



## Review Article

# Cryptocurrencies and Zakat Applicability: An Analysis of the Fatwa Genre

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### ABSTRACT

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This article examines whether zakat is applicable to cryptocurrencies via a study of the fatwa genre on this topic. Fatwas from seven legal specialists in the Muslim world will be examined. These juristic opinions range from considering cryptocurrencies to be permissible to those that consider it prohibited. However, across this spectrum these authorities argue for zakat application to cryptocurrencies. The analysis will isolate and identify the relevant proof texts and principles relied upon. It will be shown that a unifying theme across the fatwa genre is of how thamaniyya is vital in linking cryptocurrencies to zakat-applicability. The study concludes that Islamic Finance successfully contains a theoretic concept, namely thamaniyya, that can help Muslim scholarship engage with advancements in cryptocurrencies regardless of future technological innovations. This study is novel for focusing on fatwa analysis through a theoretical orientation. This article sheds light on how contemporary fatwas are used in the field of Islamic Finance to negotiate between the jurisprudential tradition and cutting-edge developments in cryptocurrencies. The study is limited in not considering socio-political factors in the analysis. It is hoped the results of this study can highlight how disparate legal opinions in Islamic Finance actually share common ground.

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### Introduction

As a topic, cryptocurrencies is hotly debated in global finance as it is in Islamic finance. An unstated concern with practitioners of Islamic finance is whether jurisprudence (commonly referred to as Fiqh) has the theoretical breadth and conceptual depth to continue providing guidance and solutions to Muslim communities—be they nation states or minorities—with regard to the latest advancements in financial instruments and institutions. As an area that is widely regarded as cutting-edge, cryptocurrencies provide an interesting challenge for Islamic finance both in theory and in practice.

This article seeks to explore contemporary attempts within Islamic finance to understand and assimilate cryptocurrencies within a juristic framework. In particular, this article focuses on several contributions by Muslim scholars, academics, and intellectuals on why zakat should be applied onto cryptocurrencies.

A variety of approaches could be used to deal with this topic. This study deals exclusively with the genre of fatwas (legal opinions) propounded on cryptocurrencies. The fatwas analysed here were propounded by Abdulrahman b. Nāssir al-Barrāk (formerly of Imam Ibn Saud University, KSA), Abdullah al-‘Uqāil (of Medina University, KSA), Abdul Bari Mishal (a member of Fiqh Council of North America, USA), Ibrahim ‘Ubādah &

Musā'id al-Jumhūr (of the American University, Jordan), Abdul Sattār Abu Ghuddah (former Shariah adviser to Al Baraka Group, Bahrain), Ahmad Eid Abdul Hameed (of al-Azhar University, Egypt) and Asmā Mahmud Mohammadi (of Majmaah University, KSA). Several of these legal authorities held that cryptocurrencies were permissible, and thus zakat applied to them. Several others, however, deemed cryptocurrencies as prohibited; yet, they still insisted that zakat be applied to them. By focusing exclusively on these fatwas, this study can explore in detail the proof texts, principles, and commonalities that underlie these legal opinions. The result is that the juristic concept of *thamaniyya* forms a theoretical foundation for how scholars within Islamic finance discuss cryptocurrencies.

The second section explores the impact of cryptocurrencies on the Muslim world. The third section provides a crucial overview of zakat's position in Islamic finance and how the concept of zakat evolved across history. The fourth section explains the methodology of fatwa analysis that will be used, and its theoretical orientation. The fifth section deals with four fatwas that deem cryptocurrencies to be halal and zakat-applicable. The sixth section covers three fatwas that consider cryptocurrencies to be haram and still maintain zakat-applicability to them. The seventh section deduces a common basis from all these fatwas as *thamaniyya*. The article concludes that the fatwa genre regarding zakat and cryptocurrencies demonstrates that Islamic finance

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does indeed have a theoretical concept—in the form of *thamaniyya*—which allows it to effectively grasp current advances in cyptomarkets.

This article will be of interest to Muslim academics, institutions, and government committees who are keen on getting an effective grasp on the juristic elements involved in Islamic financial considerations of zakat-applicability to cryptocurrencies. Researchers in the field of contemporary Islamic law will find this study's focus on fatwas useful too. A limitation of this study is that socio-political factors have been overlooked when studying these fatwas; the study's focus is more to the legal resources that were tapped in these fatwas. It is hoped other researchers can add further considerations and analyse further factors in related fatwas from Islamic finance in order to provide a more holistic portrait of the contested area.

### Cryptocurrencies and the Muslim World

Cryptocurrencies may be the future of finance. Or so many an expert have expressed. Asseverations on this abound. Henri Arsalanian and Fabrice Fischer envision the future of finance to be shaped by three major technologies: FinTech, AI, and Crypto (Arsalanian & Fischer, 2019). As of 2019, over 2,000 different cryptocurrencies (or alternatively named, crypto-assets) have been established (Arsalanian & Fischer, 2019). The first cryptocurrency, Bitcoin, was launched in 2009. The rapid growth of cryptocurrencies in just a decade is indeed startling.

Chris Burniske and Jack Tartar pointed to an interesting fact. In a survey, Goldman Sachs found that 33% of millennials think they won't need a bank by the year 2020 (Burniske & Tartar, 2018, p. 281). As such, Burniske and Tartar see crypto as “The Future of Investing” (Burniske & Tartar, 2018, p. 279-284). Decline in the use of cash has, according to Martin Chorzempa, motivated many central banks to take seriously CBDC (Central Bank Digital Currency), an idea that was mooted by the cryptocurrency community (Chorzempa, 2021, p. 103). The Bank for International Settlements surveyed central banks across the world, and found 80% of them are already researching and experimenting with CBDC (Chorzempa, 2021, p. 103).

