Accessed on 29 August 2018)

¹⁰⁵ Sindri Leo Arnason, Cryptocurrency and Bitcoin : A possible foundation of future currency, why it has value, what is its history and its future outlook, University of Iceland, Verslunarfelag Reykjavíkur : Reykjavík, 2015, p.8, in <https://skemman.is/bitstream/1946/20840/1/BS%20Ritgerð%20-%20Cryptocurrency%20-%20Sindri%20Leó%20Árnason%20Final.pdf> (Accessed on 29 August 2018)

was to employ a trusted third party intermediary.¹⁰⁶

The idea of Cryptocurrency is not new and has been there for years. Since the 1980s, many programmers and inventors began to build the foundation of cryptocurrency itself. Starting from the existence of the role of digital currency that grew, pushing the bounds of mobility, convenience, and security. The development of credit cards and automated teller machines, point-of-sale chips and pin and contactless technology, the rise of e-commerce is at the root of the birth of the cryptocurrency we know today.

Table 2.2 Timeline of the Development of Cryptocurrencies

Year	
1983	Berkeley programmer David Chum invented Blind Signature technology, it is an untraceable payment system that separated a person's identity from their transaction
Late 1980s	A self proclaimed libertarian anarchist group called „Cypherpunks“ outline some basic of modern Cryptocurrency like pseudo-anonymous identity, proof of work system,

¹⁰⁶ Eli Dourado and Jerry Brito, The New Palgrave Dictionary of Economics, 2014, p. 2, in https://www.researchgate.net/publication/298792075_Cryptocurrency (accessed on 29 August 2018)

	private/public key encryption, no government involvement and others in their memorandum „The Crypto Anarchist Manifesto“
1997	Adam Beck introduces his first successful proof-of-work algorithm that important to control the money supply of a Cryptocurrency
1997	The member of Cypherpunks named Wei Dei has released B-money, indulging the concepts of decentralization and digital contracts
2004	Another member of Cypherpunks named Hal Finney, developed the first successful reusable proof of work (RPOW) protocol based on Adam Beck’s earlier work. RPOW allowed users to transfer digital tokens by destroying and creating tokens during each transfer. This process constituted the first proof-of-work digital cash system.
2004	Nick Szabo is a computer scientist and cryptographer, launched a protocol to create Bit Gold, the cryptocurrency that servec as the predecessor to Bitcoin based on Wei Dei and Hal Finney’s work

2008	A paper titled <i>Bitcoin: A Peer-to-Peer Electronic Cash System</i> and writing under the pseudonym Satoshi Nakamoto and created the first and most popular Cryptocurrencies called Bitcoin. ¹⁰⁷
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Source : Eli Dourado and Jerry Brito, *The New Palgrave Dictionary of Economics in* <https://www.researchgate.net/publication/298792075> *Cryptocurrency*

In 2008, a pseudonym called Satoshi Nakamoto announced a way to solve the double spending problem without employing third parties. His invention is called Bitcoin, and it is essentially an electronic cash. Bitcoin accomplished through their own created public key cryptography, peer-to-peer networking and a proof-of-work system.¹⁰⁸ Nakamoto begins his paper by stating that “Commerce on the Internet has come to rely almost exclusively on financial institutions serving as trusted third parties to process electronic payments. While the system works well enough for most transactions, it still suffers from the inherent weakness of the trust-based model”. Further, the existence of a trusted intermediary increases transaction costs, “cutting off the possibility for small casual transactions.” Additionally, the trusted intermediaries are pressured to gather as much information about the parties as possible in order to control transaction costs. Hence, Nakamoto sought to create a coin that completely removed any trusted central authority and

¹⁰⁷ *Ibid.*

¹⁰⁸ Eli Dourado, *Loc.Cit*

replace trust with cryptographic proof. This system would have the added benefits of having low transaction fees, low latency or the time to make transactions, and pseudo-anonymity.¹⁰⁹

In 2009 when Bitcoin, the first Cryptocurrencies appeared to the public, people said that it would go nowhere. But four years later, it is the subject of articles in all major financial publications. Many transactions happen, every day and every second.¹¹⁰ Bitcoin market capitalization start higher in 2014 where the market capitalization reaches \$ 13million. Although Bitcoin had experienced a decline, there was no need to wait for a long time because at the end of 2017 Bitcoin was at its peak. In 15 December 2017, Bitcoin market capitalization reach its highest peak at around \$ 297million.¹¹¹

Cryptocurrency can provide new opportunities for businesses to raise capital and for investors to access a broader range of investments. With the existence of Cryptocurrency, they can also raise investor protection concerns, due to issues around volatility, transparency, valuation, custody and liquidity, as well as the use of unregulated cryptocurrency exchanges. The Investors may be harmed by unethical practices or illegal schemes, and may not

