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ANALYSING THE LOOPHOLES ON ESTATE ADMINISTRATION OF CRYPTOCURRENCY IN MALAYSIA: SHARIAH AND LAW PERSPECTIVES

Nur Syaedah Kamis[1], Norazlina Abd. Wahab[2]
[1] Faculty of Muamalat & Islamic Finance, Kolej Universiti Islam Perlis, Malaysia.
[2] Institute of Shariah Governance and Islamic Finance, Islamic Business School, Universiti Utara Malaysia

Corresponding author: nursyaedah@kuips.edu.my

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ABSTRACT

The recognition of cryptocurrency as digital assets in Malaysia under the purview of security governed by the Securities Commission of Malaysia contributed to cryptocurrency's positive acceptance, with evidence that the number of cryptocurrency users is growing. Nonetheless, due to the unique characteristics of cryptocurrency, the lack of legal regulation on cryptocurrency inheritance will have an impact on crypto estate administration. Apparently, the law on cryptocurrency in Malaysia is still in its infancy, and the existing issue of frozen estate in Malaysia, which is constantly increasing, prompted the researchers to investigate potential loopholes in cryptocurrency estate administration from a legal and shariah standpoint. The study conducts content analysis by examining the relevant statutories, such as "the Probate and Administration Act 1959, the Capital Market Service Act 1997, the Capital Market and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019, Shariah Resolutions and Fatwas in Malaysia", other literatures related to cryptocurrency estate administration. As a result, there are legal loopholes in cryptocurrency estate administration in Malaysia that prevent cryptocurrency from being inherited by the entitled beneficiary. The issue of cryptocurrency inheritance may arise in the near future; thus, this study provides policy implications to the Malaysian regulators to solve the highlighted lacuna as well as social implications to the Malaysian society to consider cryptocurrency in their inheritance planning.

Keywords: Cryptocurrency, Digital asset, Estate administration, Inheritance law, Malaysia

INTRODUCTION

The advancement of information and communication technology (ICT) in converting the physical currency into digital currency began in year 2008 when Satoshi Nakamoto introduced the cryptocurrency by writing a whitepaper in October 2008 entitled "Bitcoin: A Peer-to Peer Electronic Cash System" in where the cryptocurrency is being defined as "a digital currency that a pure peer-to-peer version of electronic cash that allows online payments to be sent directly from one party to another party without going through a financial institution by using cryptography as security" (Nakamoto, 2008). Over the time, cryptocurrency becomes a digital asset that has a financial value and is used as means of payment around the world, such as in the United States (US), Canada and Great Britain (UK). In contrast, certain countries like China, Bolivia, Indonesia, Turkey, and Egypt have banned the use of cryptocurrency (News18, 2021).

Meanwhile, in Malaysia, cryptocurrency has been recognized by "the Securities Commission Malaysia (SC)" as digital asset under "the Capital Market and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019" under "Capital Market and Services Act 2007", which came into force in January 2019. In addition, the Shariah Advisory Councils (SAC) of SC also decided in their 233rd meeting held on June 23, 2020 and the 234th meeting on July 20, 2020 that both digital currency and digital token will be recognized under the categories of urudh as mal (Securities Commission Malaysia, 2020).

Undeniably, the legal recognition of the digital assets in Malaysia has made significant contribution to the positive adoption of digital assets in Malaysia, with evidence the number of users in Digital Assets Exchange (DAX) Luno in Malaysia was reported increasing from 180,000 in 2020 grew to more than 300,000 users in 2021 and in the same year raised a total of RM4.2 billion in total cryptocurrency exchange transaction on its platform in Malaysia on the same year (Zainul Aberdi, 2021).

