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Shariah Perspective on Crypto as Asset (*Mal*): Justifying the Needs of Estate Planning and Inheritance of Digital Asset

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ABSTRACT

This study aims to analyze the crypto assets in the horizon of mal according to the shariah and further discuss the needs of estate planning and management of this digital asset. The invention of blockchain technology has enabled the existence of crypto asset. As crypto assets global users are forecasted to hit 1 billion users by the end of 2022, its adoption and demand are remarkable and continued to grow sustainably. Nevertheless, its status from shariah perspective whether the crypto assets are deemed to be permissible according to shariah are still debatable. In this study, a review of literature and interview with shariah experts were conducted to achieve the objective of this study. The study found that majority of scholars and shariah experts are in conformity that crypto assets can be considered as mal. The opinions justify the needs of estate planning and inheritance of digital asset such as crypto to be practised by the owners. This study further suggested some guidelines to ensure estate planning of crypto asset. The policymakers might find this study beneficial to various stakeholders including crypto owner, regulator, estate planner and digital asset exchange (DAX) in realizing estate planning and inheritance of crypto asset.

Keywords: *Crypto asset, estate planning, inheritance, mal, shariah*

Digital asset is anything that exists only in digital form. As one of the forms of digital asset, cryptocurrency is essentially a digital currency exchange and digital payments platform that uses blockchain technology. It uses cryptography, peer-to-peer networks and a distributed ledger technology (DLT) to create, verify and secure transactions. Cryptocurrency has two prominent roles: a payment method and an asset (Dong et al. 2022). As a payment method, cryptocurrencies can be used to purchase goods, which works similarly to payment system using fiat money. On

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the other hand, as an asset, cryptocurrencies are a type of securities actively traded at various exchanges worldwide, just like stocks and bonds (Dong et al. 2022).

Cryptocurrency seems to be a promising trend of digital assets ownership. It was estimated that crypto assets global users are forecasted to hit 1 billion users by the end of 2022. Nevertheless, wealth in cryptocurrency is challenging to inherit in the event of death, especially in a sudden situation. As such, many has highlighted that managing digital assets, including cryptocurrency, has been a concern among estate planners globally (eg. Farmer & Tyszka 2014). Some issues are linked to the absence of regulations or laws governing cryptocurrency's inheritance to the heirs after the owners' death.

In Malaysia, although the country has not legally accepted crypto as a legal tender, ownership of this type of asset rose dramatically. It was recorded that digital asset exchanges in Malaysia are thriving with over 300,000 new accounts created until 2021. Luno, the first cryptocurrency exchange to receive approval from the Securities Commission Malaysia, had processed over RM800 million worth of transactions within one year of operation with 180,000 users with 249% growth in new trading accounts opened year-on-year in 2020 via online ((Malaysia Fintech Report 2021). Ranked 7th out of 27 countries in the list, crypto adoption is on the rise with ownership being above the global average of 15.5% (Focus Malaysia 2022). With the new development that Securities Commission (SC) has provisionally approved Bitcoin Cash (BCH) as a digital asset in Malaysia, the number is expected to be higher. With the pioneer of shariah based crypto around the globe (such as Islamic Coin, OneGram and Caizcoin), it is expected that crypto owner among Muslims will be increasing in trend.

In Malaysia, the progress of crypto recognition is seen from the few rulings announced by some authorities in the country. Security Commission of Malaysia (SC) come out with a resolution that digital currency is recognised as *mal* from Shariah perspective with certain conditions. However, the recognition is only applicable to digital assets which are regulated by the SC (Securities Commission, 2020). In a state level, few states have made their rulings related to crypto. For instance, the Perlis Islamic Religious and Malay Customs Council consider that digital assets such as Bitcoin pose a certain value and should be traded in a permissible manner. In this regard, Perlis state has issued a fatwa that bitcoin is considered a valuable asset, and the owner must pay zakat accordingly (Yusof et al. 2021).

A more fundamental discussion on the recognition of crypto as *mal* is equally crucial to validate the distribution of this asset to the heirs. Hence, it is important to examine shariah perspective on crypto as asset (*mal*) as it determine the validity of this asset to be inherited. While most studies evaluate shariah perspective of crypto as money or currency, this paper tries to look into the shariah perspective of crypto as wealth or *mal*.

