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CAN MUSLIM INHERIT BITCOIN? DISCOVERING THE CONTINUITY OF DIGITAL ASSET IN PERLIS

Nur Syaedah Kamis¹, Mardziah Mohd Isa¹, Nur Syamilah Md Noor¹

¹ Faculty of Muamalat and Islamic Finance, Kolej Universiti Islam Perlis, Perlis, Malaysia.

Corresponding author: nursyaedah@kuips.edu.my

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ABSTRACT

Day by day the numbers of Bitcoins owners are increasing and as the time lapses, they also will face the death. In Perlis, Bitcoins is recognised as a wealth (*mal*) and subject to zakat by State Fatwa Committee of Perlis. Hence, this paper aims to discover the inheritability of bitcoin according to *Shariah* in Perlis. As a result, this study employed a qualitative research approach by interview in order to discover the inheritability of bitcoin as a *mal* according to *Shariah*. Purposive sampling was used in the study. The finding of this study indicated that the existing fatwa on bitcoin is silent on the inheritance ruling of bitcoin. The researcher urged that this inheritance ruling must be tabled and gazetted by the state fatwa committee of Perlis in order to ensure the continuity of bitcoin to the next generation. Therefore, this study has contributed in comprehensive *Shariah* views behind the permissibility of Bitcoin in Perlis and provides some important policy implication for the regulator and state fatwa committee of Perlis to fulfil the lacuna in the fatwa related to bitcoin.

Keywords: Bitcoin, Cryptocurrency, Digital asset, Inheritance law, *Shariah*.

INTRODUCTION

The advancement of digital assets such crypto had gained popularity from the global users. By 2021, there were around 3 million owners of crypto assets worldwide, and by the end of December 2022, that number was expected to reach 1 billion (Hon et al., 2022). More than 450,000 digital assets (DAX) accounts were opened in 2021 from the three registered DAX platforms in Malaysia, LUNO, Sinergy, and Tokenize Exchange, as reported by the Securities Commissions (SC) of Malaysia (Fintech News Malaysia, 2022). In addition, Malaysia was rated seventh among the twenty-seven (27) nations for having the greatest global ownership rate of crypto assets (Sooi, 2022).

Ibrahim Saleh et al. (2020) noted that shariah compliance is one of the most important factors to make users adopt cryptocurrencies in their daily life operations. In accordance with Malaysian law, cryptocurrencies have been legally recognised as digital currency and digital tokens, as stated in Paragraph 2 of the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Act. And in its 233rd and 234th meetings in 2020, the Shariah Advisory Council of the Securities Commission of Malaysia (SAC SC) decided that both digital money and digital tokens are regarded as a wealth (*mal*).

Salam and Rasban (2021) emphasized the allow the inheritance occurred, it is important to determine whether the property is permissible according to shariah or not because this will determine the legal heirs' ability to inherit the property. In respect to that, in Malaysia, the position of Islamic law falls within the state authority as conferred in List II, Schedule 9 of the Federal Constitution and the state fatwa committee is the authoritative body to issue Islamic ruling in respective state. As to date, only four (4) states fatwa committees that had issued ruling on bitcoin or crypto i.e., Wilayah Persekutuan, Perlis, Perak and Selangor. The researchers noted that in early 2018, the state fatwa committee of Wilayah Persekutuan opted to be cautious in issuing the ruling on bitcoin as they required further research before issuing the ruling. Meanwhile, the fatwa issued by the state fatwa committee of Perak and Selangor in August 2021 are more general on its permissibility of crypto as asset (*mal*) only applied to the crypto issued and transacted via registered and licensed digital asset exchanged (DAX) operators with Securities Commission of Malaysia which differently from the fatwa issued by the state committee of Perlis in December 2018 which only focused its permissibility as asset (*mal*) on bitcoin. The researchers further noted that the fatwa issued by the state fatwa committee of Perlis is silent on the inheritance of bitcoin and only mentioned on zakat.