¹⁰⁹ Ryan Farrell, An Analysis of the Cryptocurrency Industry, University of Pennsylvania, Wharton Research Scholars, 2015, p. 4-5, in https://repository.upenn.edu/cgi/viewcontent.cgi?article=1133&context=wharton_research_scholars (Accessed on 29 August 2018)

¹¹⁰ Laissez Faire Club, The Bitcoin Bible : The Safest and Easiest Ways to Buy, Sell, Store, and Speculate, Agona Financial, LLC, 2013 in <https://www.scribd.com/doc/249366636/The-Bitcoin-Bible> (Accessed on 4 September 2018)

¹¹¹ Based on the chart in <https://www.blockchain.com/id/charts/market-cap?timespan=all> (Accessed on 4 September 2018)

understand the properties of the investment products that they are purchasing.¹¹² Most strikingly, no politician invented Bitcoin. No commission approved it. No central bank controls it. It has absolutely no political and bureaucratic vacuum. No social consensus came up with the idea. Its success or failure depends entirely on the market. It is not even owned or controlled by a single corporation. Its value is not tied to any existing currency, but rather seeks to be its own unit of account.

D. Cryptocurrencies in International Trade

The world is now surrounded by a series of technological developments in various sectors, one of which is the financial sector. The financial sector is an instrument that is vital for the economic life of a country and society in it. With the development of financial technology, its influence covers various countries in the world. Cryptocurrency is one of today's technological products. With the basics of cryptography, digital currencies are created which in the past will never be imagined.

With a status as a digital currency, Cryptocurrency has functions similar to fiat money. Exchanging one cryptocurrency for another, buying and selling, and

¹¹² CSA Staff Notice, 46-3-7 Cryptocurrency Offerings, Canadian Securities Administrators, 2017, in http://www.osc.gov.on.ca/documents/en/Securities-Category4/csa_20170824_cryptocurrency-offerings.pdf (accessed on 29 August 2018)

exchanging fiat money into crypto money.¹¹³ Cryptocurrency can also be said to be a value asset even though there is still a lot of debate about this because Cryptocurrency is considered a fictitious asset.

Even so, Cryptocurrency trading is proof that Cryptocurrency is something that has its value. Cryptocurrency trading history began in 2009 where Bitcoin was first traded. The purpose of trading here is mining, where the miners who successfully open the code from each block will get the block they want. When mining was a fairly easy thing, many miners who managed to get hundreds or even thousands of blocks that are now very fantastic. Back to the history of Cryptocurrency trading, in 2011 the price of Bitcoin (BTC) was traded over \$ 1 for the first time in February 2011, for \$ 30 in June 2011. In 2013, bitcoin prices were below \$ 20 during the whole month of January. But the same year saw the digital currency touch its lifetime high crossing the \$ 1,100 mark. The prices eventually cooled down and during 2014, bitcoin moved in the range of \$ 300 to \$ 900. In 2015, the digital currency moved up by 152.37%, up from the low of \$ 176.89 on January 14, 2015.¹¹⁴ Surely Bitcoin experienced rapid development until this writing was made, the price of Bitcoin reached \$ 6,988 for 1 Bitcoin

¹¹³ Vicky Lava, Crypto Trading, Explained, in <https://cointelegraph.com/explained/crypto-trading-explained> (Accessed on 29 August 2018)

¹¹⁴ Prableen Brajpai, Why Bitcoin Rising, in <https://www.investopedia.com/articles/investing/110815/why-bitcoin-rising.asp> (Accessed on 1 September 2018)

only and the market capitalization worth more than \$ 125 Billion.¹¹⁵ It is all by Bitcoin as the original and leading Cryptocurrency. Under Bitcoin, there are Ethereum that also has market capitalization around \$50 billion with a trading price of about \$500 per token right now. Ethereum market capitalization is smaller than Bitcoin, but it is not impossible that the price can rise high. Right now, there are more than 1600 types of Cryptocurrencies in the market¹¹⁶.