The palpable economic trend towards cryptocurrencies has not left the Muslim world untouched. In 2020 Iran began to explore a legal framework for cryptocurrencies in a bid to counter the crippling effects of the Covid-19 pandemic, US sanctions, and rising inflation (Papadaki & Karamitsos, 2021, p. 620). Saudi Arabia views current cryptocurrencies as potentially destabilising its economy; however, Saudi Arabia has taken the pro-active stance of trying to establish “alternative cryptocurrencies to compete with Bitcoin, Ethereum, and other cryptocurrencies” (Alrawashdeh et al., 2024, p. 725). UAE is trying to expand beyond the “traditional banking system”. Cryptocurrencies have notable benefits for international trade, such as lower taxes/fees, no exchange rate, and secure records of transactions. Such benefits have motivated UAE to take interest in assimilating Blockchain to its economy (Abdennadher et al., 2020, p. 275). In 2018 the Qatar Central Bank warned all banks within Qatar to not trade with crypto assets. In 2022, however, the Communications Regulatory Authority, in collaboration with Hamad Bin Khalifa University and Qatar University, voiced a more open position. According to Amel Makhoul, calls for banning crypto assets may reflect misunderstandings over the precise nature of crypto assets (Makhoul, 2022, pp. 41-42). This explains how greater research in this field has persuaded governments in Muslim-majority countries to change their views regarding cryptocurrencies.

The case of Turkey illustrates symptomatically why many Muslims find interest with cryptocurrencies, and the challenges this entails. Data analysed in 2021 showed that crypto trading hit \$27 billion in Turkey (İkiz, 2022, p. 570). Mark Grabowski

suggests the following. In 2018 US sanctions caused the Turkish lira to collapse by 20%. Turkish cryptocurrency exchange experienced a “massive spike”. Citizens realised that it was safer to place their money in cryptocurrencies in order to safeguard them from the lira's depreciation (Grabowski, 2019, p. 2). This, however, was not without its own dangers. In 2021 Thodex, a Turkish crypto exchange, went offline. Its CEO was alleged to have stolen \$2 billion of investor funds. He fled to Albania. Turkey sought help from Interpol who issued a Red Notice against the CEO. He was arrested, and the investigation is ongoing. It is not quite certain what happened to the money and where it went (Scharfman, 2022, pp. 166-167).

Because cryptocurrencies have wide appeal in the Muslim world, and because many governments in Muslim-majority countries are now exploring its possibilities, further research on this is paramount. Specifically, given the prominence of Islamic finance theory, if not practice, within the Muslim world, the question of how cryptocurrencies can fit within an Islamic financial theoretic model is pressing. This article takes the issue of zakat as a useful door to a wider discussion of attempts to incorporate cryptocurrencies into the existing paradigm of Islamic finance. The next section details the centrality of zakat to Islamic finance, and how as a concept it has been enlarged to incorporate newer developments in economy that were absent in pre-modern conceptions of zakat. This sets the stage for later discussions in this article about whether zakat should be applied to cryptocurrencies or not.

### Zakat's Role in Islamic Finance

This section will clarify the centrality of zakat to Islamic finance. It will demonstrate how this notion of zakat intertwines with numerous other elements of Islamic finance thus illustrating how zakat can be seen as a ‘door’ or ‘gateway’ to the wider constellation of Islamic financial theory and practice. Furthermore, this section will sketch how the concept of zakat underwent expansion across the ages, where it incorporated the latest developments in trade. The result, it will be argued, is that zakat is perfectly positioned to be a point of contact with the issue of cryptocurrencies in the contemporary world.

Zakat is a tax/charitable contribution that comprises the third of the five pillars of Islam. The Quran mentions zakat explicitly thirty times. Of these, twenty-seven times zakat is mentioned in the same verse alongside prayer. Eight times, zakat is mentioned in Meccan verses, whereas the rest of the times it is mentioned in Medinan verses (Al-Qardawi, 2000, p. xli). Zakat's outsized role in early Islam can be seen by how the first civil war to wrack the Muslim community—the *Ridda* wars—was less about outright apostasy and more about the refusal to pay zakat, as a tax, to the newly minted Caliph Abu Bakr (Donner, 2005, p. 30). However, as Nora Derbal cautioned, concepts like zakat cannot be effectively grasped by either fixating on a literal definition of it, or by considering normative Islamic texts regarding it; rather, zakat is better understood contextually, in its routine usage in society amongst people (Derbal, 2022, p. 18).

Current discussions of Islamic finance tend to emphasise the importance of zakat to the overall economy. Choudhury, for instance, considers zakat as an “in-built fiscal stabilizer” for the economy (Choudhury, 2019, p. 252). Monzer Kahf argued that “mercy and caring” is embedded in the institution of Islamic finance through zakat (Kahf, 2022, pp. 7-8). This can be taken to mean that zakat, far from being a matter of an individual's exercise of charity, is to be properly conceived as a defining factor, among others, of how the very institution of Islamic finance is supposed to operate. Zakat is considered “the most influential Islamic tool for reducing poverty and ensuring socio-economic justice” and “its socio-economic contributions cover a vast area” of Islamic

finance (Uddin & Sultana, 2023, p. 251). Indeed, Tlemsani and Matthews consider zakat to contain the principles that buttress a modern state; thus, they can see in zakat a useful bridge between Islamic finance and the wider notions of statehood (Tlemsani & Matthews, 2021, p. 12). Based on how far-reaching discussions of zakat tend to be, it is no exaggeration to see zakat as a useful door or gateway to larger discussions about Islamic finance.

The concept of zakat has undergone historical changes and cannot be seen as static. There are no monoliths when it comes to money. It is beyond the scope of this article to provide a detailed chronology of the successive modifications that zakat as a concept has undergone. However, for sake of relevance, it would not be amiss to point to the contours of the evolution of zakat. This will help in exhibiting how zakat can be aligned to contemporary discussions of cryptocurrencies.

Joel Blecher has forwarded an interesting thesis. According to Blecher, leading Muslim scholars in the eighth century hijri aimed to narrow/limit zakat rather than expand it. Studying the legal spat between Sultan al-Ashraf Barsbāy (d. 841 A.H.), on the one hand, and Ibn Hajar al-Asqalānī (d. 852 A.H.), on the other hand, Blecher found that while the Sultan attempted to expand zakat to cover more areas of commerce, Ibn Hajar opposed this and narrowed zakat's application. While this may sound odd to modern ears, Blecher rightly points out that Ibn Hajar's stance was motivated by the impulse to protect Islamic law, prominently the notion of zakat, from being abused by the arbitrary power of those in authority (Blecher, 2020, p. 81). In other words, the pre-modern concept of zakat was kept narrow due to a perception that corrupt ruling powers could misuse it for their own ends.