Hence, the objective of this paper is to provide an overview of the crypto assets in horizon of *mal* according to shariah and further discussed the needs of estate planning and inheritance of this digital type of asset.

The paper is organised as follows: after introducing the topic in Section I, Section II analyses the literature on estate planning and digital asset. Section III discusses methodology used, followed by the discussion on shariah perspective on crypto as *mal*. Section V provides discussion on shariah perspective on estate planning and inheritance of crypto and finally, Section VI concludes the discussion.

Literature Review

In Islam, the asset (*al-mal*) is recognized as an important aspect of the individual and community life. The encouragement to acquire and use of assets with certain limitations have been mentioned in al-Quran. Allah orders His vicegerents to acquire and use asset righteously and prohibited them to earn asset unjustly and unethically. Allah says: "*O you believe! Eat not up your property among yourselves unjustly except it be a trade among you by mutual consent*" (al-Quran al-Nisa 4:29). The protection and usage of assets to avoid misuse and waste also have been emphasized as Allah says: "*And eat and drink but waste not extravagance, certainly He (Allah) likes not al-musfirun (those who waste by extravagance)*" (al-Quran, al-'Araf 7:31).

The Prophet also says “*nobody has ever eaten a better meal than that which one has earned by working with one’s own hands*” (Sahih Bukhari, No: 286). In Quran, the term *mal* has been written numerous times in Al-Quran and according to Karim (2009) the term *mal* or *amwal* in its plural in Arabic language is mentioned 86 times in Quran. For instance, the word *al-mal* has been mentioned in the Quran as one of the embellishments in this world.: “*Wealth and children are the adornment of this worldly life, but the everlasting good deeds are far better with your Lord in reward and in hope*” (al-Quran, al-Kahfi 18:46)

The word *mal* which mentioned in the Quran can be interpreted in various meanings that suit with the context of the verse. It does not have specific and fixed definition in Quran nor Sunnah although it has been mentioned uncountable (Islam 1999). Allah has given permission to His vicegerents to acquire and utilize *mal* in accordance with shariah which Allah has bestowed abundance of wealth upon His vicegerents and entrusted them with: “*He has known that there will be among you those who are ill and others traveling throughout the land seeking (something) of the bounty of Allah and others fighting for the cause of Allah*” (al-Quran, Muzammil 73: 20).

Mal is crucial in human dealing and affairs as it plays most important role and cannot be avoided. In Islamic law of transaction, *mal* can be considered as one of the salient features in the transaction if it turns to be the subject matter (denotes as *ma’qud alaihi*). The presumption of “permissibility is the general rule unless there is prohibition” is applied in the Islamic law of transaction where everything in this world can be considered as *mal* unless there is specific prohibition mentioned in Quran or sunnah or ijma’ or ijtiḥad of Islamic jurists based on the Islamic jurisprudence methods. Neither in Al-Quran or Sunnah of Prophet explicitly explain on theory of *mal* which opens for discussion of the Islamic jurists to interpret it in different views, and they are not mutually exclusive.

In theory of *mal*, its definition is varied. Literally, the term *mal* derives from the Arabic verb *mala* which means tend or incline (Madina 1973). It refers to all things which are capable of being owned (Al-Yaqub Firuzabadi 2015). Al-Zuhaili (1996) stated that *mal* is something that can be possessed and controlled (*hiyazah*) by someone either in physical (*‘ain*) or usufruct (*manfa’ah*). Linguistically, anything that cannot be possessed by a man cannot be considered as *mal* (Al-Zuhaili 1996). Ibn Athir viewed that *mal* is originally something that is owned like gold and silver and anything that is owned or obtained from money. The easiest way to understand *mal* is the circulation of money between man to man from mineral resources to paper money (Ibn Mandzur, 1963). Nevertheless, the scope of its definition should not be narrowed and limited, instead, it should be widened to people’s use and custom (Islam 1999).