The decentralized nature of Bitcoin makes it different from fiat money backed by regulation and government's hand.. They also difference from the usual fiat money we knew, because they are not tied to any country, nation or institution.¹¹⁷

Bitcoin and other Cryptocurrencies was designed as a deflationary currency, meaning over time its value will, in theory, inherently increase because Bitcoin has its finite supply about 21 Million Bitcoin that can be mined. Unlike fiat currencies which are inflationary and whose value will eventually decrease as time goes by because the governments can no longer ensure the value of their money and think that adding more fiat money will banish the problem, while in many cases its only causing hyperinflation. Bitcoin user see the Cryptocurrency

¹¹⁵ Nathan Reiff, *Top 5 Cryptocurrencies by Market Cap*, in <https://www.investopedia.com/news/top-5-cryptocurrencies-market-cap/>, 17 July 2018 (Accessed on 1 September 2018)

¹¹⁶ The number of Cryptocurrencies over the internet as of 19 August 2018, in https://www.coinlore.com/all_coins (Accessed on 1 September 2018)

¹¹⁷ Bitcoin is individual and still weak in making regulations, but rarely is the country that regulates Bitcoin.

as recession-proof.¹¹⁸

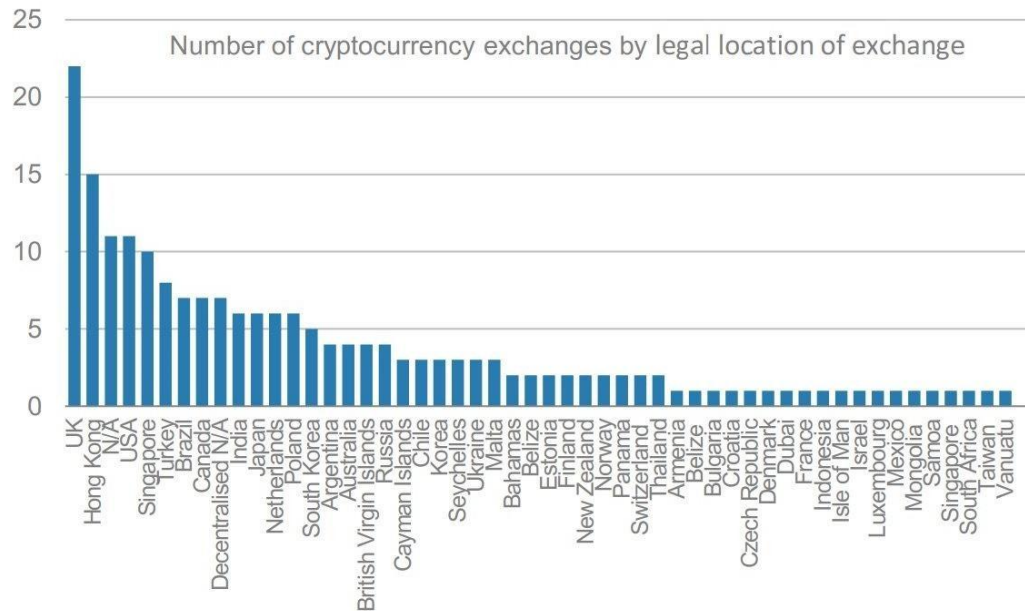
The cost of international transactions is another area where cryptocurrencies maintain a huge advantage over traditional ones. Anyone who has ever had to send money overseas will know that the cost of processing these transactions can reach ridiculous levels. There are times when these fees can top 10%. As cryptocurrencies do not view international transactions any differently from local ones, there are minimal fees for sending money to any part of the world. The speed of transactions across borders is also much faster than regular fiat currencies, a Bitcoin transaction takes around 10 minutes to register as opposed to days for international bank transfers, and other coins process transactions even faster.¹¹⁹

However, the Cryptocurrency trade has occurred in various parts of the world and the number is not small to look at the countries that have participated in conducting Cryptocurrency trade. Based on the research of Morgan Stanley, the location that has the biggest transactions of Cryptocurrency are UK, Hong Kong and USA as follows by the chart:

¹¹⁸ Stephen Satoshi, *Cryptocurrency: Beginners Bible – How You Can Make Money Trading and Investing in Cryptocurrency*, 2017, E-book, in <https://www.scribd.com/read/368784230/Cryptocurrency-Beginners-Bible-How-You-Can-Make-Money-Trading-and-Investing-in-Cryptocurrency#>, p. 14 (Accessed on 1 September 2018)

¹¹⁹ *Ibid.*

Chart 2.1 Cryptocurrency Trade based on the Users Legal Location in 2018



Source: CoinMarketCap.com, company websites, Morgan Stanley Research

Based on the chart, we can see that the biggest Cryptocurrency trading happen in UK. A small region in UK named Malta has its special title as “Blockchain Island” because majority of the Cryptocurrency trade that happen in UK was happened in Malta. Malta dominates the Cryptocurrency market in UK although the UK accounts for just 1% of global trading volumes.¹²⁰ Cryptocurrency exchanges is getting more and more money as its popularity is just insane due to the media and also the awareness of people about

¹²⁰ Based on Morgan Stanley Research about Cryptocurrency in <https://www.businessinsider.com/cryptocurrency-exchanges-trading-locations-volumes-2018-4/?IR=T> (Accessed on 3 September 2018)

Cryptocurrency.