Genders & Steen (2017) claimed that the increased number of digital assets held by the average owner will create an inheritance problem after the owner dies. The emergence of this type of asset presents a challenge to the inheritance of legal heirs as the trustee or personal representative had to access the cryptocurrency wallet and cryptocurrency information such as password and access key (Genders & Steen, 2017; Saleh et al., 2020). This problem is even worse due to the lack of the law that governs cryptocurrency after the owner's death. In addition, Saleh et al. (2020) emphasized that the problem of the lack of legal regulation on the inheritance of cryptocurrency will affect the process solutions for its inheritance due to the special features of the cryptocurrency. In Malaysia, Zulkepli and Bustami (2021) alleged that exists serious lack of legal framework which can protect the cryptocurrency inheritance and emphasized on the needs of comprehensive cryptocurrency legal framework including cryptocurrency inheritance. Therefore, this study attempts to analyze the existing laws related to estate administration and cryptocurrency in Malaysia to indentify the possible loopholes that may legally affect crypto assets estate administration in Malaysia.

THE NEED FOR ESTATE ADMINISTRATION OF CRYPTOCURRENCY

The emergence of digital asset such as cryptocurrency has become popular due to its significant and valuable property and is a type of digital asset that is used around the world. Cryptocurrency is not

similar like electronic money as its system neither derived from nor backed by any fiat currency (Low & Teo, 2017). It is created in the system through a process called mining which is decentralized and regulated by simple software architecture using blockchain as underlying technology (Omelchul et al. 2021; Katuk, 2019; Low & Teo, 2017). This technology makes the cryptocurrency different from the fiat money since it not controlled and maintained by a central bank of the countries but resides in thousands of computers around the world. This technology is essentially register containing information tracking the creation and transfer of cryptocurrency and it makes the electronic transactions over the internet more efficiency, transparency, trust and consistent. (Katuk, 2019; Rijonto, 2020).

In the context of ownership of cryptocurrency, the owner of cryptocurrency has a very long and complex private key to access the portion of the cryptocurrency which is mandatory. This private key is required whenever the owner wants to make a transaction of transfer either as payment for goods or services or perhaps as a gift (Beyer, 2019). Saleh et al. (2020) highlighted that the inheritance of cryptocurrency seems technically impossible due to the ability of ownership of cryptocurrency that depends only on the availability of the number of particular electronic cryptocurrency wallet and the password access (public and private key), even with the consent of the owner or by Court's order. Genders & Steen (2017) also viewed the same when it comes to the death of the owner, the security of login access must be effectively addressed where appropriate protocol must be put in a place to permit fiduciaries to access online account of users in appropriate circumstances. According to McKinnon (2011), the digital assets are apt to disappear if the owners fail to make provision for their heir once they died. Brucker-Kley et al. (2013) mentioned that this situation is even complex when the heirs do not know existence of the cryptocurrency not because the assets are vanished but due to inaccessible once the owners die. Furthermore, cryptocurrency service providers do not allow the third party to access the assets which can hinder the cryptocurrency inheritance (Brucker-Kley et al. 2013).

Although some recommendations on the continuity of ownership of digital asset have been raised up such as recording the information in the will, Beyer & Nipp (2020) stated that the security code and password of digital assets like cryptocurrency shall not be mentioned in the Will since it is a public record once admitted to probate and it certainly unsafe and leads to identity theft (McKinnon, 2011). Farmer & Tyszka (2014), Holt et al. (2021) Noonan (2014) emphasized that the absence of proper procedure of systematic ways of estate administration of cryptocurrency including its distribution after the death of the owners will lead to the few issues of security such as first, the issue potential loss of the cryptocurrency private key or the problem locating the digital wallet (Farmer & Tyszka, 2014). Second, the issue of data privacy and the possibility of identity theft (Holt et al., 2021; Mali & Prakash, 2020). Hence, the comprehensive law on estate administration of cryptocurrency is needed in order to enable the cryptocurrency being distributed to the legal heirs safely.

ESTATE ADMINISTRATION IN MALAYSIA

In Malaysia, three major estate administrative bodies have been vested to the High Court, the Estate Distribution Division and the Public Trust Corporation (Amanah Raya Berhad) based on monetary jurisdiction and types of estate left by the deceased (Halim, 2018). Al-ma'mun (2010) mentioned that Malaysian civil law governs the procedures of estate administration and settlement. Meanwhile, the Syariah Court's jurisdiction in the process of administering the deceased's estate differs from the other

administrative authorities in that they are only arise upon when an Order from the Syariah Court is required to resolve issues that may Muslim. (Abd Rahman, 2004; Halim 2018).

