Asian Journal of Law and Policy
Vol. 6 No. 3 (November 2026) eISSN: 2785-8979

Incorporating the Unincorporated: Reassessing the Legal Personhood of Decentralised Autonomous Organisations (DAOs)

Chay Jo Long
Faculty of Law, Taylor's University Lakeside Campus, Malaysia
ChayJo.Long@taylors.edu.my
ORCID iD: 0009-0003-7903-7489
(Corresponding author)

ABSTRACT

Decentralisation is often regarded as the holy grail for blockchain governance, offering transparency and security without reliance on central authorities. These features are particularly attractive in the governance of a wide range of blockchain-based projects. Beyond the apparent self-governing and *trustless* façade lies profound legal uncertainty and significant challenges regarding accountability. On this basis, this paper explores whether DAO should be recognised as a legal person or continue to exist within a legal void. At one end of the spectrum, legal recognition would address pressing issues of accountability, enforceability, and regulatory oversight. The grant of legal personhood further addresses broader legal complications within the financial system. However, recognition raises concerns about compatibility of external legal structures with the decentralised ethos of DAOs. Arguably, introduction of external legislative governance risks undermining the very essence of decentralisation. A comparative legal analysis is undertaken with a focus on key jurisdictions that have taken the steps in legislative governance of DAOs. This paper further evaluates if DAOs can be meaningfully situated within the established legal doctrines in company law, or if their decentralised structure renders such integration inherently problematic. Finally, the paper proposes a calibrated framework for the potential regulation of DAO in Malaysia.

Keywords: Decentralised autonomous organisation (DAO); Decentralisation; Legal personhood; Blockchain governance; Incorporation

Received: 11 December 2025, **Accepted:** 3 June 2026, **Published:** 1 November 2026

(2026) Asian Journal of Law and Policy, 6(3), 417–446
https://doi.org/10.33093/ajlp.2026.21
© Universiti Telekom Sdn Bhd. This work is licensed under the Creative Commons BY-NC-ND 4.0 International License.
Published by MMU Press. URL: https://journals.mmupress.com/ajlp

1. Introduction

The adaptation of decentralisation enables the widespread utilisation and rapid development of blockchain technology. It allows transactions to occur without reliance on a centralised authority and within a trustless environment. This offers greater transparency, security, and reliability. Such innovation opens door to new organisational models, most notably, the decentralised autonomous organisation (DAO). Implementation of DAO eliminates the involvement of third party in transactional governance and prioritises co-ordination and autonomous decision-making processes by the network participants through code-based rules and distributed consensus mechanisms. These features are particularly attractive in the governance of a wide range of blockchain-based projects such as financial protocols, community-driven networks, and open-source ecosystems. The transformative impact of DAO cannot be understated. The significant growth of DAO is proven from the accumulation of almost 6.4 million participants in 2022, leading some to describe it as the year of the DAO (Ilyushina, 2023).

While the influence of DAO in economics and technology cannot be denied, its legal status remains uncertain. Specifically, the legal recognition of DAO has not been addressed in most jurisdiction. As a result, the question as to whether DAO should be recognised as a separate legal entity—granting it with legal rights and obligations remains largely unanswered. The lack of legal clarity gives rise to several significant consequences: (1) it creates uncertainty regarding liability, especially when disputes or breaches occur; and, (2) it diminishes stakeholders' confidence in the adoption and development of DAO without clear legal protection and accountability mechanisms. Recognising the need to bridge this legal void, certain jurisdictions (such as Vermont and Wyoming in the United States) have taken the lead in granting legal recognition to DAO by treating them as a form of legal entity, synonymous to a company. However, this approach remains subject to criticism and scrutiny as the regulatory frameworks on DAO continues to lack consistency across jurisdictions. These criticisms are not limited to legal considerations but it is argued that imposing traditional legal governance on DAO takes away its essence and attraction, particularly when it becomes subject to external governance or institutional control.

It is recognised that external governance of DAO is a fine line to thread. This paper acknowledges that governance may benefit DAO through introduction of legal liability and accountability but a broad-brush approach in governance would undermine the core of decentralisation. Upon such premise, this article aims to reassess if there is a need for a separate doctrine to grant legal personhood to DAO in Malaysia or if it can be comfortably situated within the existing legal framework, with specific reference to Malaysia company law. Otherwise, this article attempts to propose a calibrated legislative framework for the potential regulation of DAO in Malaysia. To achieve this aim, this article pursues four objectives. First, it examines into the technological and governance foundations of DAO to identify the legal mavericks of decentralisation. This justifies the need to examine DAO structure distinctively from the existing legal entities in Malaysia. Second, it examines the theoretical foundation in traditional doctrine of legal personhood as it applies to company

and analyses if these frameworks can be appropriately applied to DAOs within the Malaysia law. This follows by a comparative analysis between DAO and traditional companies from the structural, operational, and legal perspectives. Third, it examines the approaches adopted in different jurisdictions in their treatment of the legal standing od DAO. This comparative analysis would be helpful as reference to the fourth objectives: the analysis on the appropriate approach or framework for DAO governance in Malaysia.

Accordingly, the remaining of this paper is separated into eight different sections: Section 2 provides an explanation in the implementation of decentralisation in blockchain technology and the development of code governance through DAOs. Section 3 introduces the void in the legal recognition of DAO. Section 4 examines the theories supporting the recognition of legal personhood and if these theories may be applicable to DAO. Section 5 provides a comparative analysis between traditional companies and DAO. Other than the functional aspects, this section further analyses if DAO can be truly be regarded as a company within the meaning and definition under the Companies Act 2016 (CA 2016). Section 6 dwells into the regulatory concerns and complications pertaining to unregulated and unincorporated DAO in Malaysia. This section highlights that the lack of legal personhood does not only affect the operation of DAO, but may also complicate legal enforcement and increases the risk of criminal activities. These facilitates the argument on the importance of recognising legal personhood to DAO, in which Section 7 examines the distinctive approaches adopted in different jurisdiction in their treatment and recognition of DAO. This comparative examination allows a better reassessment of legal personhood for DAO under the Malaysia perspective in Section 8. Lastly, Section 9 concludes the discussion on the significance and impact of DAO governance, while relating these discussions back to the Malaysian legal governance context. This paper intends to open the door for future research or to accommodate different views, when the technology gains further maturity under the domestic law and for the proposal made herein to be properly developed into a coherent regulatory framework.

2. Decentralisation and the Emergence of DAO

Blockchain technology originates from the work of Stuart Haber and W. Scott Stornetta in 1991, whereby they have intended to create a cryptographically-secured chain of blocks to impose a time-stamping requirement on documents to avoid tampering or unauthorised amendments (Shrimali & Patel, 2022). This idea is further enhanced and implemented by Satoshi Nakamoto in 2008, whereby a decentralised digital currency system with distributed ledger is introduced. The concept of decentralisation and distributed are created with an intention to resolve the issue of double-spending in the utilisation of blockchain technology. Double-spending refers to the situation in which a unit of value is spent more than once. This issue is generally not present in conventional cash-based transaction as physical money cannot be used again after the initial transaction. However, in digital transaction, the value or digital representation may be duplicated, potentially enabling fraudulent transaction if verification mechanism is not in place.

On this note, decentralisation and distributed remain as two important features in blockchain to ensure security and immutability of transaction without the need of reliance on a single, centralised authority. The idea of decentralisation and distributed can be represented in the figure below.

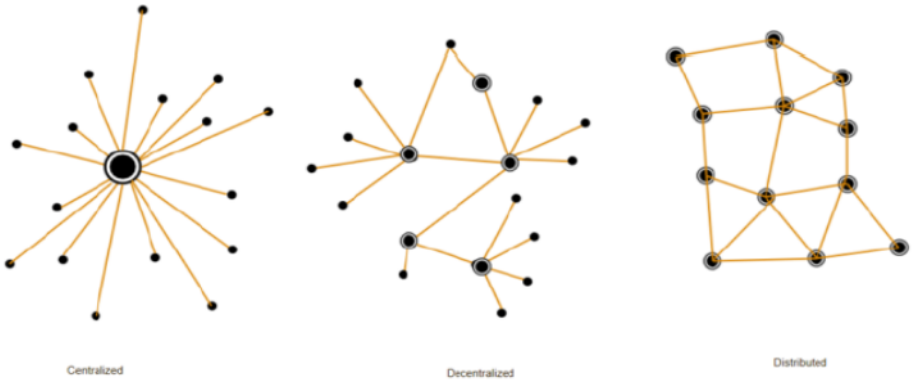


Figure 1: The differences between centralised, decentralised, and distributed environment in blockchain transaction. Source: Sarmah (2018)

Centralisation places responsibility on the central authority for safe keeping of records, data, or information for participating nodes (that is, the stakeholder concerned). This central authority acts to govern, regulate and commands any transactions therein. Traditional financial services is a good example of centralisation: that is, centralised finance (CeFi), whereby the central bank has control over the record of transactions or access to the flow of the money. An illustration can help to explain the framework of centralisation. If A intends to make a payment to B, A instructs her bank to transfer funds to B's bank account. In this process, the financial institution facilitates the transaction and maintain proper record, and ensure the enforcement of relevant rules and polices governing such transaction The financial institution also implements measures to verify the authenticity of the transaction to prevent fraud or unauthorised transfers. Although A and B may each have records of the transaction, they do not have the ability to independently verify, alter, or control these records. On this account, centralisation requires utmost trust on the reliability and accountability of the central authority. Record-keeping and the duty of authentication also lies solely with the central authority, making it susceptible to attack. Any attack or fraud perpetrated to the central authority would have damaging effect as these records or data are not independently stored by the participating individuals.