CHAPTER III

ANALYSIS OF THE LEGALITY AND CLASSIFICATION OF CRYPTOCURRENCIES TRADE TOWARDS SHARF ACCORDING TO ISLAMIC BANKING LAW

1. The legality of Cryptocurrencies and its transaction based on The Principles of Islamic Banking Law

The emergence of Cryptocurrency is certainly horrendous the world of finance. Using fiat money for years and now, we can see the digitalized money. Digitalized money or cryptocurrency is certainly born from technological innovation that follows global trends. The online generation is a title for the present generation whose majority of the time is spent online and a lot of time is spent in the digital world. Cryptocurrency is the result of analysing human habits that are now all digital. The emergence of Cryptocurrency certainly caused a lot of controversy, but the e-mail and e-commerce that we use now starts from controversial status. Digital money feels strange but real, but it's not impossible.

One of the characteristics of Cryptocurrency is decentralized peer to peer

network, means that it is an approved network by the consensus of its users¹²¹ and it is not a centralized currency just like the conventional money. Cryptocurrency is not issued and authorized by the state. Cryptocurrency stands alone with a structured system called Blockchain. Blockchain is a recording system that is distributed ledger, every Cryptocurrency transaction will be spread through a particular network until it reaches its destination. There is no third-party intervention, there are no banks, institutions or government. Because it is in the form of digital money, cryptocurrency also has no physical form just like fiat money. We cannot touch or see it with our eyes. This is what makes Cryptocurrency horrendous in the financial world. The development of Cryptocurrency contributes to the Islamic financial system. While the world is participating in the digital money revolution, this is a question for Muslims who are involved in the world of finance. Is Cryptocurrency a legal currency according to Shariah? Does Shariah allow buying and selling of Cryptocurrency like buying and selling foreign exchange in general? All developments in each sector related to human life need to have clear rules so that especially Muslims will not go wrong and violate what is ordered by the Quran and Hadith.

However, Muslims are aware of the rising and expanding of Cryptocurrency and must immediately give certainty to the legality of Cryptocurrency. The

¹²¹ Shabana Hasan, Cryptocurrency and Islam, in <https://www.islamicfinder.org/iqra/cryptocurrency-and-islam/?language=id> (Accessed on 6 September 2018)

speculative nature of cryptocurrency has triggered debate among Islamic scholars over whether cryptocurrencies are religiously permissible.¹²² Various kinds of answers and decisions emerged. One of the earliest answers came from *Monzer Kahf*, an academician who wrote about Islamic finance and he said that bitcoin is a legitimate medium of exchange, though vulnerable to manipulation. Since then, Islamic Jurists in South Africa have ruled in favour of Cryptocurrencies because Cryptocurrency becomes socially acceptable and commonly used out there.¹²³ In Saudi Arabia, Jeddah-based Islamic Development Bank (IDB) intends to drive development and financial inclusion in its member countries using a blockchain-based financial instrument so its Muslim-friendly financial products. Dubai also begun the process of developing its own encrypted digital currency for nationwide implementation, although UAE Central Bank have warned in the past against the use of Cryptocurrency due to its lack of regulation and error.¹²⁴ The lack of regulation about Cryptocurrencies has made many questions about the legality of Cryptocurrency itself. In the absence of a third party or we can call it an owner who can guarantee the transaction process, then the regulations and laws regarding Cryptocurrency must be available immediately because as long as there are no legal regulations, all Cryptocurrency transactions can be freely carried out.

¹²² Islam and Cryptocurrencies, Haram or Halal? In <https://www.aljazeera.com/news/2018/04/islam-cryptocurrency-halal-halal-180408145004684.html> (Accessed on 6 September 2018)

¹²³ *Ibid.*

¹²⁴ Shabana Hasan, *Op.Cit.*

However, regulations regarding Cryptocurrency in various countries are also getting tighter because many countries are taking preventive measures against Cryptocurrency transactions. Cryptocurrency is not handled by any country and it is individual, so many countries issue statements that Cryptocurrency transactions are illegal and the government does not guarantee anything. But not all countries also refuse to make regulations about Cryptocurrency. In Asia, Japan and Philippines have set up the regulation for Cryptocurrency trade. In America, U.S and Canada also regulate Cryptocurrency trade with warning that Cryptocurrency trade is considered high risk. But most of the countries stand in grey area and just issue statements and warnings about cryptocurrency. Indonesia itself has issued a statement about Cryptocurrency trade through a Bank Indonesia press release, where they stated that according to Law No.6 of 2009, Bitcoin and other virtual currencies are not legal currencies or payment instruments in Indonesia.¹²⁵ Subsequently, according to the regulation of Bank Indonesia No. 18 of 2016, Bank Indonesia prohibits the Payment System Service Provider from processing payment transactions using virtual currency which includes bitcoin.¹²⁶ According to Law No. 24 of 1999 about Foreign Exchange Traffic and the Exchange Rate System, the use of Foreign Exchange for the purposes of domestic transactions must pay attention to the provisions regarding legal