The term *mal* has been discussed by the classic and contemporary Islamic jurists that denotes variance technical meaning. For instance, classical Hanafi jurists is whatever human naturally loves to and can be stored and used at time of necessity. Some classical Hanafi jurists defined *mal* as whatever human naturally love to and which capable of being spent and hording. The classic Hanafi Jurists have concluded some of prevalent definition of *mal* such as follows:

1. *Mal* is anything that appeals to human nature, and which is capable of being stored or hoarded for the time of need.
2. It is anything that exists, to which human nature inclines, and to which the prohibition and spending as well as rule of expenditure apply.
3. It is anything that can be stored with intention of utilization for beneficial use at time of necessity.
4. It is anything that has been created for the benefit of people, and with respect to which scarceness and stinginess apply.

In Article 126 of Al-Majalla, the word “*mal*” is also described as “a thing which naturally is desired by man, and which can be stored for times of necessity.” It is made up of both movable and immovable *mal*. Article 127 of Al-Majalla states that for something to be deemed as a *mal*, it must be acquired and have benefits that can be obtained lawfully.

On the other hand, contemporary Hanafi jurists have made an effort to redefine the term "*mal*" to mean anything that has a monetary value among people or that can be taken into one's possession, kept safe, or otherwise recognized as having a useful purpose.

The thing on which ownership is conferred is known as *mal*, and the owner, when he or she assumes it, exempts others from interfering with it, according to the Maliki jurists. Significant arguments in favor of *mal* were made by Shafi'i jurists where financially valuable property is one that appears to have a high price during a high rate, where anything that is evaluated as effectively producing benefits is considered to be valuable financially. In other words, anything that has no benefit and value cannot be not considered as *mal*. The Hanbali jurists viewed that *mal* is anything which there exists lawfully permissible benefit without being resulting the need of it.

The definition of a *mal* by traditional Hanafi jurists was restricted to only corporeal matters, excluding the usufruct, despite the fact that Article 125 of Al-Majalla stated that a *mal* could be a specific object or an interest therein. Despite being a subject of ownership, the usufruct cannot be the object of a contract. According to Article 151 of Al-Majalla, for instance, a subject is defined as a thing that is fixed and distinct. The classic Hanafi jurists do not consider usufructs and rights as *mal* because they cannot be possessed by anyone, and it is expected to be vanished over the time and lack of continuity. The majority of Islamic jurists, on the other hand, believed that both usufruct and rights are *mal* because they could be acquired through the ability of their sources and bases to be acquired, rather than through their own merits and it is the outcomes of the material things. The absent of those outcomes will affect the human demand (Zuhaily, 1996).

From the above interpretations, it is clear that the views of Hanafi jurists on *mal* are completely different from other Islamic jurists particularly on usufruct as *mal*. In particular, the Hanafi jurists differentiated between valuable assets (*mal mutaqawwam*) and non-valuable assets (*gayr mutaqawwam*) where *mal mutaqawwam* is something that is in someone's possession which can be utilized according to shariah in normal circumstances. In contrast, *mal gayr mutaqawwam* is the asset which is not belong to anyone like the bird in the air, fish in the sea or something which according to custom do not have any value. It also can be anything that illegal according to shariah such pig and liquor. Meanwhile, the majority of Islamic jurists took a different view by not categorizing *mal* as *mutaqawwam* and *gayr mutaqawwam* since anything that can be benefitted according to shariah is considered as *mal*. They opined that *mal mutaqawwam* is anything which has value according to the custom. Hence, in theory of *mal*, an item can be considered as *mal* if it is fulfilling several conditions which are it must be something that can be possessed by a person, transferable, usable, valuable, storable and obviously it needs to be shariah compliant (Rosele et al., 2022).

To our knowledge, there is a very limited article published related to crypto and its recognition as asset (*mal*). Among the others are study by Mahomed and Ramadili Mohd (2017), who concluded that if cryptocurrency being accepted as an asset, shariah deliberation is required on its implication to zakat and inheritance. The discussion of crypto assets in purview of concept of wealth according to shariah was done by Rosele et al. (2022), where several conditions must be fulfilled for digital assets to be considered as wealth from shariah perspective. On the other hand, Muneeza et al. (2022) examines the practice of accepting zakat payment using crypto. Several shariah issues were highlighted deriving from such practice.