Blockchain technology moves away from over-reliance on a single central authority through decentralisation. In such an environment, there is no central server in governance, regulation, or authentication. Rather, such obligations are distributed to participating nodes (that is, the stakeholders). These participating nodes would have possession of identical data or information which they can separately and independently verify without having to communicate or adhere to commands of a central authority. However, it is highlighted that these participating nodes would 'communicate' with one and another through a peer-to-

peer network in a collaborative fashion, whereby they are able to perform self-verification and authentication of transactions. By using the same illustration, the transaction between A and B no longer relies on a central financial institution as a server. Instead, A and B maintain their own records within a distributed ledger system. Transactions are verified, updated, and recorded synchronously across the network, allowing both parties to access a shared and consistent transaction history.

Ergo, the responsibility in ensuring the accuracy of records shifts from the central authority to all participants. The implementation of decentralisation in financial transaction can be referred to as decentralised finance (DeFi). The removal of the need to rely on central authority would also remove the need of trust. It is for this reason that decentralisation is often recognised as a *trustless* environment. Decentralisation dilutes the detrimental effect of an attack. As each participant holds an accurate and verified copy of the distributed ledger, any attack on a single participant will be identifiable as it would result in inconsistency with the majority of other records. On this account, any attempt to falsification will be immediately detected and rejected by the network – providing a strong resistance against tampering. Nonetheless, it must be noted that tampering is improbable, but not impossible. The integrity of a decentralised blockchain system may be compromised in the event of a "51% attack". Such an attack occurs where a single entity or participant gains control of more than 50% of the network's validating or hashing power. In such circumstances, the network can no longer be regarded as meaningfully decentralised, as control over transaction validation and record alteration may effectively rest with that dominant entity, thereby creating the potential for tampering.

Decentralisation has been implemented beyond financial transactions. In line with the development in the use of blockchain, decentralisation continues to play a crucial role in supporting the functions of smart contract and decentralised applications (dApps) by allowing them to operate without reliance on central authority. Decentralised blockchain-based smart contract platform resolves trust issues regarding the execution environment (Schar, 2021) and following thereto, smart contract can be executed automatically without third-party intervention when the pre-conditions are satisfied. For simplicity, the operation of a smart contract can be explained as an '*if x then y*' logic, where execution occurs automatically once predefined conditions are satisfied. This allows contractual terms to be enforced programmatically without the need for intermediaries. The immutability of blockchain systems further means that, once deployed, a smart contract generally cannot be altered or stopped, reinforcing the finality of its execution.

The implementation of smart contract displaces the need to rely on intermediaries and transfers trust to code execution and the decentralised network consensus. However, when the consensus mechanism becomes increasingly complicated, a gap in governance emerges, raising questions on the authority controlling protocol-level decisions. This gap gave birth to the concept of DAO. The first founder of DAO intended to create an organisation that functions without managers and hierarchical structures, substituting them with an automated process governed by smart contracts embedded within the blockchain protocol

(Santana & Albareda, 2022). The first DAO was based on Ethereum and launched in July 2015 using *ether* (ETH). Ethereum serves as a primary platform for the deployment of various DAO projects, despite its turbulent beginning which led to a controversial hard fork of the Ethereum blockchain, resulting in two separate chains: Ethereum and Ethereum Classic (Mehar et al., 2017). Each DAO has different goals (Santana & Albareda, 2022): for examples, DAOstack proposes venture capital based on the Ethereum blockchain; Decentraland is a virtual world recorded on Ethereum in which contributors can build their own environments and communities; DAOhause provides a marketplace for the purchase and management of real-world assets; and, Aragon Court is a decentralised and borderless dispute resolution mechanism designed for DAO-related disputes.

Notably, DAOs serve varied functions and purposes. There is neither a singular, universally accepted definition of DAO nor a uniform model for its application. The following are ways in which DAO has been defined—

> '… blockchain-based organisations fed by virtual open networks of contributors (investors in cryptocurrencies). Their governance and management are decentralised without central control and are built on automated rules encoded in smart contracts stored and executed in blockchain. This structures enables peers to work autonomously based on a system of on-chain (machine consensus) and off-chain (voting rights) mechanisms of governance that support community decision-making and drive distributed trust among peers' (Shrimali & Patel, 2022).

> 'The ideal of a decentralised autonomous organisation is easy to describe: it is an entity that lives on the internet and exists autonomously, but also heavily relies on hiring individuals to perform certain tasks that the automation itself cannot do … The obvious difference between a decentralised organisation (DO) and a DAO … is the word "autonomous"; that is, in a DO the humans are the one making the decisions, and a DAO is something that, in some fashion, makes decisions for itself' (Buterin, 2014).

> 'A DAO is essentially an organisation run by code, without centralised control, where decisions are made collectively by its members or stakeholders … DAOs strive to have autonomous governance based on a mix of on-chain and off-chain processes that facilitate decentralised community decision-making, eschew top executive teams, and are founded on automated rules encoded in smart contracts' (Alawadi et al., 2024)

> 'A DAO is essentially a computer software code that is distributed across a decentralised peer-to-peer network and incorporates governance and decision making rules. In other words, it is a form of an organisation that is operated through rules encoded in smart contracts. The purpose behind a DAO is to design a corporate structure that could function and perform actions independently from human hierarchical management' (Schuppli & Jafari, 2021)

> 'The term decentralised autonomous organisation ("DAO") describes, in very broad terms, a new type of online organisation using rules set out in computer code. A DAO will generally bring together a community of (human) participants with a shared goal – whether profit-making, social, or charitable. The term DAO does not necessarily connote any particular type of organisational structure and therefore, cannot on its own imply any particular legal treatment' (Law Commission, 2024).

These definitions provide a consistent characteristic or feature of DAO: (1) the concepts of decentralisation and autonomous are fundamental to the philosophy and the technology that underpins DAOs; (2) DAO utilised distributed ledger technology and smart contract to set out the governance framework of DAO, in computer codes; and, (3) decision-making is done collectively or through community voting rather than a centralised authority or management team. This form of community voting allows any token-holder to take part in the decision-making of the DAO. These features of DAOs represent a paradigm shift from traditional approach of governance (Hashemi-Khiabani & Polonia, 2023). Particularly, traditional governance operates within an established legal framework, governed by contracts or legislations that prescribes the rights, duties, and liabilities of the stakeholders. The hierarchical governance model of these traditional organisations generally rests the decision-making powers on the board of directors or executive management. Arguably, the flexibility, transparency and inclusivity offered by DAOs represent a progressive shift away from traditional governance structures. However, the absence of a comprehensive governance framework, similar to traditional organisations, introduces critical issues pertaining to liability, enforceability, and jurisdictional challenges in the employment of DAOs.

3. The Legal Issues With DAOs

The descriptions and complex nature of DAOs reinforce that they are more than just a set of self-executing codes. They facilitate collective decision-making, management of assets, execution of agreements, and may affect the interests of participants off-chain. As such, the question is no longer whether DAO should be analysed under the legal lens, but how it should be treated under the law. DAOs may take upon themselves to be incorporated within the recognised legal organisation structures such as partnerships, companies, or societies. In such an instance, the characteristics of the DAO as a legal entity become clear. However, it is highly unlikely for any DAOs to take the initiative to establish a formal legal entity as it may contradict the very essence of a DAO. This contradiction or dilemma in governance will be explored further in subsequent sections. In fact, developers who have decided to set up DAOs would most probably have done it with the intention to avoid the existing legal forms and to stay true to the theoretical and philosophical principle of decentralisation. This type of DAO exists within a legal vacuum. An illustrative example on a crowd-funding project can help highlight the legal challenges that may arise from an unregulated and ungoverned DAO:

> A, B and C intend to launch a crowd-funding project known as GatherFundTogether using DAO framework. They plan to use smart contracts to govern the project and the same would be deployed on NewGen DAO network. Users within the NewGen DAO may choose to participate by contributing to the DAO's treasury. In exchange for such contributions, participants will receive tokens (GFT) which grant them voting rights. Proposals for investments may be submitted on how these funds can be used. Token holders would then be able to cast their votes on these proposals, with voting powers proportionate to their initial contributions or the amount of GFT in possession. Once a proposal is approved, the funds will be automatically disbursed in accordance with the terms and conditions of the smart contract. The entire transaction or the execution of the project will take place in a pseudonymous manner, and without centralised intervention. The transactions and history of voting would also be recorded on blockchain.