¹²⁵ Bank Indonesia's Statement related to Bitcoin and other Virtual Currencies No 16/6/DKom year 2014

¹²⁶ Article 34a of the Regulation of Bank Indonesia No. 18 year 2016

payment instruments as stipulated in the law concerning Bank Indonesia.¹²⁷ In Law No. 7 of 2011 about Currency, What is meant by currency is a legal payment instrument issued by the Republic of Indonesia which is called Rupiah. Despite its preventive way, some countries already regulate about Cryptocurrency trade. Germany in 2013 already regulate about Bitcoin and it is legally binding financial instruments that fall into the category unit of account.¹²⁸ In 2016, Russia categorized Bitcoin is legal.

Behind the reason for the lack of regulation about Cryptocurrency, we can see that a country needs time and strong evidence against the power of Cryptocurrency to be equated with currency in general. The concept of digital money is still very unusual for some people, but it is very likely that within a few years Cryptocurrency can dominate the global money market.

The lack of regulation on Cryptocurrency became the basic problem for the existence of Cryptocurrencies itself in the Islamic perspective. Islam ask us to avoid transactions that contain *gharar* (doubt) because it leads to uncertainty or causes of risk caused by a lack of explanation relating to the subject matter or price on a contract or exchange.¹²⁹ *Gharar* includes confusion or uncertainty as to the end result of a contract and the nature and / or quality and specifications of the subject matter of the contract or the rights

¹²⁷ Article 2 Chapter II about Foreign Exchange Traffic in Law No.24 of 1999 about Foreign Exchange Traffic and the Exchange Rate System

¹²⁸ Section 1 (11) of the German Banking Act, cited from Aznan Hasan, *Op.Cit.*

¹²⁹ Veithzal Rivai, *Op.Cit.*, p. 120

and obligations of the parties, ownership and / or delivery of items from the exchange.¹³⁰ In this case, the lack of regulation about Cryptocurrency can be categorized as *gharar* because there are no protection for the rights of Cryptocurrencies users. The absence of a government role in Cryptocurrency trade has caused this transaction to be filled with doubts and injustice to users because of the risk of undesirable things, such as fraud.

The lack of law regarding Cryptocurrencies is not one of the problems caused by Cryptocurrency trade. As explained in the previous chapter that all Cryptocurrency users do not display personal names and data and are replaced with codes that represent their identities. The anonymity of the user is to protect the users data in the transaction. All transactions that occur can be seen by Cryptocurrency users, this is because Cryptocurrency uses a peer-to-peer network. The function of anonymity is to prevent users who have malicious intent and misuse information about the transaction. Islam also instructs Muslims to avoid anything that is harmful or contains damage (*dar'ul mafasid*) as stated in the methodology of reasoning (*ushul fiqh*) rules and means "avoiding damage must take precedence over bringing goodness". The chances of damage and abuse of contract are very high if there is no adequate regulation. It must be remembered that in Cryptocurrency trade there is no party that can guarantee all transactions that occur. The lack of consumer

¹³⁰ *Ibid.*

protection in cryptocurrency is seen as written in the letter of Surat An-Nisa

29:

يَأْتِيهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ
بِالْبَطْلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا
أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا ﴿٢٩﴾

–O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful. ۞

Based on the analysis above, in the Islamic perspective it can be said that Cryptocurrency Trade in *akad* or contract fulfils the terms of the sale and purchase contract in *sharf*. The nature of Cryptocurrency transactions also does not contain usury because there are no additional fees in the payment exchange process and are immediately processed in minutes without any time delay. However, if viewed through a legal perspective or regulation, then Cryptocurrency trade can be said not meet these requirements due to the lack of action on the regulation of Cryptocurrency trade that causes *gharar* and can lead to *mudharat* (harm) and damage to the sale and purchase of Cryptocurrency. Regulating the law on Cryptocurrency is needed to guarantee and protect users of Cryptocurrencies, and also the existence of real controls from the authorities will

avoid Cryptocurrency trade from losses. Cryptocurrency requires clear regulation to eliminate its illegal status, because from Cryptocurrency we can actually get many tangible benefits for the easiness and also usefulness of the people.