This had motivated the researchers to discover on the permissibility of inheritance of bitcoin in Perlis specifically, since the advancement of this new digital asset based on blockchain technology had distinguished it from the other properties such as land, house and money deposited in the bank (Saleh et al. 2020). Its ownership compulsorily relies on its password and private key which are confidential and only known to the owner since it will be required whenever transaction to be done the owner (Carlson et al., 2021; Hossain; 2021, Beyer & Nipp, 2019). Furthermore, Mahomed and Ramadili Mohd (2017) mentioned that if the cryptocurrency is being accepted as an asset or *mal* then its implication on inheritance requires shariah deliberation.

Besides, without specific ruling on inheritance of bitcoin, it will complex the estate administration process when it involves with judgment of Shariah Court that relies on fatwa issued by the respective state fatwa committee (Abdul Rahman and Hassan, 2020) and eventually resulted to delay the estate distribution and ultimately causes significant losses and negatively impacts the nation's economic growth (Md. Azmi & et al., 2011). It is worth to mentioned that the issue of frozen estates in Malaysia remained unresolved as its number is increasing from RM70 billion in 2020 (Haque', 2020) to RM90 billion in 2021 reported by Amanah Raya Berhad (Kamarulbaid, 2021).

Hence, concerning on this serious problem that will hinder inheritance of bitcoin among the Muslims in Perlis and defeat the objective of shariah, this study was purposely being conducted to discover the inheritability of bitcoin according to shariah in Perlis.

LITERATURE REVIEW

***Mal* in Islamic Law Perspective**

Mal is a valuable thing from Allah to human to use in their life. In Islam, the term of *mal* refers to all the resources that Allah has made devoted to man, which includes all the rights and rewards of

ownership. The idea of vicegerant governs the ownership of asset in Islam, which holds that Allah is the sole owner of wealth and humans are the vicegerents of Allah, and the guardians of Allah's wealth. According to opinion from Imam Al-Juwayni and Imam Al-Ghazali describe the preservation of wealth is importance to protect the people's belongings from thieves whereas Al-Shatibi shows it as the prohibition against injustice, wastefulness, inefficiencies, and corruption on earth (Zailani, 2022).

In Islam, *mal* or property is neither being explained clearly in Al-Quran nor Sunnah of Prophet s.a.w. Thus, its definition is varied according to Islamic scholars or jurists. Mal or property, is a term used linguistically to refer to everything that may be owned or possessed and is valuable to humans (Abu-Bakar, 2018). It also can be referred to everything which is possessed by the humans, either it is a corporeal (*ayn*) or a usufruct (*manfa'ah*) like gold, silver, animals, plants as well as riding a vehicle or living in a house. And if otherwise, it cannot be considered as *mal* like a bird in the sky, a fish in the water and unknown treasures insides the earth. Hanafi jurists viewed that everything can be considered as *mal* if it would be desirable for human being and capable to be stored for the time of necessity. Accordingly, *mal* is only restricted to corporeal and tangible things and intangible things such as rights and benefits cannot be considered as *mal* according to Hanafi jurists (Abu-Bakar, 2018). Contrarily, most Islamic jurists i.e., Maliki, Shafi'e and Hanbali jurists viewed that everything can be considered as *mal* whether it tangible or intangible things with certain conditions. Rahmani (2010) argued that everything can be considered as *mal* if it fulfils the following attributes: (i) It is permissible and lawful in Shariah (*mutaqawwam*). Illegal and prohibited things according to shariah cannot be considered as *mal*; (ii) It is capable of being owned and possessed; (iii) It is useful and beneficial; (iv) If the custom (*wrf*) deems such thing as mal, it would be automatically be regarded as mal.