Nasrul et al. (2017) mentioned that technically, the determination of the jurisdictions of administrative bodies in Malaysia are based on four (4) factors, namely (a) the religion professed by deceased at time of demise, (b) type of assets, (c) the value of the assets and (d) the condition of the deceased, whether the deceased dies without will or with will.

Nasrul and Mohd Salim (2018) mentioned that as for the Muslim deceased, the legal heirs need to approach the Syariah Court if there any issue arising related with syariah laws from the deceased estate or its distribution. Noordin et al. (2012) noted that the Syariah Court plays important role in estate administration by issuing the *Faraid* Certificate upon application by the legal heirs or in the event they require Syariah Court Judgment in determining syariah issues. Nevertheless, Syariah Court has no authority to administer the deceased estate as set out in the List II, Schedule 9 of the Federal Constitution where the jurisdiction of Syariah Court is limited to the matters of Islamic law in relation to inheritance and shall apply only to Malaysian Muslims in its respective state.

As mentioned earlier, the jurisdiction to administer estate in Malaysia is depend on the monetary jurisdiction, types of estate and if there is a will or not left by the deceased. The jurisdiction of Estate Distribution Division is confined to small estate which refers to the types of assets inclusing immovable or movable or combination of both assets with value not more than RM 2 million (Md. Azmi et al., 2011). The Civil High Court has the jurisdiction to hear the matters related to deceased estated which is more than RM 2 million or if the deceased died testate i.e., he left his valid will. In such case, the exacutor can require the Grant of Probate from the Civil High Court (Ab Aziz et al., 2014). Meanwhile, Amanah Raya Berhad has administrative jurisdiction over the movable asset left by deceased not more thank RM600,000 as provided in Section 17 of the Public Trust Corporation Act 1995.

Other than the empowerment to administer the decesead estate, the Estate Distribution Division, the High Court and Amanah Raya Berhad also being empowered in appointment of the personal representative before estate can be proceed to distribution according to Halim et al. (2013). The personal representative refers an entrusted person with full of trust and honesty to fulfil his obligation in administrating the estate to the end process (Raman, 2018; Mohd Noor & Halim (2013).

The appointment of personal reperesentative is as provided in the Probate and Administration Act 1959 where the letter of appointment must be issued to the appointed person and his duties in administrating the deceased's estate is varied (Halim, 2018). Among the duties of personal representative as provided in the Probate and Administration Act 1959 are (a) "to uphold the rights and beneficial interest of the beneficiaris in the deceased's estate by collecting, transmitting, converting and paying debt and liabilities of the deceased"; and (b) "to distribute the balance of the deceased's estate to the legal beneficiaries".

The personal representative also has given certain power while carrying his duties such as the power to dispose of estate (as provided in "Section 60 of Probate and Administration Act 1959"), power to make a dealing with the estate (as provided in "Section 71 and 72 of Probate and Administration Act 1959"), power to appropriate (as provided in "Section 74 of Probate and Administration Act 1959"), power to appoint trustee for the minor beneficiary (as provided in "Section 75 of Probate and Administration Act 1959") and last but not least, the power to hold estate distribution (as provided in "Section 77 of Probate and Administration Act 1959").

Transmission of deceased's estate is one of the duties of personal representative. Nevertheless, to exercise this duty, the personal representative is subject to the specific law or regulation governing such assets. For example, Halim (2018) mentioned that the process of transmission i.e., acquiring of any estate, share and interest in land consequent to the death of registered proprietor is essential to the administration of the deceased estate as no personal representative shall be capable of executing any transfer in respect of any land, share or interest until his name is registered therein as provided under Section 346 (5) National Land Code 1965. Similarly, in the process of transmission of intangible asset such as share which must comply laws and regulation provided in the Companies Act 2016. In the event the shareholder died, the appointed personal representative would acquire a legal right as shareholder passing by the deceased shares in the company due the transmission of share is provided by the operation of law as stated under provision of Section 109 of Companies Act 2016. The same provision provides that this transmission must be registered for the personal representative to be recognized as having title to the share. Halim et al. (2013) emphasized that the right of personal representative over the shares left by the deceased is depending on the type of shares and subject ot each company's memorandum and article of association. Thus, the transmission of deceased's estate to the personal representative must obliged the law and regulatios governed to kind of estate left by the deceased.