However, if there is no regulation regarding Cryptocurrency trade, it is feared that its nature will come near to *gharar* (uncertainty) and not in accordance with Islamic principles. Therefore, the regulation of Cryptocurrency trade, especially in the Islamic Financial System which is a very real urgency that must be immediately executed so that peoples right are protected. Anonymity of Cryptocurrency users must also be reviewed, although it would be better to avoid the bad impact that will occur in the future.

Therefore, the legality of Cryptocurrencies based on the Principles of Islamic Banking Law is actually acceptable and applicable for the Cryptocurrency trade. This is because the nature of Cryptocurrency is same as foreign exchange trading in general, from the principles and also the contract matters. The thing that make Cryptocurrency is prohibited is because the lack of regulation of the transaction of Cryptocurrency, but it does not make it prohibited or *haram* at all because some of the characteristics of Cryptocurrency is acceptable in Islam, just that Cryptocurrency is in the digital world and is the result of innovation and enhancement of technology nowadays so it is still not perfect.

2. The Classification of Cryptocurrencies Trade

Based on the description above, we need to analyse the status of Cryptocurrency based on Shariah, especially in Islam based on the Principles Islamic Banking Law. Basically, the concept of buying and selling in Islam has been regulated in the Law of *Muamalah*. Buying and selling is a transaction of exchanging money with goods that have been agreed upon both parties. Buying and selling will be valid if the law and conditions are met. There are four pillars of sale and purchase according to the scholars of *fiqh*, namely:

- a. *Ba'i wa musytari* (seller and buyer), the conditions for the seller and the buyer are understanding (*mumayiz*), on their own accord, and not wasteful and bankrupt
- b. *Tsaman wa mabi* '(price and goods), the conditions must be their own goods, the nature, size, type must be clear and in the real sense. Items purchased may not be half-finished or unclear
- c. *Shighat (ijab and kabul)*, spoken by people who are able to fulfill the contract of *ijab* and *kabul*. Then the assembly or place must be in one place, the purpose is the *ijab* and *kabul* must be done in one place and at the same time. If *ijab* and *kabul* are carried out by one

of the parties in another place, then *ijab* and *kabul* are considered invalid.¹³¹

Tsaman wa mabi' must be one's own, as well as the clear nature, type and size and in the real sense. For example, if we want to buy fruit then we will get the fruit that has been shaped as it should, not the new one that grows or the shape of the fruit is still unclear. If Cryptocurrencies are linked to this condition, then Cryptocurrencies does not meet the requirements for the clarity of its form as described above. However, this condition experienced an expansion of meaning in which today humans make buying and selling transactions by transferring via ATM (Automatic Teller Machine) and are allowed because they have great benefits for the convenience of human life. The money transferred through an ATM does not appear in its form but still fulfils the conditions of buying and selling because both parties are equally aware and willing. Then, the money that will be transferred through a Cryptocurrency transaction is indeed owned by the party who does the transaction and does not belong to someone else. Accordingly, the object and price of Cryptocurrency is acceptable according to *sharf* principle.

Whereas *shighat* or *ijab* and *kabul* according to Islam must be spoken in one place where there are both parties. This requirement is also experiencing an expansion of meaning because today humans can make buying and selling

¹³¹ Rozalinda, *Fikih Ekonomi Syariah : Prinsip dan Implementasinya pada Sektor Keuangan Syariah*, First Press, PT Rajawali Press : Jakarta, 2016, p. 65-66

through internet access which we can call buying and selling online. The buying and selling process can be done from any country or city provided they are connected to internet access. Some opinions say that this is permissible and still meets the criteria for buying and selling transactions in Islam. We can call this a virtual meeting, where the parties are not face-to-face in buying and selling transactions, but still meet the criteria of *ijab* and *kabul*. *Ijab* is a statement that shows the willingness of both parties to make a sale and purchase, while *kabul* shows the acceptance or agreement of both parties in the sale and purchase transaction. Virtual meeting also meets the conditions of the *Ijab* and *Kabul*, because they must be done by both parties even through internet access. With the advent of technology in the present, then Islam must also open itself and not limit all the benefits that are useful for Muslims.