Come modernity, however, a paradigm-shift occurred. Instead of viewing zakat narrowly, exponents of Islamic economics viewed it expansively. According to Timur Kuran, in the 1930s zakat was "resurrected," as a socio-economic concept, by Mawdudi and Qutb. Mawdudi had popularised the term "Islamic economics" and he was convinced that a vigorous re-establishment of zakat would help revamp Muslim societies. Subsequently, proponents of "economic Islamization" have focused on the laudable effects of zakat on society, albeit with a marked exaggerated optimism (Kuran, 2023, pp. 258-259). Instead of zakat being limited in scope, Islamic economics magnified zakat's potential to be a game-changer for the economy as a whole.

This trend of expanding zakat has not yet run out of steam. Patricia Sloane-White, in her study of "corporate Islam", demonstrates how, in the context of Malaysia, zakat has been successfully "corporatized" and that this illustrates how "spiritual and capitalist economies merge for elite members of the *sharia* generation" (Sloane-White, 2017, p. 140). The ramifications of this is that the notion of zakat is elastic enough, since the onset of modernity, to cover an ever-wider range of relevance.

Seeing this historical sketch, it becomes clearer why zakat and cryptocurrencies can be placed in dialogue. The question 'Is zakat applicable to cryptocurrencies?' is one that touches the core of just how elastic, or relevant, zakat is to an economic age defined by digitalisation. The coherence of the question shows how, at least *prima facie*, there is intelligibility in exploring cryptocurrencies through the aspect of zakat.

The next section will lay down the methodology for the inquiry into zakat's application to cryptocurrencies. Seeing how central zakat is to Islam in general, and Islamic finance in particular, it is important to ground this inquiry in methodological rigour that helps bring clarity not further confusion into this area of interest.

#### Methodology of Fatwa Analysis

This paper seeks to explore whether zakat applies to cryptocurrencies. A disclaimer should be kept in mind. Some

scholars consider cryptocurrencies to be prohibited. The official fatwa council of Egypt is typical in espousing this (Allam, 2017). Al-Qaradāghī, president of the International Union of Muslim Scholars, also articulated this view (al-Qaradāghī, 2018). This seems to preclude any application of zakat onto cryptocurrencies; however, even in this, there are nuances that will later on be discussed. Other scholars consider cryptocurrencies to be permissible. The Fiqh Council of North America has endorsed this (Qadhi & Mashal, 2021). Qutub Mustafa Sano argued the same (Sano, 2021, p. 14). On this view, questioning whether zakat applies to cryptocurrencies makes obvious sense.

This research will approach this matter via an analysis of pertinent fatwas. Lena Larsen has outlined developments in the academic study of fatwas as a genre. Early generations of Western scholarship of Islamic studies took little notice of fatwas. However, from the 1970s till now, academic interest in fatwas increased dramatically. They have been studied historically, theoretically, and even sociologically (Larsen, 2018, pp. 21-23). The classical study that brought fatwas to the centre of academic interest is *Islamic Legal Interpretation: Muftis and their Fatwas*, edited by Muhammad Khalid Masud, Brinkley Messick, and David S. Powers. In it, Chibli Mallat provides a fatwa analysis of how Shariah law engages with Western economic institutions. According to Mallat, in 1904 Muhammad Abduh and Rashid Ridha published the first ever fatwa on modern banking in Egypt (Mallat, 1996, p. 287). By extension, this could be true of the entire Muslim world too. Mallat analyses the 1990 fatwa of Muhammad Sayyid Atiyya Tantawi, the Grand Mufti of Egypt, and the head of Dar al-ifta' (Mallat, 1996, p. 288). The result of this analysis is surprising. Tantawi acknowledges that as a Mufti he had to consult specialist economists over various banking operations before he could properly issue his fatwa. This shows that fatwas on modern banking recognise the limits of religious knowledge that must be supplemented by appealing to secular authorities who are experts in other non-religious fields (Mallat, 1996, p. 295-6). Significantly, Tantawi issued his fatwa after a financial scandal engulfed the Al-Rayyan financial institution, where millions of pounds of investments by ordinary Egyptians were lost. The fatwa was embedded in this "highly charged political atmosphere" (Mallat, 1996, p. 289). The fatwa was not articulated in a vacuum; rather, it was elucidated in a time of politico-economic friction. The analysis of fatwas in order to understand Islamic finance has continued to this day. For example, Abdullah, Rehman, and Farooq analyse fatwas on benchmarking Islamic financial products and services (Abdullah, Abdul Rehman, & Farooq, 2022, pp. 128-135).

Two observations must be made to further clarify the choice of methodology. Jakob Skovgaard-Petersen has fruitfully distinguished between various types of fatwas. Each type has its own characteristics and functions. The study to be undertaken here understands the term 'fatwa' as Skovgaard-Petersen's category of "public fatwa" (Skovgaard-Petersen, 2015, pp. 282-283). Conceiving fatwas this way allows for a wider-range of source material and communication mediums to be investigated. After all, public fatwas include books, newspapers, audio and video, as well as satellite television and internet (Skovgaard-Petersen, 2015, pp. 282-283). Fatwa analysis is appropriate for exploring cryptocurrencies, because tentative studies have already made use of it. In particular, Faraz Adam explored Bitcoin through analysing fatwas pertaining to it (Adam, 2019, pp. 133-147). This current study is distinguished from Adam's study by, among other factors, focusing exclusively on the issue of zakat-applicability to cryptocurrencies.

Seven fatwas will be analysed in this paper. These are the fatwas of Abdulrahman b. Nāssir al-Barrāk, Abdullah al-'Uqāil,

Abdul Bari Mishal, Ibrahim ‘Ubādah & Musā’id al-Jumhūr, Abdul Sattār Abu Ghuddah, Ahmad Eid Abdul Hameed, and Asmā Mahmud Mohammadi. All seven authorities argue that zakat is payable on cryptocurrencies. A nuance is found in the views of Abu Ghaddah, Abdul Hameed, and Mohammadi. They view cryptocurrencies as prohibited yet they still hold that zakat is payable nonetheless. The remaining four authorities emphasise that cryptocurrencies are permissible.