Methodology

This study adopted a qualitative research approach that focusing on the review of literature and interview with shariah experts. It first analyses the collected literatures by way of appropriate books, journals and other online publications that discussed on the issues related to cryptocurrency and shariah perspective on crypto as *mal*. This is followed by a structured interview which took place on July-August 2022 with three respondents consists of shariah experts from different background including both industrial and academic background. The interview comprises of three elements related to the respondents' background and views on crypto as *mal* and its inheritance.

Shariah Perspective on Crypto as Property (*Mal*): Opinion from the Contemporary Islamic Scholars

Islamic scholars hold divergent opinions regarding the legality of crypto due to the speculative nature of the issue. In this part, the researchers address the belief of Islamic scholars that crypto constitutes property (*mal*). First of all, the Islamic scholars took into consideration that the legal maxim of the original rule is permissibility in financial and business transactions ("*al asal fil muamalat al-ibahah*") where unless there is an indication from the Islamic law that forbids it explicitly or implicitly, a new transaction or subject matter that has not previously been known in Islamic law is considered as legal. Hence, the new invention including crypto is by default permissible unless there are clear prohibition elements such as usury, uncertainty and gambling exist in crypto (Amanie Advisors, 2019).

Secondly, the precise definition of property is not provided in the Quran and nor the Sunnah. As a result, there are some differences between the definitions of *mal* by the Islamic jurists and scholars. The first view that property is something that would be desirable for human being and capable to be stored for the time of necessity (Ibn Nujaim, 1997; Ibn Abidin, 2009). Consequently, usufructs and rights are not property because, these things cannot be stored. In this view, the property should be tangible thing or *ayn* like Al-Haskafi (2000) defined the property as a tangible thing or corporeal thing which is desirable and consumable. Similarly, Zarqa (1989) explained that the definition of property according to Hanafi Jurists is every tangible thing which has material value among the people. Conversely, the majority jurists and scholars are of the view that property is not limited to tangible things and considered intangible things as well as benefits and rights with certain conditions constitute as property. Usmani (2015), the contemporary Hanafi Scholar, expended the definition of property to include intangible property such as rights and benefits as they become valued things in accordance with custom. Likewise, Rahmani (2010) explained that something can be considered as property if it fulfilled the following attributes:

1. It is *mutaqawwam* according to Shariah.
2. It is capable being owned and possessed.
3. It has some uses and benefits.
4. If custom determines and treats something as property, thus it automatically be considered as property.

With regards to that, Darul Uloom Zakariyya, the South African Islamic Seminary's Fatwa Center had issued their *fatwa* and took into position that bitcoin i.e., one type of the crypto, satisfies the criteria for property (*mal*) (Mahomed & Ramadili Mohd, 2017). Yuneline (2019) found out that crypto fulfills the attributions of property as set by the classic Hanafi's jurists. According to Yuneline (2019), the bitcoin can be considered as property because of the great demand for bitcoin suggests that it can satisfy the desirability requirement, and in terms of storability, bitcoin is encoded within the blockchain and put into distributed ledger system that can be retrieved in the network (Yuneline, 2019). This supported the view of Oziev and Yandiev (2018) that the high demand and the price of bitcoin skyrocketed is not an indication of its impermissibility according to shariah and indeed, the strict shariah compliant must be observed for crypto.

Differently, Izhar and Gundogdu (2019) viewed that although there is no problem with crypto being *mutaqawwam*, it cannot be considered as property because it does not by nature have usufruct to be used for the advantage of contracting parties. Its value can only be realized when it is exchanged for backed-up fiat currency. Nevertheless, Bakar (2019a) mentioned that Islam recognizes something as a currency that ease human life whether it is tangible or intangible assets as long as it is being accepted by the community as a valid medium of exchange in trading or other financial transaction. In the case of crypto, it is assessed based on custom (*uruf*) which means the current habits and acceptance. Initially, people used to the bartering system which does not involve any intermediaries or centralized authorities which circumstantially alike "peer-to-peer" transactions where nowadays, people can exchange directly with one another and do a

variety of services including crowdfunding, donations, zakat, education and many more services using crypto (Bakar, 2019b).