Within this illustration, one can easily foresee the liability and legal issues that may arise in GatherFundTogether. Foremost, and central to the theme of this paper, is the question on how a DAO can serve as a platform for crowd-funding projects. Without any legal recognition, it is unclear as to how a DAO can enter into any enforceable contracts, own assets or properties. Further complication ensues when there are disputes pertaining to the project – particularly concerning the extent to which a DAO can attract legal liability. For instance, if GatherFundTogether is used as a vehicle of fraud, it remains unclear as to whether participants would have any legal recourse or remedies against the developer (A, B, and C), or GatherFundTogether, or the project proposer, or the other token holders who voted on the fraudulent proposal, or even the NewGen DAO network. The question of liability becomes even more complex when fraud is not involved but a mere technical malfunction such as an error in code or unforeseen bug in the protocol. On this account, the appropriate dispute resolution avenues available to the innocent participants is unclear. For these reasons, certain DAO platform provides specialised dispute resolution mechanism for disputes arising from the utilisation of DAO within their network. For instance, Aragon Court is a form of decentralised and on-chain dispute resolution mechanism that is in-built to resolve blockchain-related disputes in the Aragon Network.

However, the commencement of off-chain litigation against the project proposer or the token holder or the developer poses separate set of issues: pseudonymity nature of the transaction. It is pointed out that participants in DAO operates pseudonymously, and not anonymously. As activities are tied to the participants' wallet address and other metadata (such as IP address), they are transparent and traceable. Ergo, it remains possible for the innocent participant to locate the fraudulent participants. However, blockchain forensics are not straightforward and complicate legal action and enforcement. To overcome this challenge, courts have allowed the commencement of litigation against 'persons unknown' provided that the description of such person is sufficiently certain to identify those who are included and those who are not. Nonetheless, even with this approach, legal recourse faces another obstacle: jurisdiction. Any DAOs, like GatherFundTogether exists solely on-chain.

There is no physical office or registered address for DAO, rendering the issue of service and applicable jurisdiction particularly challenging. This is further complicated by the fact that the participants, developers, token holder, the DAO (i.e. GatherFundTogether) or the network (i.e. NewGen DAO) may be located at multiple jurisdictions. This transnational structure complicates the enforcement of rights and resolution of disputes.

4. Theoretical Foundation of Legal Personhood And Its Application to DAO

The above section examines the legal issues and challenges in establishing liability and enforceability of DAOs. These complications stem from the difficulty in fitting DAOs within the conventional legal framework and the lack of recognised legal identify for DAO. On this note, the recognition of legal identity to beings other than human is not novel. It has been established since the early Roman law. The Roman's concept of '*persona*' refers to a mask to be worn by actors and its definition extends itself to refer to the role of a person in society (Tanwar, 2021). The Roman legal system vested entities with rights and duties. Traditional conception of legal personhood is usually binary in nature, that is, one entity can either be a holder of rights and duties, or they do not. As such, an entity cannot be regarded as a legal person for one purpose but not for the other (Kotzamann et al., 2023). One of the recognised juristic persons is a corporation. It is a long-established principle that a corporation, although is an artificial entity and can only act through natural persons, it is to be treated as a legal entity which is separate and distinct from its directors and members.[1] Legal personhood to company or the corporate personality has been described as the law's greatest invention (Prithvijov, 2019). Such description may be an exaggeration but it remains true that the recognition is not mere fictitious or artificial.

A pertinent aspect of legal personhood allows an entity to commence legal action against those who have harmed its interests.[2] This rule is known as the 'proper plaintiff rule' established in *Foss v. Harbottle*,[3] as early as in 1843.[4] This rule provides that the only entity who can seek relief for an injury done to a company, is the company itself. The recognition of such right to a company to commence legal action on its own name is in line with the grant of legal personhood to the company; a right that has been extended beyond natural persons. This rule is broadly applied within the Malaysian jurisdiction.[5] In effect, the recognition of a separate legal personhood benefits the stakeholder by limiting their liability to the amount of the investments. In the event that a company is subjected to a lawsuit or suffers from winding-up, the personal assets of shareholders are protected and insulated

[1] *Holland v. Revenue and Customs Commissioners and another* [2011] 1 All England Reports 430 (Supreme Court, UK).

[2] *Lee Eng Eow (as director of Lee Guar Cheow & Co Sdn Bhd) v. Mary Lee (as executrix of the estate of Low Ai Lian) & Ors* [1999] 3 Malayan Law Journal 481 (Court of Appeal, Malaysia).

[3] *Foss v. Harbottle* [1843] 67 English Reports 189 (Vice Chancellor's Court, UK).

[4] This is also enshrined under Companies Act 2016, s 21(1)(a).

[5] *Low Cheng Teik & Ors v. Low Ean Nee* [2024] 5 Malayan Law Journal 580 (Federal Court, Malaysia).

from the debts and liabilities of the company.[6] This separation between the company and the stakeholders is often referred to as the corporate veil. It is a double-edged sword. While it protects stakeholders and encourages entrepreneurial risk-taking, it creates opportunities for abuse, such as fraud or evasion of legal responsibility. In response, the court may, in limited circumstances, pierce the corporate veil to hold wrongdoers personally accountable.

The potential for abuse invites examination on why the law recognises legal personhood in the first place. To understand this, the following discussion investigates three dominant frameworks: (1) concession theory; (2) real entity theory; and, (3) nexus of contracts and agency theory. These theories offer justifications from the functional and practical perspectives.

4.1 The Concession Theory on Legal Personhood

The establishment of company under the concession theory has a historical beginning. It is also referred to as the artificial entity theory as the recognition is dependent on the fulfilment of legal requirements. Conventionally, the Crown would award privileges to corporations on an ad-hoc basis through legislation or special administration. These privileges allowed corporations to operate in a relatively self-governing manner, while preserving the lifespan beyond its constituent members (Micheler, 2025). Contemporary development in the concession theory understands that the legal personhood granted to a company is derived from the state or the law through the process of incorporation. It is possible to understand the concession theory through its connection with legal positivism (Micheler, 2021). As the latter framework posits that law derives its authority from state-sanctioned rules and institutions, it is natural to reason that any rights or privileges enjoyed by a company must be dependent on the will of the sovereign. On this account, the concession theory can be seen as a practical manifestation of legal positivism. The recognition of rights of a company cannot go beyond its legal requirements. This restriction was acknowledged in *Salomon v. A. Salomon Co. Ltd* (1897),[7] whereby, Lord Herschell, particularly, noted the importance in ascertaining the intent and meaning of the Companies Act in finding out the conditions imposed for entities to trade with limited liability.

4.2 The Real Entity Theory On Legal Personhood

The real entity theory identifies corporations through their actual and non-fictional existence within the society. It functions to govern the behaviours of individuals, who would have behaved otherwise but for the rules and procedures within the corporations. Given its actual purpose and influence within the society, the law acknowledges and formalises its existence and capacity to act in legal terms. The law does not create the rights and capacity. Conventionally, this theory attributes anthropomorphic characteristics to corporations whereby the directors act at the brain and the workers are the arms and legs. However, this

[6] *Salomon v. A. Salomon & Co. Ltd* [1897] Appeal Cases 22 (House of Lords, UK).

[7] *Salomon v. A. Salomon & Co. Ltd* [1897] Appeal Cases 22 (House of Lords, UK).

theory goes beyond the anatomical analogy and posits that corporations ought to be characterised by the habits, routines, processes, procedures, and cultures that human social interaction brings about it (Micheler, 2024). When human beings come together to work under a common goal or organisation, they establish routines. Passing of time would develop these routines into processes and procedures and eventually, these processes and procedures are formalised to become a social structure. These social structures are persistent and they shape and form participants who come into the organisation. The consequences in changing human behaviours fortifies the argument that these entities are real and have real effect in the society, regardless of the recognition that may be bestowed upon them by the institution. Precisely due to the ability to influence human behaviour, it is pertinent for organisations to be held legally accountable. Recognition of legal personhood helps with organisational accountability (Micheler, 2024).