CRYPTOCURRENCY LEGAL FRAMEWORK IN MALAYSIA

Cryptocurrency in Malaysia is jointly regulated by the Securities Commission Malaysia and Central Bank of Malaysia (BNM) as they have jointly made statement in explaining their regulatory approach with digital currencies and digital tokens in 2018. Both had differentiated their jurisdiction over cryptocurrency where SC regulates on issuance of digital assets in Malaysia and its trading at Malaysian digital asset exchange. Meanwhile, BNM regulates the regulations involved with payment and currency matter that related to any issuance of dealing of digital assets. Zulkepli and Bustami (2018) mentioned that the division jurisdiction between SC and BNM is clearer when both responded to allegation of policy confusion in 2020.

For instance, the regulation of cryptocurrency by SC has come into force in 2019 where cryptocurrency is being considered as securites under the purview of SC as provided in "the Capital Market and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019". The regulations set by SC is related to issuance and trading of cryptocurrency in Malaysia as set out in "Capital Market and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019", "Guideline on Recognized Markets 2015" which revised in November 2022 and the Guidelines on Digital Assets which issued by SC pursuant to Section 377 of the" Capital Markets and Services Act 2007". The issuance of cryptocurrency in Malaysia must be by the registered and licensed Digital Assets Exchange (DAX) with SC. And as to date, only "Luno Malaysia Sdn Bhd, MX Global Sdn Bhd, SINEGY DAX Sdn Bhd and Tokenize Technology (M) Sdn Bhd" are the registered and licensed DAX in Malaysia.

Meanwhile, BNM as the overseer any dealing related to any payment in Malaysia had specifically issed "Anti-Money Laundering and Counter Financing of Terrorism for Digital Currency (Sector 6)" to regulate the cryptocurrency in Malaysia. To avoid public confusion, BNM repeatedly reiterated that cryptocurrency is not considered as legal tender in Malaysia and warned the public to use it at their own risk (Bank Negara Malaysia, 2014; Bank Negara Malaysia, 2018; Bank Negara Malaysia, 2020).

Zulhuda and Sayuti (2017) commented that the Malaysian regulators had taken a minimalist approach to regulate cryptocurrency by adopting "wait and see" approach towards it. In contrary, Durgha (2018) viewed that the Malaysian regulators has embraced warm approach in welcoming cryptocurrency in Malaysia. Ismail Nawang and Azmi (2021) stated that the minimalist approach that taken by Malaysian regulators because to avoid hindering innovation and the development of cryptocurrency in Malaysia. Neverthless, the serious lack of existing cryptocurrency legal framework that developed in Malaysia has been alleged by Zulkepli and Bustami (2021) where none of the regulations laid down on cryptocurrency inheritance which can protect its inheritance.

METHODOLOGY

The study conducts content analysis by analyzing "the Capital Market Service Act 1997, the Capital Market and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019, Central Bank of Malaysia Act 2009, Currency Act 2020, Financial Services Act 2013 (FSA 2013) and Islamic Financial Services Act 2013 (IFSA 2013), Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) and the Probate and Administration Act 1959", under, Shariah Resolutions and Fatwas in Malaysia, cases law, and literatures on cryptocurrency estate administration

FINDINGS AND DISCUSSION

The researchers found that there are few issues that should be taken care by the respective authorities before the estate administration of cryptocurrency can be legally operated in Malaysia.