In Malaysia, the ruling on crypto as property under category *urudh* had been issued by the Shariah Advisory Councils (SAC) of Securities Commission Malaysia (SC) by referring the definition of *urudh* where the following matters must be fulfilled ie. (i) the proceeds raised from the issuance of the digital token must be utilised for Shariah-compliant purposes; (ii) the rights and benefits attached to the digital token must be Shariah compliant; and (iii) in the event that the utilisation of proceeds under item (i) and the entitlement of rights and benefits under item (ii) above are for mixed activities of Shariah compliant and Shariah non-compliant purposes, the existing SAC resolution on utilisation of sukuk proceeds and the business activities benchmark under the Shariah screening methodology for listed companies on Bursa Malaysia are applicable.

The central bank's first statement regarding Bitcoin was released on January 2, 2014 emphasizing that Bitcoin is not recognized as an official currency (legal tender) in Malaysia and BNM does not regulate the operation of Bitcoin, so the public is advised to be careful of the risks arising from the use of such digital currency. Nevertheless, it is still considered as a commodity that can be traded and used as an investment asset (Malaysian Reserve, 2020). Based on this concept, cryptocurrency is legally used as one of the forms of transaction because it is considered as an item that has the same value as other items. Hence, as highlighted by Mahomed and Ramadili Mohd (2017), if the cryptocurrency is regarded as property in accordance with shariah, then the implications for inheritance also call for shariah consideration.

We further conducted a semi-structured interview with shariah experts to get their view on crypto and its inheritance. Three shariah experts from different background (industry player and academician) were asked about the themes ie. Crypto as Mal, Inheritance of crypto, Inheritance management of crypto and challenges in crypto inheritance. The following Table 1 displays background of the respondents while Table 2 summarizes their view on crypto and its inheritance.

Table 1: Background of the Respondents

Item	R1	R2	R3
Position	Chairman, Shariah Advisory Council of Securities Commission, Malaysia	Professor in Islamic Finance & Member of Fatwa Committee of a state in Malaysia	Head, Shariah and Governance, Bursa Malaysia
Years involved in current position	6 years	4 years	3 years
Expertise	Shariah, Islamic finance	Shariah, Islamic banking and finance	Shariah
Experience in crypto	Written blogs and post on crypto from shariah perspective	Research on crypto from shariah perspective	Working on project related to inheritance of digital asset

Table 2 shows the results of the interview conducted with three respondents who have vast knowledge and experience with the study. Moreover, R3 has experienced to be the Head of Shariah and Governance in Bursa Malaysia. With vast experience in the area, all respondents can be considered as the most suitable person to give opinion and thought on crypto as asset (*mal*) and its inheritance.

Regarding their opinion on the perspective of shariah on crypto as asset (*mal*), all respondents (R1, R2 and R3) agreed that crypto can be considered as an asset (*mal*) as long as it fulfil its criteria of ownership and valuable. As highlighted by R1: *"It can be owned and provide benefits. So the conditions to allow it to be defined as property is fulfilled... Crypto is a commodity that can be used as a mean of exchange"*

R3 explained that referring to an article (Al-Mal fil Islam), it can be summarized that an asset is considered as property in Islam if it has four elements: (i) it has value (*mal mutaqawwim*); (ii) it has benefit based on custom (*manfaah hasabul uruf*); (iii) it has ability to be consumed and transferred- the owner can transfer the asset, stored it and trade it; (iv) no shariah prohibition on the asset.

"Crypto tick all the four boxes of the features mentioned.. and can be categorized as mal ... However, as of now, crypto has not been recognized by any Islamic authorities, as they are not clear about crypto derivation..."

Giving the same opinion, R2 asserted that the acceptance of the society as to whether the item has value is important in determining its category as *mal*. He mentioned: *"If we want to determine whether it's an asset or not.. look at uruf.. whether it has value or not.."*

The second theme with regards to inheritance of crypto was parallel with the discussion of the first theme. The respondents unanimously agree that crypto can be inherited as long as it can be considered as asset (*mal*) as the issue of permissibility of inheritance of crypto comes automatically if the asset is generally accepted as *mal*. As R1 highlighted:

"If crypto is recognized as mal, not only inheritance, all other requirements and matters in property such as hibah, zakat or waqaf can or should also be implemented..."