4.3 The Nexus Of Contract And Agency Theory on Legal Personhood

The nexus of contract theory or also known as the aggregate entity theory or symbolist does not view corporations as a real or natural person. Instead, it conceptualises that corporation as a central hub for series of contractual relationships (Hayden & Bodie, 2011). These contractual relationships may include as between the directors, between the shareholders, between the corporation and the employees, between the corporations and the customers or suppliers. The recognition of any legal personhood is fictional, and merely a response to the nexus among these corresponding relationships. This is because a high transaction cost may be involved if these contractual obligations are dealt with separately and individually. The transaction cost incurred can be explained through a simple illustration. Where a supplier intends to provide service to a large group of individuals, significant fees and operational complications may arise if the supplier is required to enter into separate contracts with each individual. By recognising this group of individuals as a single legal entity, these multiple contractual relationships are reduced to a single contractual relationship between the supplier and the entity, thereby lowering the transaction cost and improving efficiency. This allows contractual relationships to be managed in an effective and collective manner. The concept in the reduction of transactional cost also supports the agency theory in explaining the recognition of legal personhood. Directors have the role of overseeing the operation, negotiation, and participation of company's activities as an agent of shareholders (Millon, 1990). These shareholders face risk that the directors will fail to act in a way that maximises the shareholders' interests. In this context, the transactional costs involved are known as the agency costs. Legal personhood allows a company to act as a single legal entity that agents can represent and hold accountable to, such as the duties of the directors to act in good faith and in best interest of the company, rather than requiring directors to be accountable to each of the shareholders.

The above discussion highlights the theoretical justifications in granting legal personhood under corporate law. However, when applied to the present context, they provide useful analytical framework to assess the legal status and potential in the

recognition of legal personhood of DAO. From the perspective of concession theory, such recognition may be fundamentally constrained. As legal personhood is only conferred by the State through formal incorporation and in adherence to the procedural requirements set by the law, DAO arguably does not fall comfortably within the existing statutory regime, particularly in Malaysia. Regardless of their functional similarities to traditional companies (as will be elaborated in Section 5 below), they are not sufficient to establish legal personhood to DAO in the absence of legislative recognition. This position reflects the current legal reality in jurisdictions such as Malaysia.

On the other hand, real entity theory and nexus of contract and agency theory offer a more convincing framework to assess the legal personhood of DAO. Rather than focusing on the legislative requirement, these frameworks examine the functional and structural realities of DAO. Particularly, the construct of DAO fits seamlessly into the framework of real entity theory. Token-holders participate in a collective manner towards a common goal and mission in DAO. Through this collaboration, they operate through structured governance and consensus mechanisms, whereby their behaviour is influenced or governed through coded rules. The ability of these structures to govern and change human behaviour suggests that DAO is more than an artificial construct but constitutes an organised social system with tangible effect. DAO is not merely formalities on paper. In this regard, it is argued that legal recognition does not create an entity but a mere acknowledgement on the existence of an organisation, thereby supporting the argument that DAO warrants legal personhood. Further, the nexus of contract and agency theory justifies the practical advantages in the recognition of legal personhood for DAO. Similar to corporations, DAO can be conceptualised as a network of relationships between participants (or token-holders), developers, and users whose relationships are founded on smart contracts. This aligns with the notion of nexus of contractual arrangements designed to reduce transaction costs.

The analysis demonstrates a tension between these theoretical foundations. At one end, the grant of legal personhood to DAO can be justified through functional existence and practicality but it may not be qualified when analysed under the lens of legal validity. This is particularly significant in jurisdictions such as Malaysia, where corporate personality is firmly rooted in statutory incorporation under the CA 2016. For this reason, the subsequent section examines the resemblance of DAO with corporations in terms of structure and function and answers the question if DAO can truly satisfy the legal and institutional requirement for recognition under CA 2016.

5. Reassessing Legal Personhood of DAO Under The Malaysian Companies Act 2016

For clearer analysis, the table below outlines a comparison between DAOs and traditional companies in terms of their structure, functions, governance, and operations.

FEATURES	DAO	TRADITIONAL COMPANY
Registration requirement	Generally, no requirement for registration.	Must be registered with the relevant authority, for an instance, the Companies Commission of Malaysia (CCM).
Decision-making process	No hierarchy and members of DAO are free to have discussions and communications. Decision-making is usually made in a collective manner.	Hierarchical structure for governance and decision-making. Top of the structure makes vital decisions. Usually in the hands of the directors or board of directors.
Ownership	Participants who own token within the DAO network.	Shareholders who own shares
Voting process	Token-holder has the right to vote. Usually voting power is proportionate to the amount of token held but different DAO can implement different mechanisms such as quadratic voting and weighted voting.	Shareholder has the right to vote. One vote per share.[8]
Voting mechanism	Different mechanism may be implemented such as supermajority, simple majority, and consensus voting.	Ordinary resolutions may be passed by a simple majority,[9] but special resolutions may be passed at a 75% majority.[10]

[8] Malaysian Companies Act 2016, s. 293(1)(a).

[9] Malaysian Companies Act 2016, s. 291(1).

[10] Malaysian Companies Act 2016, s. 292(1).

Calling of meeting	Notice may be posted on the DAO platform. There is not strict requirement on notice and may be governed by the governing rules of each DAO. Votes and proposals are recorded on-chain.	More stringent requirements. In Malaysia, members of company may call for meeting by given a notice of at least fourteen-days or any longer period as specifies in the constitution for ordinary resolution.[11] Special resolution would require at least twenty-one days or longer.[12] Meetings are generally records in the minutes of meeting or written resolutions filed with the CCM.
Governance	Governed by smart contracts and community rules.	Governed by constitution and the relevant provisions of the law, such as the CA 2016 (in Malaysia).
Enforceability	Self-enforced through smart contracts on the blockchain.	Enforced through legal system and regulators such as the CCM in Malaysia.
Legal personhood	Generally, no legal personality.	Company has legal personality and may sue and be sued in its name.

[11] Malaysian Companies Act 2016, s. 316(1).

[12] Malaysian Companies Act 2016, s. 292(1).

Liability	Liability of DAO is unclear but the participants may be liable, especially when fraud is involved.	Company may be liable in its own name. Directors of company may be liable in situations where, among others, they have acted in manners that harmed the interest of the company (that is, fiduciary duties).[13]

Table 1: A comparison between DAO and traditional company

It is compelling to argue that the theories underpinning recognition of legal personhood for companies to apply *mutatis mutandis* to DAO. This is particularly so as the theory of nexus of contract and real entity theory provide functional explanations for organisations to exist beyond formal legal recognition. Afterall, Table 1 above highlights the functional similarities between DAO and traditional company. Fundamentally, they perform organisational functions that extend beyond any one individual such as asset ownerships, collective decision-making, and operational governance. The contractual relationships between a traditional company and its stakeholder can be interpolated to DAOs, with the key distinction that in DAOs, parties interact through self-executing code rather than natural language. In this sense, DAO can be seen as a technologically facilitated nexus of relationships that binds the existing stakeholders into a bundle of rights and obligations. Token holders in DAOs, similar to shareholders in a traditional company, may delegate their decision-making powers through a series of mechanisms such as automated smart contracts or elected multisig. signers. This delegation raises concerns over accountability, similar to the principal-agent problem present in corporate theory. However, the lack of enforceable fiduciary duties in DAO complicates the direct application of agency theory, and therefore, weakening the analogy with traditional corporate governance. This fortifies the argument that the legal framework in the governance and liability of traditional company ought to be applied for DAO, specifically, in the recognition of legal personhood.

Other than resolving the issue of accountability, applying existing legal framework for corporations to DAO also establishes liability and jurisdictional forum (Charleton et al., 2023). Once a DAO is registered as a legal entity, it can be held liable for any civil or criminal liabilities. This is particularly important when malfeasance is present in a fundraising process. Allocation of liability allows easier enforcement, rather than leaving responsibility distributed among numerous pseudonymous participants. This clarity in liability allocation further works to the advantage of the founding members of the DAO and its initial token holders. Akin to the principle of corporate veil, this group of individuals may enjoy limited liability and conceal their own personal assets against legal or financial risk arising from the DAO's activities, unless they are themselves, participants of fraud or misconduct. Having an earlier enforcement also refers to the benefit of having a jurisdictional anchor. It may be

[13] Malaysian Companies Act 2016, s. 213.

remembered that the transnational structure of the fictional GatherFundTogether poses considerable challenge in determination of jurisdiction. Having GatherFundTogether recognised as a legal entity, with a registered address ensures disputes can be adjudicated in a specific forum. This legal certainty helps to foster confidence and legitimacy in DAO-led activities.

Before arriving at any conclusion that DAO should be granted with legal personhood on the basis of their functional and structural similarities to traditional companies, it is necessary to examine the requirements under CA 2016. This underscores the relevance of the theoretical tensions identified in the previous segment. Under the Act, a '*corporation*' is defined to include a body corporate formed, incorporated, or existing in Malaysia or outside Malaysia.[14] This demonstrates that the requirement of formation or incorporation is fundamental to the recognition of corporate personalities under the CA 2016. This position is consistent with the concession theory, which posits that legal personality is conferred by the State through legislation, rather than arising from functional or structural characteristics of an organisation.