Stress has been laid on Arabic-language fatwas for several reasons. A lot of the academic literature in Islamic finance is conducted in English. By dealing with Arabic-language fatwas, this study brings into the English-language domain material that hitherto has been limited to Arabic-readers. Furthermore, given the Arabic-language medium used in such fatwas, it becomes far easier to identify similarities between their content and classical works of jurisprudence which is, of course, encoded in Arabic terminology. Additionally, given the continued prestige that Arabic language still retains in the Muslim world, it won’t be amiss to focus on fatwas circulating in the Arabic medium. This is not to prejudice one language over another; rather, it is to provide a contribution by bridging the language divide that often characterises debates in our globalised age.

The overall emphasis is on authorities that promulgate legal opinions on their own and rarely as spokespersons for institutions. This is because such individual scholars happen to have less institutional restraints on them. They can provide legal opinions in a manner unencumbered by bureaucratic considerations. This allows for such fatwas to be characterised by highly opinionated views that bring verve and variety to the discussion.

The fatwas from these seven authorities will be analysed through a theoretical lens. Social and political context will not be taken into account. Instead, the analysis will identify the proof texts and principles that these fatwas utilise, and will compare those to the classical jurisprudential corpus to test their cogency. Areas of agreement will be highlighted, but also weaknesses or possible rejoinders will be considered too.

After this, the analysis will deduce from these fatwas the core underlying issue at stake that justifies the application of zakat on cryptocurrencies. This foundational issue—which will be shown in later sections to be *thamanniyyah*—will be explored to explicate the theoretical basis for such positive applications of zakat. The analysis will end by positing a conditional view: if cryptocurrencies fulfil the condition of *thamanniyyah*, then zakat applies to them. If not, then no. The benefit of this theoretical approach to the fatwas is that it lays the groundwork for future scholars, academics, and commentators to conceptualise zakat-application on cryptocurrencies even when the technologies of cryptocurrencies change. As is undoubtedly the case, the rapid pace of cryptocurrencies means that their actual form may well differ very soon; however, from a theoretic perspective, they can still be related to zakat regardless of modifications in e-commerce.

This methodology, of course, is limited in that it excludes social and political context of the promulgated fatwas. However, it is hoped that other academics can supplement these dimensions to the theoretic discussion provided here. Lastly, such a methodology allows the analysis to show to what extent current fatwas on zakat retain roots in classical jurisprudence, not in terms of a one-to-one correspondence, but in terms of theoretical affinities.

#### Fatwas Permitting Cryptocurrencies and Applying Zakat

This section deals with fatwas of authorities who hold cryptocurrencies to be permissible and who enjoin zakat on said cryptocurrencies. The analysis will limit itself to four fatwas issued by Abdulrahman b. Nāssir al-Barrāk, Abdullah al-‘Uqāil, Abdul Bari Mishal, Ibrahim ‘Ubādah & Musā’id al-Jumhūr.

The notion of proof text is important in Islamic jurisprudence. According to Ahmed El Shamsy, Shāfi’ī interpreted Quranic verses as proof texts (El Shamsy, 2013, p. 87). He used an array of methodological tools including proof texts to ground his legal arguments (El Shamsy, 2013, p. 190). Both al-Buwaytī and al-Muzanī strove to provide “direct reference to the relevant proof texts” for each of Shāfi’ī’s legal opinions (El Shamsy, 2013, p. 187-8). It wouldn’t be amiss to see what proof texts are used in fatwas supporting zakat application on cryptocurrencies.

Surprisingly, out of the four fatwas, only two mention proof texts. Both al-‘Uqāil and ‘Ubādah & al-Jumhūr cite Q.51:19 (al-‘Uqāil, n.d., p. 33; ‘Ubādah & al-Jumhūr, 2019, p. 414). The latter go on to cite an additional verse, Q. 9:103, and the hadith of Mu’adh bin Jabal. Interestingly, both fatwas recognise that the only relation between the proof texts and the issue of cryptocurrencies is the generality of these proof texts. Al-‘Uqāil refers to the “general sense” (*umūm*) of the Quranic verse. ‘Ubādah & al-Jumhūr say the same, including their note that the hadith they cite is relevant to the issue because “the significance is in the generality of the terms (used) not in the specificity of the reasons (surrounding the hadith)” (*fal-‘ibra bi-umūm al-lafāth lā bi-khusūs al-sabab*).

In this case, using the generality of proof texts must invoke a critical pause. As is well-known, many items and types of wealth have no zakat applicable to them. Two examples can be given, the furniture in your house and your car. Furthermore, such use of proof texts omits the dynamic development of zakat-application across Islamic history. As Timur Kuran pointed out, Islam arose in Western Arabia, a region lacking in industries that other regions had, namely metallurgy and tool-making. However, as Islam spread across the Middle East, the economic base of the Islamic Empire began to diversify, incorporating newer sources of wealth. This resulted in demanding “exemptions for numerous categories of wealth and income.” Many of these demands were adopted (Kuran, 2020). It follows from this that just because cryptocurrencies are a new source of wealth does not, *ipso facto*, mean it must be subsumed under zakat-applicability. Certainly, there is a “broad consensus” that zakat includes productive forms of wealth and excludes unproductive forms of wealth. But as Volker Nienhaus has pointed out, in a developed market economy, this distinction can be subverted. One can, for instance, transform productive wealth into unproductive wealth, and vice versa, with ease (Nienhaus, 2006). Additionally, scholars such as Ibn Hazm, al-Shawkani, and Siddiq Hasan Khan have argued to “restrict zakatability”. Because zakat is a religious obligation, and because the wealth of a Muslim is protected, widening the gamut of zakat application is considered by these scholars as contrary to Islamic teachings (Al-Qardawi, 2000, p. 62-3). It is far from obvious that proof texts referring to a generalised wealth is sufficient to justify incorporating cryptocurrencies into the orbit of zakat applicability.