Table 2: Opinion on Crypto as Mal and Its Inheritance

Theme/Respondents	R1	R2	R3
Crypto as mal	There is no definite definition of mal in Al-Quran. Crypto can be considered as asset (mal) as it can be owned and has value	Refer to <i>uruf</i> to determine whether it has value	Fulfilment of the four features: i) has value; ii) benefit based on custom; iii) ability to be consumed and transferred; iv) no shariah prohibition
Inheritance of crypto	Crypto can be inherited as long as it can be considered as asset (mal)	It depends whether it can be considered as an asset	Follow the requirement of asset
Inheritance management of crypto	Management of the code of the account	Following other assets, it should follow faraid inheritance law	Recognition of shariah court on crypto as inheritance asset
Challenges in crypto inheritance	The needs of a licensed custody as per implemented in shares Custodian and security	Depository system should be improved to enable the inheritance	-Capacity of the executor and heirs -Password sharing legally prohibited -Declaration of crypto- tax issue

Any digital account owned by a person needs to be informed to the heirs. R3 suggested that all information related to the crypto asset are made known to the heirs. This is where *wasiyyah* (will) plays important role as the best tool in estate planning of crypto as it keeps all information regarding the owner's asset to be managed by the executor. R3 mentioned:

"The issue where heirs do not know assets owned by the deceased.. this is an old issue.. today we have digital account.. how do we convey the info to the heirs?.. for me, it should be listed in the will.. how details? It depends..."

Nevertheless, the main issue faced in crypto inheritance is management of the code. Crypto code which contains security code which uniquely identified to a specific person must be kept safely and made available to heirs upon death of the owner. In this case, security issue becomes the main challenge in making sure that there is no breach of trust among the custody, lawyer or even the heirs themselves. This is where, a licensed custody could be implemented as a solution to the security issue highlighted here (R1). R1 also suggested: *"Maybe we can suggest a concept of dual custodian... one owner, one given to the custody,... maybe Baitulmal can play a role as intermediaries.."*

However, R3 proposes that the intermediaries, Baitulmal or a new company established at the state level need to be those with the trait of trust (*Al-amin*), as to avoid any security issue in future. R2 posited that the inheritance may be made possible with the cooperation by the Digital Asset Exchange (DAX) in improving the existing system used in crypto to enable the transfer: *".. maybe the depository system should be improved to prevent the asset from being lost.. as what being implemented in shares.."*

To our knowledge, Luno has (in their Terms of Use) a part related to the demise of the owner, under the Restriction, suspension and termination part as follows:

Death of Account Holder. Should we receive legal documentation confirming your death or any other information leading us to believe that you have died, we reserve the right to restrict or suspend your Luno Account for security purposes and, during this time, for no transactions to be completed until such time as: (i) we receive instructions from your designated executor / fiduciary; or (ii) we receive proof in a form satisfactory to us that you have not in fact died.

If we have reason to believe you may have died but we do not have proof of your death in a form satisfactory to us, you authorize us to make all inquiries as may be necessary, whether directly or through third parties, in order to ascertain whether or not you have died. Upon receipt by us of proof satisfactory to us that you have died, the executor / fiduciary that you have designated in a valid Will or similar testamentary document may instruct us in writing to: (i) sell the applicable cryptocurrency for Local Currency and withdraw that Local Currency to a bank account nominated in writing by the executor / fiduciary; or (ii) transfer the applicable cryptocurrency to another cryptocurrency wallet nominated in writing by the executor / fiduciary.

If you have not designated an executor / fiduciary, then we reserve the right to treat as your executor / fiduciary any person who is entitled to inherit your Luno Account under applicable law. Luno reserves the right to demand all documentation that we, in our sole and absolute discretion, may deem necessary or appropriate in order to satisfy ourselves as to the identity and authenticity of such person, including (but not limited to) an order designating an executor / fiduciary from a court having competent jurisdiction over your estate. In the event that we determine, in our sole and absolute discretion, that there is uncertainty regarding the validity of the executor / fiduciary designation, then we reserve the right to require an order resolving such an issue from a court of competent jurisdiction before taking any action relating to your Luno Account.