Mal management after death also must be at the point of emphasis in inheritance mal according to shariah law. Although *faraid* law plays a role in the division of inheritance, but the distribution of property through such means can lead to certain problems if it is not managed perfectly and is not understood correctly. The division of inheritance aims to give to the rightful and to help the heirs left behind. *Shariah* has established that when a person dies, his property will be divided according to the *faraid* division. Dividing property by *faraid* is one of the ways of dividing property in Islam. Verses 7, 11, 12 and 176 in surah al-Nisaa outline the guidelines regarding the entitled heirs and the parts that each heir should get. Referring to the book *Mughil Muhtaj* written by As-Sheikh Muhammad Al-Khatib As-Syarbini who has stated that among the things that need to be settled on the property of the deceased are unpaid zakat, pledged items that have not been redeemed, debts of the deceased on property left behind, matrimonial property, waqf, vows, grants that have been completed but not yet transferred, funeral expenses, debts, and wills. In the Qur'an explain the obligation of inheritance to heirs which means:

"For men there is a share in what their parents and close relatives leave, and for women there is a share in what their parents and close relatives leave—whether it is little or much. "These are" obligatory shares." (Quran, 4: 7)

Bitcoin as a Mal

In 2022, the Security Commission Malaysia (SCM) recognised Bitcoin as a digital asset that can be traded on the local DAXs. The list of permissible digital assets in Malaysia also includes Bitcoin, Ethereum, Litecoin and Ripple (Fintech News Malaysia, 2022). New digital asset or digital *mal* known as cryptocurrency is a term for digital currency that can be used for transactions between users without having to go through a third party. If in transactions in general the bank acts as a third party, in cryptocurrency, no one acts as an intermediary. Cryptocurrency transactions originate from

computer networks that use specific calculation algorithms. This mathematical calculation is called cryptography which uses blockchain technology.

Bitcoin is the first and largest type of cryptocurrency. According to the *fatwa* issued by the state of Perlis, any ownership of digital assets is subject to zakat if it is sufficient *haul* (storage period) and *nisab* (mandatory rate). Its significant to declare the digital currency is property and *mutaqawwim* currency is legal property. Being a question that often arises to the community is about what is the law of investing in Cryptocurrency. The law that is being discussed is in terms of currency transactions/*bay al-Sarf* (currency trading) in the permitted *Shariah* and secondly, the crypto category that is recognized as a digital asset in the money market either as an investment or a daily trading transaction.

A meeting of the Majlis Agama Islam dan Adat Istiadat Melayu Perlis (MAIPs) in 2018 has decided that the ownership of Bitcoin, which is one of the cryptocurrencies, is legal and can be recognized as having property value based on the 'multi-function and benefit' obtained by Bitcoin owners. Bitcoin can be described as a digital asset in a unique form and has various benefits of its own especially for the community that knows how to use and benefit from it. The latest in August 2021, the Jawatankuasa Fatwa Negeri Perak also established the Is become permissible to conducting transactions using digital currency either as a payment intermediary (medium of payment), money transfer (remittance) and savings assets if it meets the conditions specified to it.

This can be seen that the discussion of permissible cryptocurrency according to the type of transaction carried out, is it required to be a payment intermediary, money transfer, savings asset and trade with it. According to the State Fatwa of Perlis, bitcoin is recognized as a valuable asset, so every possession that exceeds the value of 85 grams of gold (*nisab*) and a sufficient period of ownership for one year (*haul*), is obligatory on the Bitcoin owner to pay property zakat of 2.5% of the current value of the Bitcoin. In addition, Bitcoin users must also understand the ins and outs of using Bitcoin. This is important to avoid the element of *gharar* (uncertainty) when using it. In addition, the parties involved must also first understand the high level of risks associated with Bitcoin transactions such as Bitcoin get-rich-quick schemes that are fraudulent and illegal in terms of Sharia. This will lead to the prohibition of cryptocurrency by the local government in order to protect the *maslahah* of the community and avoid harm (Saadan, 2018).

In heritage on bitcoin become the issue to cryptocurrency owners. According to fatwa issued by the state fatwa committee of Perlis is silent on the inheritance of bitcoin and only mentioned on zakat. This had motivated the researchers to discover on the permissibility of inheritance of bitcoin in Perlis specifically, since the advancement of this new digital asset based on blockchain technology had distinguished it from the other properties such as land, house and money deposited in the bank (Saleh et al. 2020). Its ownership compulsorily relies on its password and private key which are confidential and only known to the owner since it will be required whenever transaction to be done the owner (Carlson et al., 2021; Hossain; 2021, Beyer & Nipp, 2019). Besides, Mahomed and Ramadili Mohd (2017) mentioned that if the cryptocurrency is being accepted as an asset or *mal* then its implication on inheritance requires shariah deliberation.