In most circumstances, a DAO exists on blockchain and does not have any physical presence within a specific jurisdiction. The absence of territorial anchoring complicates compliance with statutory incorporation requirements, particularly where certain particulars must be submitted as part of the application process. For instance, the proposed address of a registered office is required,[15] but DAO may not possess a fixed place of business. Similarly, the name, identification, nationality, and place of residence of every person who is to be a member,[16] or director of the company must be provided.[17] This requirement may be difficult to satisfy as participation in DAO is often pseudonymous and flexible. The imposition of such disclosure obligations undermines the very rationale for adopting a decentralised organisational structure. Furthermore, incorporation requires the appointment of a minimum number of directors.[18] This presents a further incompatibility as DAO does not operate through a centralised board of directors. As illustrated in Table 1, decision-making in DAO is generally exercised collectively by token-holders. The absence of this central decision-making body complicates the statutory requirements and challenges the application of director-focused duties and accountability mechanism under CA 2016.[19] For these reasons, it is unlikely for DAO to be regarded as corporation under CA 2016, and henceforth afforded with legal personhood under the Act.

Other than the disconnection from CA 2016, the ownerships and managements of DAO are inherently different compared to traditional companies. The ownership of companies is vested in the shareholders while the management of business and daily operation is under

[14] Malaysian Companies Act 2016, s. 3.

[15] Malaysian Companies Act 2016, s. 14(3)(d).

[16] Malaysian Companies Act 2016, s. 14(3)(e).

[17] Malaysian Companies Act 2016, s. 14(3)(f).

[18] Malaysian Companies Act 2016, s. 196(1).

[19] Malaysian Companies Act 2016, s. 213.

the direction and supervision of directors. This separation of ownership and control justifies the need for separate legal personhood for companies (Ong et al., 2019). To maintain good governance, the law imposes fiduciary duties on directors as the managing agents to safeguard the interests of the company and its owners. While it is possible for a director to be a shareholder as well, the default corporate structure assumes such divergence of interests. However, this separation is less profound in the context of DAO whereby ownership and control are often exercised by the same group of participants (Chua, 2020). Token-holders often vote on governance matters and participate in the management of the DAO, thereby reducing the classic dichotomy of ownership and control. Legal personhood, in theory, may be less compelling in the DAO context as participants are, in many cases, acting in their own collective interest, rather than through a delegated management structure.

6. Regulatory Concerns and Implications Of Unincorporated DAO In Malaysia

The absence of recognition of legal personhood for DAO and the consequential legal vacuum extends beyond uncertainty as to its legal status. In Malaysia, these unregulated DAO may give rise to broader regulatory implications within the Malaysian legal and financial system. In particular, DAO may complicate regulatory regimes governed by Bank Negara Malaysia (BNM) and Securities Commission Malaysia (SC), especially in relation to anti-money laundering obligations and capital markets regulation.

From the anti-money laundering and counter-terrorism financing perspective, DAO present significant enforcement challenges. This is not a theoretical concern as various organised crime groups have exploited digital platforms to disguise illicit funds by using intermediary wallets, smurfing,[20] and fund mixing (Kabra & Gori, 2025). The use of intermediary wallet as a layering strategy for illegal funds to exchange hands before eventually being integrated into the financial system is prominent. It is reported that such crime has increased from 800,000 in 2022 to 1.4 million in 2023 (Devanesan, 2024). To further conceal the origins of these funds, they may be deposited into a mixer such as WasabiWallet to complicates the effort in identifying transaction trails. Malaysia has adopted a relatively mature and adaptive regulatory framework in combating such risks through the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA 2001) and regulatory oversight from the Securities Commission Malaysia (SC), with strict mechanisms on Know-Your-Client (KYC) and reporting obligations on digital asset exchanges. The current anti-money laundering (AML) mechanism is also broadly aligned with the standard of international instruments such as the Financial Action Task Force and arguably effective in regulating conventional crypto-assets related activities (Kabra & Gori, 2025). However, its application to DAO may expose an underlying enforcement gap that has yet to be fully addressed. At first instance, the decentralised nature of DAO makes it more vulnerable to exploitation due to its pseudonymous nature and the lack of centralised

[20] Such conduct is an offence under Section 4A of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA 2001).

control. For instance, the use of open-source software such as Tornado Cash complicates the enforcement of the KYC and AML regulations. It operates as a digital asset intermediary and mixer on the Ethereum blockchain, which allows funds to be pooled and mixed with other users in smart contract and can later be withdrawn at a new crypto address or wallet. By anonymising transactions and obscuring the origin and destination of funds, it becomes difficult to identify the originator or beneficiary of the transaction (Watters, 2023). Further, the existing regulatory framework relies heavily on the presence of identifiable intermediaries, particularly in the context of token issuers. In these instances, liability can be effectively allocated to identifiable entities which allows for the enforcement of KYC and AML obligations. In the context of DAO, enforcement becomes weakened when decision-making and control are distributed among pseudonymous participants without the existence of a central issuing entity. In this regard, the absence of legal personhood fortifies this enforcement gap.

Tokenisation is another important component of DAO. DAO operates through tokens and relies on them for many functions, including the deployment of smart contracts, participation in DAO projects, and voting. However, the legality of such tokens requires deeper analysis. Jurisdictions worldwide have focused on the taxonomy of tokens as a primary consideration in assessing their legal characteristics and regulatory treatment. For example, the Markets in Crypto-Assets Regulation (MiCA) adopted in the European Union in May 2023 categorised tokens into asset-referenced token (ART); electronic money token or e-money token (EMT); and other crypto-assets not falling within the categories of ART and EMT. The Swiss Financial Market Supervisory Authority 2018 (FINMA) categorises crypto-assets to asset tokens (that represent assets such as a credit or a right on the issuer's capital); utility token (that grant holders a right to access a service); payment token (that allows payment to acquire goods or services without investment or speculation); and, hybrid tokens (that exhibit characteristics of an asset token and utility token). In France, the PACTE LAW (Ministre de l'Economie et Finance 2019) categorises digital assets into two main subcategories: utility tokens and cryptocurrencies.

In Malaysia, the regulation and governance of digital token falls under the purview of Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 (CMSA Order 2019). Pursuant to section 2 of this CMSA Order 2019, digital currency is defined as digital representation of value which is recorded on a distributed digital ledger where cryptographically-secured or otherwise, that functions as a medium of exchange and is interchangeable with any money, including through the crediting and debiting of an account; and, digital token is defined as a digital representation which is recorded on a distributed digital ledger whether cryptographically-secured or otherwise. Accordingly, digital tokens are not strictly distinguished based on their functionality. On this note, the Malaysian Securities Commissions (SC) explained that even if a token is intended as a utility token, they are mostly issued for a company to raise funds and therefore, at least, at that stage, it falls under securities law. As such, DAO issuing tokens may be subject to the regulatory requirements of SC. In situations where DAO

remains unregulated or unincorporated, it becomes significantly more difficult for regulators to monitor token issuance and enforce compliance, thereby increasing the risk of regulatory oversight, investor harm, and potential misuse of token-based fundraising mechanisms. This is not a fictional concern. There has been fraudulent operation involving the issuance of token, such as AnubisDAO whereby the dog-inspired DeFi project has raised USD 60 million in a token sale in 2021 before being rug-pulled. The developers behind the project absconded with the money by transferring the fund to a different wallet address, causing investors to lose money (Avan-Nomayo, 2022).

7. Evolving Legal Recognition of DAO: A Comparative Overview

Any discussion on the legal recognition of DAOs must refer to the pioneering 2018 Vermont legislation. The Vermont Blockchain-Based Limited Liability Company (VBBLLC) framework is among the first attempts to allow registration of blockchain-specific business entities as distinct legal entity. Limited liability company (LLC) can be designated as blockchain-based LLC (BBLLC) provided that they elect to function as one in their articles of association.[21] Under the VBBLLC, there are various governing requirements for BBLLC, among others:[22] (1) to provide summary description on the mission and purpose of the BBLLC; (2) to specify whether the decentralised consensus ledger would be fully decentralised or partially decentralised, and whether the ledger would be fully or partially public or private; and, (3) to identify the voting procedures adopted and the activities within the purpose of the BBLLC. More crucially, for the purpose of allocation of liability and enforcement, VBBLLC requires the specification of rights and obligations of each group of participants within the BBLLC.[23] It is interesting to note that VBBLC provides that the Act does not exempt BBLLC from other judicial, statutory, or regulatory provisions of the Vermont law or federal law.[24] This suggests that to certain extent, liabilities of traditional corporation under company law may be applicable to BBLLC and it remains unclear as to how these liabilities may be attached to a DAO that is fully autonomous. It is noted that the VBBLLC appears to expect some human involvement in the organisation, that is, an LLC that is owned and operated by human individuals in a traditional manner but implemented blockchain technology in its operational governance (Conway, 2022). In such a way, VBBLLC tests the water in the legislation and incorporation of BBLLC, rather than allowing the creation of a DAO that operates completely free of human intervention. This piece of legislation certainly paved the way for subsequent legislative effort on DAOs.