Source: <https://www.luno.com/en/legal>

R3 agrees with the password issue. According to him, how does the owner deals with the password to enable transfer of the crypto asset during his life is very important as password sharing is legally prohibited.

Another issue of crypto inheritance is the capacity of the executor as well as the heirs in dealing and receiving the asset. Having the private key without any knowledge about crypto and its management will be a burden to the executor and heirs. Hence, a mechanism is required to ensure that the transfer is executable although executor or heirs do not have any knowledge on the management of the crypto apps. This may enquire the cooperation of DAX to ensure its execution.

In addition to that, R3 added that inheritance of crypto may also open to tax issue among crypto owners as they need to declare their ownership which later open for tax payment, as ruled out in Malaysia that when a person dies, he needs to also pay any due tax remaining.

In certain cases, there is possibility that part of inheritance asset is given to Baitulmal (eg: when all heirs of a deceased are female), hence, there is probability that crypto inheritance needs

to be handed over to Baitulmal. In this regard, R3 suggested that every Baitulmal or Religious State Council to have their own digital wallet for crypto.

Discussion

The above findings have shown that generally, scholars have agreed that crypto fulfills the requirement to be considered as *mal* from the shariah perspective. As crypto asset is considered as one of the recognized asset (*mal*) from an Islamic perspective, this type of asset can be also considered as heirloom which could be inherited by the next generation. An heirloom is everything that belonged to the deceased during his life, then left for his heirs whether property, rights and what was included in his possession after his death. It was done after deducting all his debts and obligations that must be given to the parties entitled according to law.

In this regard, an asset is considered as heirloom if it fulfils its conditions to be considered as *mal* (property) in Islam. Hence, if crypto asset is recognized as property in Islam, it should be also subject to all other consideration related to *mal* such as zakat, waqaf as well as inheritance or any other matters related to property in Islam.

Nevertheless, as ruled in inheritance management in Islam, the inheritance can only be distributed after burial expenses and settlement of debts and wills as well as other considerations such as matrimonial property distribution etc. This rule needs to also be taken into consideration in estate planning and inheritance of crypto.

Based on the above discussion, the followings are some suggestions on the guideline to ensure estate planning of crypto:

1. *Create digital inventory*: Information on the asset (including its value, apps, password etc.) should be placed clearly to ascertain where the executor should direct to. As highlighted by Atsushi (2020), password sharing as the first thing to do as the capability of gaining accessing into a digital device significantly raises the possibility that the family of the deceased will notice the existence of the deceased's digital assets. Consequently, measures on how the asset can be transferred (either through financial institutions should also be informed (especially in the case where the family of the deceased has never used crypto before).
2. *Appoint executor*: Owner of the assets should create its crypto asset plan by determining the heirs/recipients as well as appointing the custody/executor who will manage the distribution of this asset. The executor is preferably a tech-savvy person who has knowledge on the digital asset.
3. *Place a will with lawyer/SDB*: As crypto is very much concerned with security, the estate planning and management should be done in legal and securely manner. Perhaps, planning the estate of crypto to be secured in Safe Deposit Box (SDB) in financial institutions would be the safest way of placing the information. Nevertheless, the cost of placing information in SDB would create some cost issue.

The above discussion has highlighted on the insight on the recognition of crypto asset as *mal* (asset). As most scholars have given the opinion that crypto fulfil the requirement as asset, this study suggests that an enhanced framework of crypto asset planning and management is also needed. Since Malaysia has already face the issue of frozen asset, the new or enhanced framework may help to minimise any potential loss coming from the frozen crypto that could not be inherited.

The new enhanced framework should be commenced with an enhancement of the law framework of crypto estate planning and management which include a) Responsibility of the crypto owner; b) Crypto estate planning tools and methods; c) Responsibility of Digital Asset Exchange (DAX); and d) jurisdiction of estate administration for crypto. SC as the main authority governing crypto assets in Malaysia should play its role in realizing the estate management of crypto to be distributed to the heirs. By having a comprehensive legal framework, it is expected that the objective of shariah in achieving protection of wealth (*hifzul mal*) is realized among the

community. Hence, collective roles between all parties would be required to ensure no loss of property occurred.

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