The Legal Status of Cryptocurrency in Malaysia

In the light of monitoring and supervising cryptocurrency in Malaysia, BNM has released a statement in 2014 that they do not regulate the operation of bitcoin i.e. one of the famous cryptocurrencies and do not recognized it as a legal tender in Malaysia (Bank Negara Malaysia, 2014). This statement is parallel with the "Section 63 of Central Bank of Malaysia Act 2009" which provides that only currency notes and coins issued by BNM are regarded as legal tender in Malaysia. Furthermore, according to Ismail Nawang & Abd Ghani Azmi (2021), neither the words cryptocurrency nor virtual or digital currency are defined in "the Financial Services Act 2013 (FSA 2013) and Islamic Financial Services Act 2013 (IFSA 2013)". The closest inference may be referred to the interpretation of 'electronic money' where "Section 2(1) of the FSA 2013" defines electronic money as:

"Any payment instrument, whether tangible or intangible that-

a) *Stores funds electronically in exchange of funds paid to the issuer; and*
b) *Is able to be used as means of making payment to any person other than the issuer."*

The similar definition of electronic money has been stipulated in Section 2(1) of IFSA 2013 which is: -

"Any Islamic payment instrument, whether tangible or intangible that-

a) *Stores funds electronically in exchange of funds paid to the issuer; and*
b) *Is able to be used as means of making payment to any person other than the issuer."*

From the aforementioned interpretation in "Section 2(1) of FSA 2013 and Section 2(1) IFSA 2013", it seems that the cryptocurrency appears to possess certain function of electronic money, particularly as a store of value and medium of exchange. However, Zahudi & Amir (2016) mentioned that it should be noted that electronic money is not the same as cryptocurrency or virtual currency because electronic money represents fiat money or legal tender that is stored electronically in digital accounts and is subject to the BNM's regulatory control. Besides, the BNM is the sole authority to issue the printing currency notes and minting currency coin as provided in "Section 5 and 6 of the Currency Act 2020" respectively and only the currency notes and currency coin issued by the BNM shall be the legal tender in Malaysia as stated in "Section 10 of the Currency Act 2020". Thus, the electronic money and cryptocurrency under the Malaysian law is not legally comparable as these two are peculiarly different since the electronic money equates legal tender whilst the cryptocurrency is not being recognized as a legal tender as it is not issued by the BNM.

With the new norm of digital currencies in Malaysia, the BNM has made a notable move to regulate the cryptocurrency and had officially issued the policy paper "Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) – Digital Currencies (Sector 6)" which specifies further detailed requirements imposed on the reporting institutions either from Malaysia or outsides Malaysia where they will be subject to the obligations under the "Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA)" as mentioned in "Paragraph 4.2 of Sector 6".

Nonetheless, the imposition of these obligation on the reporting institutions does not mean that the BNM has recognized the cryptocurrency as a legal tender in Malaysia. The BNM reiterated in "Sector 6 paragraph 1.6" that digital currencies are not legal tender in Malaysia and advised the public to conduct the necessary due diligence and risk assessment when dealing in digital currencies or with entities providing digital currency-related services. The BNM emphasized that privately issued cryptocurrency is not suitable as a general payment instrument because it lacks universal characteristics of money and is subject to risks such as price volatility and vulnerability to cyber threats. As a result, because it is not regulated by the BNM and does not constitute a money that is legally accepted for the exchange of goods and services in Malaysia, it cannot be used as a payment instrument.

Although the BNM does not recognized the digital currencies as the legal tender in Malaysia, the new regulation on the digital currency and digital token has come into the force in 2019 with the issuance of "Capital Market and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019" by the Securities Commission Malaysia (SC) where the digital currency and digital token are being prescribed as securities for the purposes of securities laws. In this Order, the digital currency and digital token are clearly interpreted as stipulated in "Paragraph 2 of Capital Market and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019".

"2. In this Order –

"Digital currency" means a digital representation of valued which is recorder on a distributed digital ledger whether cryptographically-secured or otherwise, that function as medium of exchange and is interchangeable with any money, including through the crediting or debiting of an account"; and

"Digital token" means a digital representation which is recorded on a distributed digital ledger where cryptographically- secured or otherwise".

The above definition, according to Ismail Nawang and Abd Ghani Azmi (2021), addresses the lack of statutory interpretation of the term cryptocurrency in the FSA 2013 and IFSA 2013. Nonetheless, Regulation 3 of the Capital Market and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 stated unequivocally that digital currency and digital token are not issued or guaranteed by any government body or central bank as specified by the Commission, and are prescribed as securities for the purposes of securities laws. As a result, cryptocurrency is still not recognised as legal tender in Malaysia, but only as securities under Malaysian securities laws.