In July 2021, Wyoming followed suit in the enactment of the Wyoming Decentralised Autonomous Organisations Supplement (WDAOS). While the VBBLC did not make explicit reference to DAO, WDAOS specifically recognises DAOs by name in its legislation. WDAOS allows the incorporation, formation, and management of DAO, to the effect that DAO is

[21] Vermont Blockchain-Based Limited Liability Company, 11 Vermont Statutes Annotated, s. 4172.

[22] Vermont Blockchain-Based Limited Liability Company, 11 Vermont Statutes Annotated, s. 4173.

[23] Vermont Blockchain-Based Limited Liability Company, 11 Vermont Statutes Annotated, s. 4173(F).

[24] Vermont Blockchain-Based Limited Liability Company, 11 Vermont Statutes Annotated, s. 4176.

recognised as a legal entity. The regulation only applies to DAO organised under the Wyoming Limited Liability Company Act and DAO organised as limited liability corporations in states other than Wyoming will not be authorised to do business in Wyoming. There are a number of requirements in the registration of DAO, among others:[25] (1) the article of organisation must contain a statement that the company is a DAO as described within WDAOS; (2) to provide the relations among members, with their rights and duties in their capacity as member; (3) to specify the activities of the DAO and the conduct of those activities; (4) to identify rights and voting rights of members; and, (5) to provide for the procedures in amending or updating the applicable smart contracts. The importance of code and smart contract are evidentiary. The Act specifically provides that where the articles of organisation conflict with the smart contract, the smart contract shall pre-empt any such conflicting provisions.[26] Further, the Act appears to give the maximum effect to the principle of freedom of contract by waiving the fiduciary duties of members by default (Lewis, 2021). It is expressly provided that members of DAO shall not have any fiduciary duty to the organisation, except that members shall be subject to the implied contractual covenant of good faith and fair dealing.[27] While fiduciary duty and good faith are separate legal doctrines, the difference between them is subtle and often hard to distinguish in practice. It is also interesting to note that there is limitation in the usage of smart contract by a traditionally incorporated LLC in Wyoming. In such instances, it is unclear as to why an LLC would choose to be registered specifically under WDAOS, given its more stringent requirements in disclosure (Martin, 2025). Notably, while the article of organisation of a traditional LLC requires the inclusion of the name of entity and contact information for a registered agent, the WDAOS requires an additional twelve items to be included in the incorporation of DAO LLC.

Following the lead of the United States, the Republic of the Marshall Islands introduced its own DAO legislation, hailing to be the first sovereign nation to introduce such framework. The Decentralised Autonomous Organisation Act of 2022 (DAOA),[28] supplemented by the Decentralised Autonomous Organisation Regulations 2024 (DAOR) provides a comprehensive regulatory requirement in the formation and management of DAOs as domestic LLC and integration of DAOs into the jurisdiction's established legal framework.[29] The DAOA allows the application of the existing Limited Liability Compact Act to the management of DAO, to the extent not inconsistent with the DAOA.[30] Similar to WDAOS, DAOA expressly provides that the members do not owe fiduciary duty to the organisation but subject to the implied contractual covenant of good faith and fair dealing.[31] On the contrary, DAOA places importance on the certificate of formation and the limited

[25] Wyoming Decentralised Autonomous Organisations Supplement, W.S. 17-31-106.

[26] Wyoming Decentralised Autonomous Organisations Supplement, W.S. 17-31-115.

[27] Wyoming Decentralised Autonomous Organisations Supplement, W.S. 17-31-104.

[28] Republic of the Marshall Islands, Decentralised Autonomous Organisation Act 2022 (PL 2022-50).

[29] Republic of the Marshall Islands. (2024). Decentralised Autonomous Organisation Regulations 2024.

[30] Decentralised Autonomous Organisation Act 2022, s. 103.

[31] Decentralised Autonomous Organisation Act 2022, s. 109.

liability company agreement, whereby these documents would prevail when in conflict with the smart contract.[32] In order to streamline the registration of DAO LLC, the Marshall Islands DAO LLC (MIDAO) has been introduced as an exclusive public-private partnership with the Republic of the Marshall Islands government for the registration and management of DAO LLC. It is promoted for a quick and effective set up with low maintenance and flexible option for non-profit organisations, a path which appears to be unavailable in WDAOS. Arguably, extensive disclosures are required in the certificate of formation and the limited liability company agreement, which include but not limited to documents governing the relations among members, rights and duties as members, activities of DAO, distributions to members, transferability of membership assets, and procedures for amending or changing the applicable smart contracts.[33]

These jurisdictions are pioneers in demonstrating the legislative effort to govern DAOs and to recognise them as a separate and distinct legal entities. While these legalisations provide valuable insight and guidelines on the incorporation of DAOs, they also raise critical questions. Among others, these frameworks have been criticised for having stringent and onerous requirements for disclosure, keeping the flexibility of DAOs at short legal leash. One must not forget that external governance may compromise the ethos of DAOs and the novelty of decentralisation. This raises practical and theoretical considerations as to whether such legal recognition is ultimately necessary or is in fact, at the expense of decentralisation which erases the advantage in adopting a DAO structure.

Premised on the development and wide implementation of DAO worldwide, the Law Commission of England and Wales published a scoping study on DAOs in July 2024, particularly, to identify the legal identity of DAOs and the appropriate governing legislative framework, and if necessarily so, the options for legal reforms. At the outset, the Law Commission identifies that most DAOs do not operate in a fully autonomous or decentralised manner. As such, legal characteristics of DAOs would be dependent on where they fall within the spectrum. They have been largely classified as the pure DAO at one end of the spectrum and digital legal entity at the other end of the spectrum. Pure DAO are arrangements which are fully implemented through smart contracts with very limited off-chain activity and exist fully autonomously or in a decentralised manner. There is no incorporated legal structure and does not depend on legal framework for its existence. On the other hand, digital legal entity is an incorporated legal entity that merely uses smart contracts or decentralised ledger technology for its operation or governance. Any formation ranging in between of the spectrums is known as the hybrid arrangements, whereby certain degree of human participation and intervention are expected.

Separate conclusions on regulatory treatments are as follows –

[32] Decentralised Autonomous Organisation Act 2022, s. 115.

[33] Decentralised Autonomous Organisation Act 2022, s. 106.

7.1 Pure DAOs

In most circumstances, pure DAOs are created with an intention to exclude the dependent on law and legal institutions. The characteristics of the same echo the essence of decentralisation and fully rely on technology such as codes, smart contracts, and distributed ledger technology. As such, it does not use any legal entities within its structure. However, it does not imply that participants within a pure DAO do not attract legal liabilities.

The Law Commission considers the possibility of recognising pure DAOs as a form of partnership. This is not a novel consideration. The argument that DAOs may be recognised as a partnership has triumphed in *Samuels v Lido DAO* (2024).[34] In this case, the plaintiffs were a group of investors who brought in a class action after having lost money by purchasing crypto tokens of the DAO on a secondary market and sought for damages against the institutional investors. It was contended that the crypto token known as LDO was essentially a security with the meaning of s 12(a)(1) of Securities Act and that Lido DAO was liable as a general partnership under California law. Lido DAO motioned to dismiss the lawsuit by contending that, among others, Lido DAO was not a partnership and could not be sued in its name. Notably, the Northern District of California found that Lido DAO was a form of a general partnership and was not entirely "an autonomous software program" as they were the actions "of an entity run by people." This decision may be contributed by the fact that the DAO was not a pure DAO in nature and involves human participation. As such, this case may not be fully relevant and applicable in situations where the governance of DAOs is pure, in the sense that it is fully autonomous, self-executing, and decentralised. There is another fallacy in categorising DAOs as partnerships. Some DAOs are not created for money-making purposes and may be established solely for participants to interact or to carry out non-business purpose. In such circumstance, participants of such DAOs can hardly be held liable to others in the same way as partners.

However, the Law Commission notes that this does not naturally means that non-profit making pure DAOs escape legal liabilities. Obligations may arise under other aspect of the law, such as contractual law. After all, smart contract that governs the relationship of the participants may be regarded as a valid and binding contract. Aside, participants may also be liable through common law negligence, unjust enrichment or under trust.

The Law Commission further acknowledges that pure DAOs may give rise to the issue of governing law or regulatory regime as there is no link to a specific jurisdiction. However, the Law Commission finds that this is a question that can be answered by applying the rules of private international law and can be determined on a case-to-case basis.