METHODOLOGY

This study was a qualitative method using semi-structured interviews was conducted with the *Shariah* experts in Islamic Finance and also one of the members of State Fatwa Committee of Perlis. Informant was asked to reflect on the inheritance ruling on the Bitcoin as a digital asset. Transcripts were analysed using content analysis. The main objective was set in order to to discover the inheritability of bitcoin according to *Shariah* in Perlis. This objective was achieved by following the qualitative approach.

FINDINGS

As mentioned earlier, this research is only focused on discovering the inheritance ruling of bitcoin specifically in the state of Perlis which had its own state fatwa on bitcoin. Based on the interview session with the informant who is the member of state fatwa committee of Perlis and an expert in Islamic Finance, the researchers found that the fatwa issued by the state fatwa committee of Perlis is limited to bitcoin but not its issuance. The researchers firstly confirmed with the informant whether the fatwa issued was specifically on bitcoin or can be applied to the other types of crypto and the confirmation was given by the respondent that this fatwa was specifically issued on bitcoin and cannot be analogue to the other types of crypto. The respondent said that the basis of each crypto is different. No assurance whether the other types of crypto has asset-backed or otherwise because for the bitcoin itself, it can be either asset-backed or not and the purpose of asset-backed is for verification of bitcoin in the blockchain. The informant's opinion is consistent with the result found by Ajouz et al. (2020), who concluded that cryptocurrencies backed by precious metals are shariah-compliant because the precious metal itself is shariah-compliant money and the cryptocurrency is just an electronic representation of that money.

The informant also clarified the shariah ruling issued by SAC SC only applied to the crypto that issued by the four (4) licensed and registered DAX with SC i.e., LUNO, MX Global, SINEGY and Tokenize and beyond that is outside the jurisdiction of SAC SC but does not imply the other cryptos issued by unregistered and unlicensed DAX by SC are prohibited. In contrast, the fatwa issued by state committee of Perlis does not limit to bitcoin issued by licensed and registered DAX.

The informant was further asked whether the knowledge on bitcoin is the obligatory requirement for permissibility of bitcoin in Perlis and he enlightened that bitcoin is associated with high risk. The bitcoin itself is permissible and it is digital asset and it has several conditions that must be complied and one of is the knowledge and skills to use bitcoin. This requirement is saddu zari'ah (closing the doors or ways which may lead to prohibited things). It is necessary for one to have knowledge and skills on bitcoin in order to avoid unnecessarily loss due to high risk associated with bitcoin and does not defeat the objective of shariah, preservation of wealth and to build better civilization (Az-Zuhaily, 1986).

Secondly, the informant then was asked on what will happen to the bitcoin if the owner passed away? Can it be inherited or otherwise. The result indicates that bitcoin is digital asset that can be considered as intangible asset that has financial value (mal mutaqawwam) and it can be inherited if the owner dies. The informant stated that it essential to determine whether the bitcoin is mal mutaqawwam (valuable asset) or mal gayr mutaqawwam (non-valuable asset) before regulating its inheritance.

The informant further added that mutaqawwam or gayr mutaqawwam are only term used by the Hanafi Jurists. According to Hanafi jurists, mal is everything that can be stored for time of necessity and only restricted to corporeal and tangible things and intangible things such as rights and benefits cannot be considered as mal (Abu-Bakar, 2018). The classical Hanafi jurists provides two important attributes to consider thing as a mal which are (a) 'the possibility of possession and acquisition', thing that cannot be possessed or acquired will not be considered as a mal which exclude intangible asset and (b) 'the possibility of the use of the thing', if it cannot be used, then it cannot be considered as a mal. In contrast, the majority jurists (Maliki, Shafi'I and Hanbali) have different attributes of mal where it must be things should contain value according to the custom and it can be compensated if it is being destroyed either it is tangible or intangible assets. In addition, thing to be considered as mal must be shariah compliant (Az-Zuhayly, 2010). Similarly, the contemporary jurists viewed that intangible thing can be considered as mal, if it has value according to custom (Usmani, 2015).