Moreover, the issuer of the cryptocurrency i.e., the Digital Assets Exchange (DAX) operators must be registered as a Recognized Market Operator (RMO) as provided in the Guidelines on Recognized Markets (Guidelines) that issued by the SC pursuant to "Section 377 of the Capital Markets and Services Act 2007 (CMSA 2007)" and read together with "subdivision 4, division 2 of Part 11 CMSA 2007". This Guidelines also provide that the RMO must protect the interest of the client by keeping latest records of the investors as well as the money and digital assets held, segregating trust accounts that receive money from and pay to the licensed financial institutions and making arrangements to protect the clients against risks, loss, and also theft. Thus, the cryptocurrency that issued by unregistered DAX operators will not be legally recognized as securities as prescribed under securities laws in Malaysia.

The legality of the cryptocurrency has finally been tested in the unreported case of "*Robert Ong Thien Cheng v Luno Pte Ltd & Bitx Malaysia Sdn Bhd [2020] 1 LNS 2194*" where briefly the fact of the case is that the 1st Respondent was mistakenly transferred additional 11.3 bitcoins to the Appellant's registered bitcoin account after having transferred the initial 11.3 bitcoins on the same day and required the Appellant to return that 11.3 bitcoins to the 1st respondent but he refused. The High Court Judge held that the learned Trial Judge was not erred in accepting the bitcoin is not money as the cryptocurrency is form of commodity, as real money is used to purchase the cryptocurrency and it fell within the category of 'thing' under "Section 73 of Contract Act 1950". The High Court Judge further decided that there was no material or evidence before the Trial Court Judge that, although cryptocurrency is not recognized as legal tender in Malaysian Court jurisdiction, the Respondents' whole operation is illegal and cannot sustain the claim for restitution. Consequently, the cryptocurrency is only being recognized as legal commodity if it issued by the recognized DAX operators and subject to the contractual obligation with those recognized DAX operators.

The Shariah Status of Cryptocurrency in Malaysia

In terms of the Shariah status of cryptocurrency in Malaysia, the SAC of SC issued resolutions in their 233rd and 234th meetings in 2020, recognizing both digital currency and digital token as mal under the category of 'urudh. The SAC of SC referred to Ibn Qudamah's interpretation of 'urudh as mal other than currency, such as plants, animals, lands, and others, and al Bujairimi's interpretation of 'urudh as anything exchanged for currency. However, this resolution only applies to digital assets regulated by the SC, and the SAC of the SC explicitly stated that this resolution does not apply to any digital assets outside the SC's jurisdiction. Furthermore

Nonetheless, since the Islamic laws in Malaysia is under the state jurisdiction as provided in List II-State List, 9th Schedule of Federal Constitution, the fatwa on legality of cryptocurrency from every state in Malaysia is substantial to determine the inheritability of the cryptocurrency according to Syarak since

the illegal and unlawful assets cannot be considered as the estates to be inherited by the heirs. Salam & Rasban (2021) emphasized that in the process of determining whether a property is inherited or not is of paramount importance as it will determine the mechanism for transfer of the property either through Civil or Shariah system in Malaysia

As to date, only three (3) states have provided a fatwa on permissibility of using cryptocurrency as medium of transactions and trading which are Jabatan Fatwa Negeri Perlis, Jabatan Fatwa Negeri Sembilan and Selangor. The other twelve (11) states have not issued their fatwa on the permissibility of using cryptocurrency.

The Fatwa Committee of Negeri Perlis resolved on its 38th meeting in 2018 that the bitcoin is a digital asset that has various benefits and it is permissible to community that know how to use and utilize it. This digital asset is permissible be transacted as medium of payment, transfer, storage and trading and subject to the law of zakat. However, they further resolved that, the legal status of bitcoin shall be changed to illegal and prohibited if the government authority banned the usage of bitcoin in the country and it also illegal in terms of Shariah law on the basis of public interest and to avoid harm according to the assessment by the ulil amri. Besides, the bitcoin is prohibited if the owner gained it from the middlemen or company that offered bitcoin scheme with fixed and lucrative profit. This fatwa does not specifically mention that the jurisdiction of this fatwa only applies to the bitcoin that issued by the registered DAX operators with authority in Malaysia.