By far the greatest emphasis found in the four fatwas is on principles. All four fatwas refer to analogical reasoning that likens cryptocurrencies to fiat currencies (al-Barrāk, 2020; Mishal, 2020). In both al-‘Uqāil and ‘Ubādah & al-Jumhūr there is an implicit allusion towards Maqāsid Shariah considerations. Al-‘Uqāil makes his point forcefully. According to him, *ribā* is still prohibited in cryptocurrencies, in order to protect the poor from facing injustice (*dhulm*). Since protecting the poor from injustice is enough to establish the prohibition of *ribā* in cryptocurrencies, then it follows, he argues, that similarly zakat is established on cryptocurrencies, because the aim of zakat is to protect the rights (*himāya li-haqq*) of the poor (al-‘Uqāil, n.d.).

The reliance on analogical reasoning, between cryptocurrencies and fiat currencies, demonstrates these contemporary fatwas relate more to the modern corpus of Islamic

jurisprudence than to the classical corpus. After all, fiat currencies did not exist during the formative period of classical Fiqh. It is a uniquely modern phenomenon. Thus, these fatwas can be understood as falling within what Amel Makhlouf terms “financial fiqh,” which has its formative period in the 19th century (Makhlouf, 2019). Being less related to classical fiqh, these contemporary fatwas, with their analogical reasoning, are vulnerable to the fact that financial fiqh has yet to form into a proper system, and that its current status is plagued by various problems (Makhlouf, 2019). In other words, reservation can be held regarding whether such analogical reasoning can adequately grapple with such a momentous issue.

The implied allusion to Maqāsid Shariah is also open to critique. International bodies that deal with Islamic finance have already complained about the misuse of Maqāsid Shariah. These include IIFA and AAOIFI (Güney, 2024). As a discourse, Maqāsid Shariah is open to conflicting interpretations that can lend itself to justifying positions that run contrary to Islamic teachings. It is not enough to ground a ruling simply by tying it to Maqāsid Shariah. Also, misconceptions about Maqāsid Shariah abound in Islamic finance that have led to products and services being promoted in what a handful of researchers have dubbed as “abuse of the concept of maqāsid al-Shariah” (al-Nahari et al., 2022). This is not to say the fatwas analysed here engage in such errors; rather, it is to highlight the ambiguity implicit in attempts to ground contemporary fatwas on cryptocurrencies by merely relating the issue to Maqāsid Shariah. Something over and above this relation needs to be provided to establish the case for or against zakat application in a newly developed field of commerce.

Finally, a few words must be said regarding the form of these four fatwas. Referring back to Mallat’s classic study of banking fatwas, the complexity of modern financial transactions often entail that Muftis cannot simply canvass the proposed topic in a definitive manner. At times, this meant fatwas on modern banking were quite lengthy (Mallat, 1996). The fatwa of Abdul Bari Mishal covers a few sentences at best (Mishal, 2020). Al-Barrāk opens his fatwa by admitting he had initially judged cryptocurrencies to be prohibited, but later changed his mind and recognised they are permitted (al-Barrāk, 2020).

Mishal’s fatwa indicates the perfunctory treatment sometimes afforded to this issue. Al-Barrāk’s fatwa indicates that cryptocurrencies remain an open question where changes of legal opinion can be expected. The analysis, thus far, makes clear that on the issue of zakat application to cryptocurrencies, there is no over-reliance on proof texts in legal opinion; rather, the main dependency is on legal principles to anchor the issue.

The fatwas analysed in this section were from legal authorities who deemed cryptocurrencies to be permissible. In the next section, similar fatwas will be analysed but from legal authorities who deem cryptocurrencies prohibited yet still zakat-applicable.

#### **Fatwas Prohibiting Cryptocurrencies and Applying Zakat**

The three fatwas analysed in this section endorse applying zakat to cryptocurrencies while simultaneously holding cryptocurrencies as prohibited. Most scholars who regard cryptocurrencies as *haram* rarely discuss zakat-application; since, it is held that *haram* wealth excludes zakat. The fatwas of Asmā Mahmud Mohammadi, Abdul Sattār Abu Ghuddah, and Ahmad Eid Abdul Hameed are a rarity. They seek to explore zakat-application to an admittedly prohibited wealth-source. For this reason, these fatwas are deserving of attention.

Mohammadi grounds her discussion of cryptocurrencies in *Fiqh al-Nawāzil* (Mohammadi, 2019). Her cursory reference deserves some comment. The term *Nawāzil* (‘contemporary issues’) is defined by Wahbah al-Zuhayli as an event, situation, circumstance, or condition that afflicts and affects society whereby there is neither a direct revelation nor a past juristic opinion that

addresses it (al-Zuhayli, 2001). Muhammad al-Jayzānī adds three requirements for an event to fall under the ambit of *Fiqh al-Nawāzil*. The first is that the event has actually occurred (*al-wuqū’*). This criterion means that hypothetical scenarios are excluded from consideration. The second is newness (*al-jiddah*). This necessitates that the event to be scrutinised is not a reoccurrence; rather, it is a new event that has not happened before. This criterion excludes events that jurists dealt with in the past. The third is strong impact (*al-shidda*). This criterion excludes peripheral matters that have little relevance and minimal impact on society (al-Jayzānī, 2006). As discussed in an early section of this paper, cryptocurrencies have already become widely used in Muslim-majority countries. The technology is recent. Many governments are taking them seriously, both in a positive and negative sense. This makes cryptocurrencies immensely qualified to fall under the domain of *Fiqh al-Nawāzil*.

It must be clarified that *Fiqh al-Nawāzil* does have grounding in the Islamic heritage. For instance, Ibn Sahl (d. 486 A.H.) composed an important collection of fatwas regarding *Nawāzil* occurring in Andalusia (Ibn Sahl, 2002). Yet in its most common usage, *Fiqh al-Nawāzil* has come to exclusively refer to contemporary issues that have no direct precedent in the classical juristic corpus. This is clear in how Bakr Abu Zayd’s two-volume compendium of fatwas on *Fiqh al-Nawāzil* is directed towards modern issues that were not found in the past (Abu Zayd, 1996). Abdel-Aziz Wasfi is not exaggerating when he says fatwas in *Fiqh al-Nawāzil* are significant for the religious, legal, historical, social and economic aspects they encompass (Wasfi, 2018).