Islam (1999) highlighted that the conflicting views on definition and attributes of mal between classic Hanafi jurists and majority jurists lead to practical implication in terms of inheritance. Where according

to majority jurists, the intangible asset is inheritable. In contrary, Classic Hanafi jurists disregard inheritability of intangible asset (Islam, 1999). Thus, Bitcoin should fall within the definition and attributes of mal as mentioned above for it to be considered as mal (Rosele et al., 2022) before it can be inherited.

Rosele et al. (2022) also found that bitcoin meets fulfil all essential features or attributes of mal set by classical and contemporary jurists. Where it has its financial value according to the digital community that uses it where its capital market is USD \$319,450,492,443 as at end of December 2022 (CoinMarketCap, 2022). Bitcoin meets the criteria of being available for possession and acquisition as it can be possessed through mining or purchase and keep them in e-wallet through blockchain system (Baur et al., 2018; Kuo Chean, 2015; Jokić et al., 2019). With regards to this, the informant also mentioned that the same that bitcoin can be stored like others thing as it being stored in the e-wallet. Bitcoin also can be benefitted to fulfil their users needs by making a dealing using bitcoin such as buying car, booking hotel and airline tickets (Kiesnoski, 2021).

The informant then clarified on the issue of silent inheritance ruling in existing fatwa on bitcoin issued by the state fatwa committee of Perlis and suggested the new fatwa must be issued regarding its inheritance due to whenever bitcoin is permissible as a mal then automatically, it can be inherited. He further clarified that whenever Religious Council of Perlis (MAIPs) recognized bitcoin as mal, it must be treated as a mal. The informant then emphasized that to ensure the continuity of bitcoin after the death of the owner, the owner must pay attention on two (2) matters as follows: -

- i) The bitcoin password must be kept securely and safely and hand-over it to the high-trusted executor (wasi) that he will be appointed.
- ii) The parameter, since bitcoin is decentralized and outside the control of central government, then it needs to be hand over to trustee to take care of it.

CONCLUSION

This research concluded that the definite definition of wealth (mal) is not been mentioned in the Quran and sunnah and its definition is varied according to Islamic jurists. The state fatwa committee of Perlis has taken positive action in issuing the fatwa on bitcoin and considered it as mal is parallel with trend in contemporary society. The interest of public on digital assets such bitcoin is growth significantly as mentioned earlier, where the number of digital assets owners including bitcoin is proliferating. As the time flies, the possibility of the owners die will occur in near future and the issue of its inheritance will occur (Genders & Steen, 2017).

Based on the finding of this study, it confirms that the existing fatwa on bitcoin is silent on the inheritance ruling of bitcoin. The researcher urged that this inheritance ruling must be tabled and gazetted by the state fatwa committee of Perlis in order to ensure the continuity of bitcoin to the next generation. Allah has commanded on inheritance must be done after deducted the wealth from debt and bequest as mentioned in the Quran (Quran 4, verse 11). the inheritance of bitcoin is one of the ways to ensure the continuity of bitcoin in order to the achieve the objective of shariah, preservation of wealth as Allah mentioned in the Quran that “So that it may not be [a benefit] going around and around among such of you as may (already) be rich” (Quran, 59:7).

The researchers recommend that the state fatwa committee of Perlis to revise the fatwa on bitcoin and to consider the other types of crypto that being issued through platform of registered and licensed digital asset exchanged providers (DAX) with SC so that the inheritance of crypto by Muslims in state of Perlis does not limit to bitcoin only. The Islamic legal maxim of evolution of shariah ruling (based on custom and ijihad) due to changing of times is not to be denied shall be applied in this circumstance since the

shariah ruling of SAC SC is applicable to digital assets that within jurisdiction of SC. Thus, this study provides policy implication to the state fatwa committee of Perlis in considering to revise the fatwa on bitcoin so that it will in line with the objective of shariah.

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