Then in the types of *sharf* transactions mentioned in the previous chapter, there are 4 types of *sharf* transactions:

a. SPOT Transaction

This is the transaction of buying and selling foreign exchange for delivery at the time and the settlement at the latest within two days. This transaction is permissible because it is considered cash and two days is considered as the process of settlement of the transfer of foreign exchange.

b. FORWARD Transaction

This is the transaction of buying and selling foreign exchange that the value is determined at the present time and applied for the future time between 2x24 hours to one year. This is not permissible or haram because the price used is the agreed price and the delivery is carried out later.

c. SWAP Transaction

This transaction of buying and selling foreign exchange when the spot prices are combined with foreign currency sales and forward prices. Swap transactions are barter transactions, where transactions are carried out with an agreement to exchange a currency with another currency on the basis of an agreed exchange rate in order to anticipate the risk of exchange rate movements in the future. Contemporary scholars reject this transaction because *ta'alluq*, and according to the MUI DSN fatwa Np. 28 / DSN-MUI / III / 2002 this transaction is categorized as haram because it contains elements of *maysir* (gambling).¹³²

d. OPTION Transaction

This is a transaction of buying and selling foreign exchange to get the right to buy or the right to sell which does not have to be done on a number of foreign currency units at a certain price and term or end date. This transaction gives the buyer the option to make an agreement to buy

¹³² *Ibid.*

foreign exchange but at a price other time. This transaction is also not permissible because it includes *maysir*.

The transaction of selling and buying foreign exchange in *sharf* is only allowed through spot transactions, because spot transactions meet the requirements of the *sharf* such as the existence of *kabul* permits directly, then the money is traded directly, and must fulfill the terms and criteria of goods that can be traded in Islam. There is no time interval in the process of buying and selling foreign exchange except the time used for administrative matters.¹³³ If there is an interval time for the transaction it is invalid and does not meet the conditions of buying and selling *sharf*.

The truth is, the Cryptocurrency transaction process is similar to the spot transaction process. For instance, transactions on Cryptocurrency starting with buyers who want to buy Bitcoin will make transactions via blockchain. Transaction is represented as block. The block is distributed and processed by all players in the network until all the players approve the transaction and create a hash. The hash is added to the chain and the transaction is done.¹³⁴ One transaction on the blockchain takes approximately 10 minutes. In Cryptocurrency transactions, the agreement is represented by the buyer ordering process to the seller through a

¹³³ Waktu administrasi transaksi SPOT maksimal 2 hari setelah ijab Kabul berdasarkan DSN MUI Np. 28/DSN-MUI/III/2002 tentang Sharf.

¹³⁴ Sundeep Gantori, *Op.Cit*, p. 8

platform that provides Cryptocurrency transaction services, then the buyer pays the agreed amount and reaches the seller in a very fast time. This process is the same as buying and selling online which is commonly used by people, it's just that the intermediary media uses its own database, blockchain. Transactions on Cryptocurrency are actually faster than spot transactions in Indonesia, which usually takes about 2 days for administrative matters. Even if the spot transaction on buying and selling foreign currency is done directly and without any period for administration, then Cryptocurrency transactions also meet these criteria because the point is that there is no time delay. Therefore, the author considers that Cryptocurrency transactions are in accordance with the terms of spot transactions and *sharf* where there is no delay in the transaction process.

According to Veithzal Rivai in his book, a contract must fulfill the elements below and if a contract does not fulfill all these elements then it is certain that the contract is invalid:

- a. Forms, such as offer and acceptance (*sighah*)
- b. Contracting parties (*_Aqidain*)
- c. Subject, or object of contract (*Ma'qud _alayh*)

In this case, *sighah* does not contradicted to Islamic law as explained

above. But for contracting parties (*‘Aqidain*), this element has doubt in it because buying and selling transactions in Islam must state a clear subject, and this is contradicts to the Cryptocurrency transaction where the subject is anonymous.

Legal subjects are everything that has rights and obligations according to the law. Every human being is a subject of law, but not all humans fulfil the criteria to become legal subjects. Legal subjects who have responsibility for what they do in the civil field are called legal experts. Exceptions from legal experts are legal subjects who are immature, are still under arrest, and those who are considered inadequate by law.¹³⁵ In Islamic law, people who are lawful are called *mahkum aih alaih*. But in a Cryptocurrency transaction, we cannot find out whether the transaction participants fulfil these requirements because the Cryptocurrency transaction does not use data or the real name of the transaction participants. The anonymity of Cryptocurrency transactions initially aims to protect the privacy of users so that there is no abuse from other users. But on the other hand, the anonymity of cryptocurrencies users is feared to be a place for money laundering, black market, and other illicit activities. In addition, the anonymity of Cryptocurrencies users has many risks. First, dealing with the use of cash for settling transactions through peer-to-peer platforms. The direct exchange of cash between unknown buyers and

¹³⁵ Dadang Sukandar, Cakap Hukum Secara Perdata, in <http://www.legalakses.com/cakap-hukum-secara-perdata/> (Accessed on 8 September 2018)

sellers posing security risks, which is the feedback system of the users only partially mitigated. The second risk is related to scams. The absence of functions that are as a market settler, may not guarantee the two parties that the transactions will be successfully finalized. The third risk can be connected to the regulatory framework around the cryptocurrencies¹³⁶ that lead to the banning of cryptocurrencies and it may harm the users. Clarity of the subject or user of Cryptocurrency is needed, because there is no third party that can guarantee the transaction.