Mohammadi provides modern reasons for why cryptocurrencies should be deemed as impermissible. She argues that cryptocurrencies lack government regulation and banking oversight; so, cryptocurrencies are a medium well-suited to money-laundering, drug-trade, and supporting terrorism (Mohammadi, 2019). Her judgment is tempered somewhat when she acknowledges that cryptocurrencies can become permissible if they become well-regulated (Mohammadi, 2019).

In justifying zakat-application on cryptocurrencies, Mohammadi provides three proof texts: Q.9:103, Q.70:24-5, and the hadith of Mu’adh bin Jabal (Mohammadi, 2019). Both Q.9:103 and the hadith were previously cited in fatwas that held cryptocurrencies to be halal and zakat applicable to it. Arguably, the lynchpin of her position is not so much these proof texts but a principle she uses to bridge the gap between cryptocurrencies and generalised statements on wealth. She lists six criterion of wealth that is zakat-applicable. The fourth criterion she notes is that wealth should be productive, capable of growth (Mohammadi, 2019). She points out that cryptocurrencies are indeed a productive source of wealth that can grow; therefore, they fall under the zakat obligation (Mohammadi, 2019).

On first brush Mohammadi’s position is perplexing. It is well-known that prohibited wealth, such as *ribā*, cannot have zakat applied to it (Kuwait Ministry of Awqaf and Islamic Affairs, 1983). It is not clear how her argument for zakat-application overrides this well-known juristic position. However, a closer analysis of her fatwa brings to light a crucial nuance.

She does not regard cryptocurrencies as prohibited *tout court*. The impermissibility is levelled against cryptocurrencies in its *current form* (*bisūratihā al-hāliyya*). She stresses that if governments in Muslim-majority countries officially recognise and regulate cryptocurrencies, then cryptocurrencies should be considered akin to fiat currencies (Mohammadi, 2019). She tells people to not invest in cryptocurrencies, because they could lose their money (Mohammadi, 2019). This, of course, applies even to investments in fiat currencies. She accepts the legality of cryptocurrencies such as Project Aber, between Saudi Arabia and United Arab Emirates, and EmCash of Dubai, and avers that such

digital money should be deemed identical to fiat currencies (Mohammadi, 2019). It is relevant to note that EmCash is a cryptocurrency created by the government of Dubai, and that citizens of Dubai will be able to pay for governmental and non-governmental services through this officially-recognised cryptocurrency (Wilson, 2019).

Abdul Sattār Abu Ghuddah and Ahmad Eid Abdul Hameed provide similar expositions on zakat-application to cryptocurrencies. According to Abdul Hameed, the majority of scholars deem cryptocurrencies as impermissible (Lowry, 2014). Consequently, he holds that cryptocurrencies are impermissible except where a government officially endorses it (Hameed, 2018). Abu Ghuddah provides important clarification on this point. According to Abu Ghuddah, the issue of cryptocurrencies is one that has no specific revelation addressing it, and one where scholars have disagreement over. For this reason, Abu Ghuddah says he prefers to use the term 'ban' (*mana*) rather than 'prohibit' (*harām*) out of caution (Abu Ghuddah, 2018). He stresses, once more, that the issue is not strictly about permissibility (*halāl*), impermissibility (*harām*), or even a religiously sanctioned ban (*mamnū'an shar'an*). Instead, the issue is about the prohibition of going against the government or banking authorities in relation to determining economic policy (Abu Ghuddah, 2018). Both scholars use proof texts to show zakat applicability to cryptocurrencies. Abdul Hameed cites Q.51:19 (Abu Ghuddah, 2018). Interestingly, Abu Ghuddah cites Q.9:103 and the hadith of Mu'adh bin Jabal, in the context of discussing a 1986 fatwa on fiat currencies (Abu Ghuddah, 2018). This shows how the proof texts used to apply zakat to cryptocurrencies are the same proof texts used to apply zakat to fiat currencies. It also demonstrates the continuities between past fatwas regarding modern economy with present fatwas on contemporary economy. These proof texts, however, lack persuasive force. Abu Ghuddah openly recognises that cryptocurrencies were "not known before (in Fiqh) except in our contemporary time" (*lam takun ma'rifa min qabl illā fi al-'asr al-hādhir*) (Abu Ghuddah, 2018). Because of that, there is great dispute over how zakat should be related to cryptocurrencies (Abu Ghuddah, 2018).

The central pillar in the fatwas of both Abdul Hameed and Abu Ghuddah is conceptualising cryptocurrencies as *Fulūs*. Their argument can be abbreviated thus: classical Fiqh included *fulūs* in the ruling of zakat. Cryptocurrencies are *fulūs*. Therefore, cryptocurrencies must be included in the ruling of zakat (Abu Ghuddah, 2018; Hameed, 2018).

This approach has its strengths. It builds a bridge between cryptocurrencies and classical Fiqh. Traditionally, *fulūs* was used as a payment alongside the more established gold and silver. This means that *fulūs* was classically conceived as *not* the sole currency in an economy; rather, *fulūs* works parallel with other currencies. This fits nicely with contemporary economic practice, because cryptocurrencies operate parallel to fiat currencies.

Unfortunately, this approach has its downsides. Traditionally, *fulūs* had its own inherent value that outlasted its economic value. Copper was usually used for such coins. Even in cases where the coinage loses economic value, the copper can still be smelted and sold. This is not the case with cryptocurrencies. As digital items they lack in themselves any inherent value that can outlast the loss of economic value. Moreover, the analogy of cryptocurrencies with *fulūs* is an analogy from a *far'* to another *far'*. *Fulūs* is not an *Asl* (original case) of Fiqh; rather, it is a *Far'* (new case). Usually in analogies, a new case should be annexed to an original case. Most scholars of *Usūl al-Fiqh* hold that analogies should not annex a *far'* to another *far'* (al-Shawkāni, 2000). In this instance, cryptocurrencies would be a new case annexed to *fulūs*, which is *not* an original case. This leaves the analogy open to the accusation of conceptual confusion.