7.2 Hybrid Arrangements

The extent of human intervention and the autonomous nature of the DAO under this category would determine the allocation of liability. If human intervention is required to run

[34] *Samuels v. Lido DAO* (ND Cal, 18 November 2024) 2024 WL 4815022.

the organisation, *Samuels v Lido DAO* (2024) may be applicable to argue that the DAO in question is mostly a partnership in nature.

Smart contract may be *wrapped* within a legal entity. Although it may still run on a decentralised and autonomous manner and exhibit the characteristics of a pure DAO, it still exists within one or more legal forms. LLC that may be established under WDAOS falls under such hybrid arrangements. The questions to ask in the allocation of liability would be the type of legal form that these types of DAOs assume and in which jurisdiction.

7.3 Digital Legal Entity

This is an incorporated legal entity that digitalised its operations through the implementation of distributed ledger technology and smart contracts for governance and operational management. Legal issues are less challenging at this spectrum as off-chain legislative frameworks are mostly applicable.

To this end, the Law Commission did not find the need to develop a DAO-specific legal entity for England and Wales. There were two reasons given to this conclusion. First, there was no consensus as to how the entity should be framed and what the parameters should be. Second, there was a general desirability of organisational law to remain technology neutral. This has been a long-standing preference. A similar argument was raised during the early debates on Internet governance when it was first introduced. Adversaries described it as 'Law of Horse' and argued that cyberspace did not exactly require a separate section of law (Easterbrook, 1996). Similarly, off-chain legislation can be applied to govern on-chain disputes through extension or legal analogy.

Certain DAOs, particularly pure DAOs that function fully autonomously and without centralised governance, are purely code executed on blockchain. Arguably, they lack traditional characteristics such as intent, consent, free will and the ability to enter into or be bound by terms of contracts. In this circumstance, imposing legal personhood for pure DAOs may be stretching the concept beyond its functional limits. This category of DAOs is more akin to an infrastructure. Granting legal personhood to these DAOs is argued to be an unproductive exercise, analogous to attributing legal personhood to an inanimate object, like a rock (Furnari & Villani, 2026).

The Law Commission further identifies that the founder or creator of pure DAOs, in most situations, knowingly creates the DAOs free from the reliance or dependence on external governance. Imposing a requirement of registration and subject them to formal regulatory framework undermines the foundational ethos of DAOs: decentralisation. A quick examination of WDAOS would disclose how decentralisation may be distorted. Requirement of registration connects DAOs to a jurisdiction and governing law, imposing a centralised legal identity and takes away the borderless nature of DAOs. Stringent disclosure requirements further reduce the pseudonymity and flexibility that DAOs value. These fundamental characteristics and features of DAOs cannot be abandoned at the need of legislation – or simply the need of putting a label to DAOs. Rather than a wholesale

importation of existing company law doctrine, this paper argues for a more deliberate and balanced approach through careful scrutiny of the actual functions of DAOs and how they interact with the stakeholders and the legal system.

Closer to home, DAO is not categorised as either a company, partnership, or business trust under the laws of Singapore (Chua, 2020). However, this does not preclude DAO from functioning within the existing legal framework as it can be structured through legal wrappers such as incorporated entities or other recognised forms. DAO legal wrappers can be conceptualised as an external layer that provides legal recognition to a DAO (DAObox, n.d.), without undermining its decentralised features in management and operation. With a wrapper, a DAO can fit into the existing legal framework and interact with traditional financial and legal systems, with its own rights and obligations. In Singapore, the variable capital company (VCC) and limited liability partnership (LLP) are among the most common structures used, as they offer flexibility in managing digital assets and members' contributions. These legal wrappers are required to comply with the Monetary Authority of Singapore (MAS) and the Accounting and Corporate Regulatory Authority (ACRA). Registration of such entities with ACRA requires at least one resident director, a qualified company secretary, and a registered office address in Singapore. A DAO that deals with digital payment tokens is further required to obtain a licence under the Payment Services Act (Chainscore Labs, n.d.). MAS has also taken initiatives to promote the regulation of blockchain innovation through the introduction of regulatory sandbox frameworks (Monetary Authority of Singapore, 2022). These frameworks allow new blockchain-based and decentralised models to be tested in a controlled environment, subject to regulatory oversight and defined parameters. This enables novel organisational structures, such as DAOs, to be experimented with before being exposed to undue risk in the broader financial system. This functional and adaptive approach provides a useful reference point for jurisdictions such as Malaysia in addressing the challenges posed by decentralised governance models.

8. Reassessing Legal Personhood For DAO Under the Malaysian Perspective

The comparative analysis on the current approaches towards the incorporation of DAO can largely be compartmentalised into three distinct categories. At one end of the spectrum, jurisdictions such as Wyoming, Vermont, and the Republic of the Marshall Islands adopt a formal recognition model whereby DAO are expressly incorporated into the statutory framework as a legal entity. In doing so, DAO is prescribed with legal certainty and facilitate the allocation of legal rights and liability. However, as discussed, the imposition of strict disclosure requirements and KYC may dilute the decentralised nature of DAO. At the other end of the spectrum, Law Commission of England and Wales appears to adopt the non-interventionist and technology-neutral approach. It is clear from the report that it is opined that DAO-specific legal entity is unnecessary as existing legal principles are sufficiently adaptable to address disputes arising from DAO. This is largely resolved through case-to-case basis approach and depending on the degree of decentralisation of DAO, structural

governance, and purpose in each case. Situated in the middle of the spectrum is the position advanced by Singapore. The functional approach does not automatically brand DAO as a separate legal category but regulates it based on the nature of its activities and purposes. While these two approaches offer a varying degree of flexibility and technological neutrality, it may result in lack of clarity or consistency in the classification of DAO.

In reassessing the appropriate approach to be adopted for Malaysia, the grant of legal personhood should not be forced into DAO through the existing framework of CA 2016. As discussed in earlier sections, even though DAO may share some structural similarities with traditional companies, they are not identical and DAO cannot be situated comfortably within the Act. On the other hand, non-interventionist approach risks creating a regulatory vacuum, leading to uncertainty in liability, enforcement difficulties, and potential exposure to financial risks and criminal activities.

As such, a hybrid approach may be considered to balance the need for legal certainty and regulatory oversight while preserving the decentralised governance structures. This bespoke framework provides an option for registration, in which event, a DAO may be regarded having a form of limited legal personality. This allows DAO to hold assets, enter into contracts, and be subject to legal proceedings. Such recognition has the advantage of affording legal protection to DAO and reinforces confidence among participants and users. In exchange, DAO will be required to comply with minimum regulatory safeguards such as basic governance disclosure and compliance with applicable anti-money laundering and securities regulations. The disclosure requirement may be kept at the minimum, limited to the key persons involved in the DAO, such as developers or founders. This places the responsibility on them to ensure that the operation of the DAO complies with the law, failing which they may attract legal liability. This framework imposes no further regulatory requirements or mandates on how the DAO ought to be operated, which shall lie solely in the hands of the token holder.

A DAO may elect not to register. In the absence of such registration, the identifiable participant, particularly the founders or developers may bear personal liability and may be regarded as the contracting parties. Further, even without registration, activities remain subject to existing laws where applicable. Admittedly, the legal enforcement against unregulated or unregistered DAO is more complicated. This highlights the importance of adopting a regulatory approach that incentivises participation. By offering the option to obtain legal personhood and limited liability in exchange for minimum compliance requirements, the law encourages voluntary participation within the regulatory framework. This improves enforceability without undermining the decentralised nature of DAO.

The approach taken by MAS in providing a regulatory sandbox may also be referred to by Malaysia. It serves as a useful model to facilitate the experimentation and testing of DAO regulatory structures while limiting risks to financial system.

9. Conclusion

The discussion in this paper has examined the theoretical foundation behind the recognition of legal personhood in corporations and attempted to analyse the similarities and differences between corporations and DAOs as a basis to interpolate the doctrine of legal personhood to DAOs. Indeed, certain legal issues or challenges presented by DAOs appears to be addressed through the introduction of legal personhood. This cannot be denied – evident from the legislative frameworks adopted by jurisdictions such as Vermont and Wyoming. However, these frameworks come with compromises: centralised registration, disclosure obligations and the need for human accountability which may no longer with compatible with the grand vision of decentralisation.

Malaysia remains in the early state of blockchain development and acceptance and the question of DAO legislation has yet to come into focus. However, when that moment arrives, it is important to recognise that a broad-brush approach in the application of company law doctrine to DAOs may prove ill-fitting. The findings of the Law Commission are particularly instructive. Existing regulatory landscape may be extended to govern DAOs without the need for separate legislation or to confer specific legal personhood. If there is truly a legislative need, it should be done thoughtfully, with a principle-based and tailored regulatory approach that take into account different types, functions, and categories of DAOs.

Acknowledgement

The author thanks the Faculty of Law, Taylor's University for research facilities and administrative support.

Funding Information

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

Author's Contributions

Long: Contributed to the conceptualization, methodology, formal analysis, and writing the original draft, review and editing.