Based on the analysis above, an answer to the question that often exists when Cryptocurrency is related to Islam can be taken. Judging from its validity in the elements of contract and buying and selling in Islam, Cryptocurrency has fulfilled all the existing criteria except the anonymity of Cryptocurrencies users that still raises doubts for the validity of a transaction. The Weakness of having an anonym user is already explained above, one of it is security risk. The State also see this as a threat because it means that the Government cannot see the data of all the Cryptocurrencies users and it feared would be a threat to national security and defence. But from the author perspective, that the anonymity of Cryptocurrencies users is basically created to protect the personal data of users. Because it uses a peer-to-peer network

¹³⁶ Robin La Quercia, How Anonymous Is the Purchase of Crypto? Regulations, Practice, Risks, in <https://cointelegraph.com/news/how-anonymous-is-the-purchase-of-crypto-regulations-practice-risks> (Accessed on 8 September 2018)

system, all transactions can be seen by users who will approve the transaction so that the transaction can run until the end. All blockchain-based transactions can be seen by all users, so the anonymity is crucial to protect user data from other people's evil intentions. The Countries are beginning to see this as a chance for people who have bad intentions, therefore some countries are starting to regulate the anonymity of cryptocurrencies users by obtaining customers prior to opening, and also verifying the identity of each customer within a reasonable time before or after account opening.¹³⁷

The penetration of Cryptocurrency into Islamic Financial system is highly recommended because the financial technology is largely positive for Islamic Finance. Islamic Law deals with permanencies (*al-thawabit*) and flexibilities (*al-mutaghayyarat*) matter, which means that as long as the parameter of permanencies and flexibilities are preserved, innovation and technology enhancement which bring benefit to mankind is definitely encouraged.¹³⁸

Accordingly, Cryptocurrency can be classified and acceptable as *sharf* in the Principles of Islamic Banking Law because it fulfils the principles and criteria of contracts according to Islam although there are weaknesses of

¹³⁷In United States , the exchange platforms have to comply with the Anti-money Laundering (ALA) and Know your customer regulations to strengthen the measure to prevent, detect, and prosecute money laundering and the financing of terrorism.

¹³⁸ Aznan Hasan, *Shariah and Fintech Solution in Wealth Management*, Institute of Islamic Banking and Finance, International Islamic University Malaysia, in <http://mfpc.org.my/wp-content/uploads/Events/2017/15April/aznan.pdf> (Accessed on 13 September 2018)

Cryptocurrency that are not in line with Islamic Law. Furthermore, it is actually acceptable because the characteristics of Cryptocurrency is the same with *sharf* in general.

CHAPTER IV

CONCLUSION AND RECOMMENDATION

A. Conclusion

Based on the description of the previous chapters, then the conclusions of this thesis are:

1. Cryptocurrency is not contradicted with Islamic Banking Law Principles because its substance is actually acceptable and fulfill the Islamic Banking Principles. There are no *riba* because the transaction has no additional cost and time delay. The only thing that would likely causing *gharar* is the lack of regulation of Cryptocurrency trade and the anonymity of the Cryptocurrency users. Only some countries have arranged Cryptocurrency, the rest is still in gray area. The regulation of Cryptocurrency is very important to guarantee the users rights.
2. Cryptocurrency is classified and accepted as *sharf* because all of the characteristics of Cryptocurrencies are almost similar with Islamic Foreign Exchange in Islamic Banking Law although it has the weaknesses too about the regulation and also the anonymity of the users. Despite its weaknesses, the criteria of selling and buying in Islamic Banking Law already fulfilled; there are seller and buyer, the price and goods, and also *ijab* and *kabul*.

B. Recommendation

In connection with the conclusion above, there are things that must be

specifically examined:

1. Cryptocurrency trade is somehow taking the global market and in great popularity. People will quickly find out about Cryptocurrency and participate in it. The speed of a country's government to regulate and make regulations about this is urgently needed, because Cryptocurrency trade has the risk of not having a guarantor who can protect users protection. Cryptocurrency is feared to be prone to crime, money laundering, and black markets, so that regulations can be expected to prevent these risks.
2. When Cryptocurrency has fulfilled the criteria of a contract according to Islamic Law, then there should be statements and regulations from the relevant government or national Sharia board so that there is no imbalance and there are definite answers so as not to cause doubts to the public.

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