It is difficult to not sense a disharmony in the three fatwas analysed here. The easiest, by far, route would be to exclude cryptocurrencies from zakat because they are impermissible or not legal. Yet in a bid to make cryptocurrencies applicable to zakat, these scholars push their positions into untenability. For instance, one of the reasons Abdul Hameed gives for viewing cryptocurrencies as prohibited is the following: cryptocurrencies do not square with the requirements of zakat; so, they fail the criterion for zakat here (Hameed, 2018). Yet as shown above, Abdul Hameed argues that zakat applies to cryptocurrencies based on an analogy.

It can be suggested that this incongruity reflects two things about the current status of Islamic finance's approach to cryptocurrencies. Firstly, the lack of firm decisions on whether to adopt cryptocurrencies or not by Islamic financial institutions and governance in Muslim-majority countries means that an endemic ambiguity permeates juristic discussions over this. This is unsurprising given how cryptocurrencies and mainstream banking sectors even in the West have yet to achieve integration. The question on cryptocurrencies' future harmonisation into the global framework of world economy remains open. Secondly, the rapid rise of value in cryptocurrencies has left its mark on jurists. To not apply zakat to cryptocurrencies when the news media blares of its meteoric ascendancy in value is to essentially allow people to be millionaires yet pay no zakat at all. This may explain an unstated tension in these fatwas: if cryptocurrencies can indeed make a person fabulously wealthy, then should zakat be applied even if this wealth is impermissible by the law of the land?

I end this section by providing two potential avenues that can untangle the incompatibilities witnessed in such fatwas. While it is true that classical Fiqh exempted illegal wealth from zakat, it is also true that classical Fiqh made exceptions too. Buying and owning gold and silver utensils is prohibited in Fiqh. However, as Ibn Qudamah stated, there is a consensus amongst scholars that zakat is applicable to golden and silver utensils (Ibn Qudamah, 1997). Al-Nawawi affirms this as well (Nawawi, n.d.). A potential avenue is to see cryptocurrencies in a similar light. While it may be impermissible, cryptocurrencies still require zakat payment. A distinctive feature of the Maliki Madhhab is the adoption of the legal principle *mura'āt al-khilāf* ('observing differences of opinion'). According to al-Qabbāb, this principle entails that in matters where opinions differ, a scholar does not invalidate the transactions done which he personally considers wrong, but which another legal opinion considers correct (Shaqrūn, 2002). This principle was adopted by many *malikī* scholars, such as Ibn Rushd, Ibn 'Arafah, al-Shātibī, and al-Qarāfī (Ibn Rushd, 1988; al-Wansharīshī, 1981). A potential avenue is to recognise the differences of opinion regarding cryptocurrencies and incorporating them in a legal ruling. While some scholars see cryptocurrencies as impermissible, they recognise that others consider it permissible; so, those who see it as impermissible incorporate the ruling of zakat which the other scholars have explicated. These two potential avenues are suggestive not definitive, but they show that classical Fiqh does have resources to provide a more coherent conceptualisation of cryptocurrencies, which is unfortunately sorely lacking in the fatwa literature on cryptocurrencies.

There are overlaps between fatwas that hold cryptocurrencies permissible and those that hold them impermissible where zakat is applied. The proof texts in both sets of fatwas are the same. However, as is clear from the aforementioned discussion, principles rather than proof texts are emphasised in both sets of fatwas. A thematic agreement can be discerned from these fatwas, with regards to the foundational basis for understanding cryptocurrencies. To this, the next section turns.

### **Thamaniyyah as Theoretical Foundation**

The previous two sections analysed several fatwas regarding the application of zakat on cryptocurrencies. A thematic agreement can be found in them. Regardless of whether these fatwas see cryptocurrencies as permissible or prohibited, they make an analogy between cryptocurrencies and fiat currencies. This section examines the juristic debates on fiat currencies, and deduces *thamaniyyah* as the foundational basis for regarding cryptocurrencies as zakat-applicable.

The question of whether fiat currencies is zakat-applicable exercised great attention by numerous Muslim jurists. Neither the Quran nor the Sunnah mentions fiat currencies. Classical jurisprudence is silent on it. It is not possible to cover the vast scholarly literature on this topic; however, the legal discussions can be parsed.

Muslims scholars provided various jurisprudential characterisations (*takyif*) of fiat currencies. Abdul-Rahman al-Sa'di and Sheikh 'Illish conceived paper money as "trade goods" (*'urūdh al-tijāra*). Thus, zakat applied only when it was traded (al-Sa'di, 1982; al-Dubyan, 2011). Other scholars saw paper money as debt certificates (al-Husayni, 1911; Ibn Mani', 1984). This meant that paper money was subject to the legal differences of opinion classically held regarding zakat on debt (Makhlūf, 1925). Other scholars deemed paper money to be *fulūs*. According to Ahmad al-Khatib, there is no zakat on paper money except if it is traded as *fulūs* (al-Khatib, 1883). Ahmad Rida al-Brilvi, citing the Hanafi position on *fulūs*, held zakat applied to paper money necessarily because it was *fulūs* (al-Hindi, 2005). Other scholars espoused the juristic principle that substituents take the rulings of the substituted (Shabakah, 2008; Ibn Mani', 1984). Since paper money substituted gold and silver for economic exchange, paper money should be deemed a substitute for gold and silver. The same zakat rules applicable to gold and silver are applicable to fiat currencies. This is the view of Abu Zahra and Abdul Razzaq al-Afifi (Shabakah, 2008).

The prevailing view of scholars nowadays is that fiat currencies are new currencies that possess the property of *thamaniyyah*. That is, fiat currencies are independent of gold or silver yet they have *thamaniyyah*, the quality of being a medium of exchange. Thus, fiat currencies should be treated alongside the same rulings of gold or silver, because fiat currencies share the same effective reasoning (*'illah*) as them, which is *thamaniyyah* (Shabakah, 2008). It follows from this that fiat currencies have the same zakat ruling as gold and silver (Ibn Mani', 1984). Importantly, the *thamaniyyah* of fiat currencies is the focus of the 1986 fatwa (by the International Islamic Fiqh Academy) that Abu Ghuddah mentions in his discussion of cryptocurrencies (Abu Ghuddah, 2018).