Conflict of Interest Declaration

The authors declare that they have no conflict of interest in this study.

Ethics Approval

This study did not involve human or animal subjects or personal data and therefore did not require ethical approval.

AI Usage Declaration

Generative artificial intelligence, particularly ChatGPT, was used to assist with language correction, structural refinement, and citation support. All substantive ideas, analysis, and conclusions remain the author's own work.

References

Alawadi, A., Kakabadse, N., Kakabadse, A., & Zuckerbraun, S. (2024). Decentralised autonomous organisations (DAOs): Stewardship talks but agency walks. *Journal of Business Research*, 178, Article 114672. https://doi.org/10.1016/j.jbusres.2024.114672

Avan-Nomayo, O. (2022, June 24). A*nubisDAO funds move for the first time, eight months after rug pull*. The Block. https://www.theblock.co/post/154004/anubisdao-funds-move-for-the-first-time-eight-months-after-rug-pull

Buterin, V. (2014, May 6). *DAOs, DACs, DAs and more: An incomplete terminology guide*. Ethereum Foundation Blog. https://blog.ethereum.org/2014/05/06/daos-dacs-das-and-more-an-incomplete-terminology-guide

Chainscore Labs. (n.d.). *Setting up a DAO legal wrapper in Singapore*. https://chainscorelabs.com/guides/decentralized-autonomous-organizations-daos/dao-legal-wrappers/setting-up-a-dao-legal-wrapper-in-singapore

Charleton, G. C., Adams, M., & Whang, C. (2023). The decentralised autonomous organisation: Legal personality and the problem of governance. *Journal of Law & Commerce*, 42(1), 55–86. https://doi.org/10.5195/jlc.2023.269

Chua, W. R. (2020). The legal status of DAOs in Singapore: Company, partnership, or business trust? *Singapore Law Review*, 38, 213–237. https://access.heinonline.com/HOL/Page?handle=hein.journals/singlrev38&id=229&collection=journals&index=

Conway, K. A. (2022). Blockchain technology: Limited liability companies and the need for North Carolina legislation. *Campbell Law Review*, 45(1), Article 5. https://scholarship.law.campbell.edu/clr/vol45/iss1/5/

DAObox. (n.d.). *DAO legal wrappers: Definition, types, jurisdictions, and use cases*. https://docs.daobox.io/dao-legal-wrapper-design-and-creation/legal-wrappers-for-daos-definition-types-jurisdictions-and-use-cases

Das, P. (2019). *Corporate personality is the laws greatest invention* [Unpublished paper, University of Law]. SSRN. https://doi.org/10.2139/ssrn.3373137

Devanesan, J. (2024, July 18). *Understanding crypto money laundering, and how to get a handle on it.* Fintech News Singapore. https://fintechnews.sg/98478/crypto/understanding-crypto-money-laundering-and-how-to-get-a-handle-on-it/

Easterbrook, F. H. (1996). Cyberspace and the law of the horse. *University of Chicago Legal Forum*, 1996, Article 7.

Fintech News Malaysia. (n.d.). *SC Malaysia Clarifies: A Crypto-Asset is Only A Security if Used in Specific Ways*. https://fintechnews.my/19737/blockchain/securities-commission-malaysia-status-tokens-coins-utility-bitcoin/

Furnari, S. L., & Villani, C. (2026). Regulation of financial protocol DAOs: Addressing the problems of decentralization and AI governance. In M. Lustenberger, F. Spychiger, & L. Kung (Eds.), *Decentralized autonomous organizations—Governance, technology, and legal perspectives* (pp. 115–134). Springer. https://doi.org/10.1007/978-3-032-03273-7_7

Hashemi-Khiabani, S. S., & Polonia, D. (2023). Improving corporate governance using DAO. In *Proceedings of the 15th International Joint Conference on Knowledge Discovery, Knowledge Engineering and Knowledge Management* (Vol. 3, pp. 150–156). SciTePress. https://doi.org/10.5220/0012164600003598

Hayden, G. M., & Bodie, M. T. (2011). The uncorporation and the unraveling of "nexus of contracts" theory. *Michigan Law Review*, 109(6), 1127–1144. https://repository.law.umich.edu/mlr/vol109/iss6/16

Ilyushina, N. (2023). Work for decentralised autonomous organisation: What empirical labour economics can tell us about the decentralised digital workforce. *The Journal of the British Blockchain Association*, 6(2). https://doi.org/10.31585/jbba-6-2-(2)2023

Kabra, S., & Gori, S. (2025). Combating cryptocurrency laundering by organised crime groups through an effective regulatory framework. *IIUM Law Journal*, 33(1), 293–324.

Kotzamann, J., Stonebridge, M., & Christiaenseen, P. (2023). Evolving conceptions of legal personhood: What might recent developments herald for non-human animals in Australia? *University of New South Wales Legal Journal*, 46(2), 347–380. https://doi.org/10.53637/DKTU6447

Law Commission. (2024, July 11). *Decentralised autonomous organisations (DAOs)*. https://lawcom.gov.uk/project/decentralised-autonomous-organisations-daos/

Lewis, J. T. (2021, Aug 2). *Wyoming paves way for DAO legal company status*. Frost Brown Todd. https://frostbrowntodd.com/wyoming-paves-way-for-dao-legal-company-status/

Martin, C. C. (2025). *Recognising DAOs as legal entities: Balancing public policy, innovation, and consistency* [Unpublished paper, Texas Tech University School of Law]. SSRN. https://doi.org/10.2139/ssrn.5220994

Mehar, M., Shier, C., Giambattista, A., Gong, E., Fletcher, G., Sanayhie, R., Kim, H. M., & Laskowski, M. (2017). Understanding a revolutionary and flawed grand experiment in blockchain: The DAO attack. *Journal of Cases on Information Technology*, 21(1), 19–32. https://doi.org/10.2139/ssrn.3014782

Micheler, E. (2021). *Company law—A real entity theory* [Unpublished paper, London School of Economics]. SSRN. https://doi.org/10.2139/ssrn.3783696

Micheler, E. (2024). Separate legal personality—An explanation and a defence. *Journal of Corporate Law Studies*, 24(1), 301–329. https://doi.org/10.1080/14735970.2024.2365170

Micheler, E. (2025). Corporate rights and obligations—The perspective of real entity theory. *Transnational Legal Theory*, 16(1–2), 22–42. https://doi.org/10.1080/20414005.2025.2496574

Millon, D. (1990). Theories of the Corporation. *Duke Law Journal*, 39(2), 201–262. https://scholarship.law.duke.edu/dlj/vol39/iss2/2

Monetary Authority of Singapore. (2022). *Fintech regulatory sandbox guidelines*. https://www.mas.gov.sg/-/media/mas-media-library/development/regulatory-sandbox/sandbox/fintech-regulatory-sandbox-guidelines-jan-2022-v12.pdf

Ong, T. S., Ng, Y. H., Teh, B. H., Kasbun, N. F., & Kwan, J. H. (2019). The relationship between corporate governance attributes and environmental disclosure quality of Malaysian public listed companies. *Asian Journal of Accounting and Governance*, 12, 1–12. http://doi.org/10.17576/AJAG-2019-12-01

Santana, C., & Albareda, L. (2022). Blockchain and the emergence of decentralised autonomous organisation (DAOs): An integrative model and research agenda. *Technological Forecasting and Social Change*, 182, Article 121806. https://doi.org/10.1016/j.techfore.2022.121806

Sarmah, S. S. (2018). Understanding blockchain technology. *Computer Science and Engineering*, 8(2), 23–29. https://doi.org/10.5923/j.computer.20180802.02

Schar, F. (2021). Decentralised finance: On blockchain and smart contract-based financial market. *Federal Reserve Bank of St. Louis Review*, 103(2), 153–174. https://doi.org/10.20955/r.103.153-74

Schuppli, B., & Jafari, G. A. (2021). Piercing the digital veil: A case study for a DAO legal framework under Swiss law. *Journal of Intellectual Property, Information Technology and Electronic Commerce Law*, 12(4), 331–359. https://nbn-resolving.de/urn:nbn:de:0009-29-54043

Shrimali, B., & Patel, H. B. (2022). Blockchain state-of-the-art architecture, use cases, consensus, challenges and opportunities. *Journal of King Saud University–Computer and Information Sciences*, 34(9), 6793–6807. https://doi.org/10.1016/j.jksuci.2021.08.005

Tanwar, T. (2021). The concept of legal personalities. *Indian Journal of Integrated Research in Law*, 4(3), 356–364. https://doi-ds.org/doilink/05.2024-81116482/IJIRL/V4-I3/A23

Watters, C. (2023). When criminal abuse the blockchain: Establishing personal jurisdiction in a decentralised environment. *Laws*, 12(2), Article 33. https://doi.org/10.3390/laws12020033