The takeaway from this is that the analysed fatwas that apply zakat to cryptocurrencies are tapping into the modern Fiqh position that *thamaniyyah* forms the basis of why zakat is applied to fiat currencies. Thus, at an even deeper level of analysis, it is *thamaniyyah* that emerges as the most foundational aspect held by the fatwas that apply zakat to cryptocurrencies.

Al-Fayrūzabādī defines the *thaman* of an item as what one pays to deserve that item (al-Fayrūzabādī, 2005). Baker and Semai define *thamaniyyah* as "holding value" where *thaman* is "value". They clarify what exactly this value is. Anything that is a replacement of the value of something else is its value, which is understood as a "currency" that is accepted by a community as a medium of exchange (Baker & Semai, 2020). The importance of *thamaniyyah* in Islamic finance cannot be understated. For instance, the Maliki and Shafi Madhabs consider *thamaniyyah* as a ratio that serves the basis for Islam's stance against *Riba* (Ismail, 2010). Contemporary discussions of *thamaniyyah* exhibit much

sophistication. Obaidullah points out that *thamaniyyah* is not absolute; rather, it is of varying degrees. He gives the example of rupees and dollars. Rupees loses its *thamaniyyah* when a person attempts to use it for purchases or transactions inside America. In contrast, the US dollar "possess *thamaniyya* globally" and thus retains its *thamaniyya* outside the national boundaries of America (Obaidullah, 2001). Baker and Semai discuss *thamaniyyah* with regards to virtual currencies (Baker & Semai, 2020). The contemporary understanding of *thamaniyyah* is important, because it acts as a crucial bridge between Islamic finance in the modern era and classical jurisprudence in the pre-modern era. Valentino Cattelan emphasises that classical legal scholars of Islam were able to ground *thamaniyyah* in "human convention" (*istilah*). This provided the rationale for both the Umayyid and Abbasid dynasties to mint copper coins. This shows, according to Cattelan, that Islamic scholars recognised that money need not be by nature; rather, money could be by agreement. In this, Islamic scholarship toed a similar line as Aristotle's own conception of money (Cattelan, 2016). Al-Hujāwī (d. 968 A.H.) and his advice to Muslim rulers is a case in point on the classical usage of *thamaniyya* to determine economic policy (Oberauer, 2018). This and the above provide a persuasive case that by pinpointing *thamaniyya* as the foundation for cryptocurrencies, the fatwas analysed in this study are taking a well-trodden path.

There are precedents for attaching zakat to *thamaniyya* for new modes of currencies. The Council of Senior Scholars (Hayat Kibār al-'Ulamā) of Saudi Arabia pegged the obligation of zakat on paper money to *thamaniyya* (The General Presidency of Islamic Research and Ifta, 2013). The fatwas in these studies regard cryptocurrencies as containing *thamaniyyah*. Ergo, zakat is applicable to them.

This foundational basis for understanding the relationship between zakat and cryptocurrencies has the benefit of providing a theoretically sound anchorage for future debates on cryptocurrencies. While the technologies of digital currencies will definitely evolve and develop in a myriad of new ways, *thamaniyya* will remain a relevant and pertinent category by which to view them. The concept itself has been successfully applied to copper coins in pre-modern times, to fiat currencies in modern times, and has now been extended to cryptocurrencies in contemporary times. This is a track record that inspires confidence that Islamic finance contains theoretical insights capable of tackling newer challenges in the foreseeable future.

It can be suggested that the debate of zakat applicability to cryptocurrencies should focus more on the aspect of *thamaniyya*, which is agreed by many scholars, rather than relatively weak attempts of forcing generalised proof texts to encompass the specificities of cryptocurrencies.

### **Conclusion**

This article began by discussing cryptocurrencies. It ended with discussing *thamaniyya*. The former notion is post-modern; the latter notion is pre-modern. The link connecting both goes through classical jurisprudence to modern Fiqh and reaches to the contemporary field of Islamic finance. The fatwas analysed here provide testament that the linking of both notions—cryptocurrencies and *thamaniyya*—is neither ad hoc nor unwarranted. This is grounds enough to recognise the potential of Islamic finance to fruitfully bring into conversation both the jurisprudential tradition and cutting-edge financial advancements.

As shown earlier, cryptocurrencies currently affect the Muslim world. Many Muslim-majority nations have prohibited cryptocurrencies. At the same time, many Muslims have enthusiastically embraced it. The issue of zakat is a helpful gateway for engaging with cryptocurrencies. This is given the centrality

and significance of zakat in Islam and its development across history as an expansive concept. The attempt to probe zakat's applicability to cryptocurrencies is therefore coherent.

The fatwa genre provides a microcosm of the wider legal discourse being held amongst Muslim scholarship. By analysing fatwas, it is possible to isolate and identify the proof texts and principles articulated by Muslim scholarship on a specific issue. In the case of this study, it has been shown how proof texts play a minimal role in persuading scholars that zakat applies to cryptocurrencies. Instead, principles played the major role in grounding their arguments.

Despite differences over the legality of cryptocurrencies, the seven fatwas analysed here agree, explicitly or implicitly, with the theoretical foundation of thamaniyya as the crucial key to whether cryptocurrencies are zakat-applicable or not.

More fatwas could have been included in this study if space were not a consideration. However, this researcher is confident that the fatwas analysed provide an accurate reading of the scope of predominant legal opinion regarding zakat and cryptocurrencies. While future debates within Islamic finance may introduce newer proof texts or principles, the concept of thamaniyya will necessarily be retained.

Future researchers may want to balance this study's conclusion with considerations of other non-juristic elements such as a nation's current economic policies, or global trends in economic stability, etc. Having said that, the concept of thamaniyya will still play an influential role in how to integrate or harmonise cryptocurrencies within an Islamic framework.

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