Meanwhile, the Fatwa Committee of Negeri Perak and Selangor on August 2021, has agreed to adopt the decision of Muzakarah Committee of the National Assembly for the Islamic Religious Affair (MKI) as irshad hukm on the permissibility of the business transaction using digital assets as medium of payment, remittance, and storage assets if the transaction is performed through registered and licensed DAX operators with the authority in Malaysia, the user has sufficient knowledge on digital assets including the risks involved, the technical matters in acquiring and safekeeping the digital assets, the rules set by the registered and licensed DAX operators with the authority; and laws and regulation on the digital assets. This fatwa implied that the business transaction using digital assets in state of Perak is allowed if such transaction is performed on the registered DAX with SC since the SC is the authority that has power to regulate the digital assets in Malaysia. In contrast, the fatwa resolved by Fatwa Committee of Negeri Perlis is more general and does not limit the permissibility of using the bitcoin to be transacted or traded on specific DAX operators.

The Absence of Specific Laws or Regulations on Estate Administration of Cryptocurrency in Malaysia

Apart from the legality of cryptocurrency either in terms of civil laws and shariah laws in Malaysia, the crucial concern is the absence of specific laws or regulation on estate administration of cryptocurrency. The researchers note that none of regulations stipulated in “Capital Market and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019” specifically mentioned on the transmission of digital asset upon the death of the owner of digital assets. It also cannot be inferred that, the same law of transmission of shares, debentures or trust to the personal representative upon the death of the shareholder should be applied on transmission of digital assets to the personal representative upon the death of the owner. This is due to the provision of Regulation 5 of Capital Market and Service

(Prescription of Securities) (Digital Currency and Digital Token) Order 2019 clearly mentioned that digital currency and digital token are not share, debenture or unit trust.

"Digital currency and digital token are not share, etc".

"5. For the purpose of securities laws, a digital currency and digital token that are prescribed as securities under this Order that is offered or traded on or through a recognized market is not –

a) A share in or debenture of, a body corporate or an unincorporated body; or
b) A unit trust scheme or prescribed investments scheme."

Besides, the Shariah resolution by SAC of SC and the fatwa from Fatwa Committee Negeri Perlis and Negeri Perak on permissibility of using cryptocurrency also merely silent on the inheritability of cryptocurrency by the Muslims. The absence of specific law on the inheritance of cryptocurrency may lead to varies verdict on the inheritability of cryptocurrency by Muslims according to the Judges preferences if the case on inheritances of cryptocurrency being brought before the Syariah Court in near future as the matters related intestate, testate, and succession for Muslims are governed and determined by Islamic law as conferred by Federal Constitutions.

In the case of "*Robert Ong Thien Cheng v Luno Pte Ltd & Bitx Malaysia Sdn Bhd [2020] 1 LNS 2194*" clearly shows that only the legal owner of digital asset has the right to transfer or return the cryptocurrency to the other party although such transfer was mistakenly done by the registered DAX i.e., Luno Pte Ltd. Thus, it can be inferred that in the event of the owner of cryptocurrency dies, which the private key or password access is only known by the owner will make the inheritance of cryptocurrency becomes technically impossible if there is no specific law on transmission of the cryptocurrency to the personal representative or the heir upon the death of the owner (Saleh et al. 2020).

CONCLUSION

The ownership of cryptocurrency is still at infancy level. Therefore, the impact on estate administration perspective is not yet seen. Whilst, the laws and regulations on cryptocurrency are still evolving as their condition and uses are still considered new in Malaysia. The privately issued of cryptocurrency is not recognized as legal commodity and illegal pursuant to provisions in "Capital Market and Service (Prescription of Securities) (Digital Currency and Digital Token) Order 2019". Nevertheless, it can be seen that there are different views on application of the permissibility of cryptocurrency from Syariah point of views the first view is the jurisdiction of permissibility of cryptocurrency is only applied to the cryptocurrency issued by the registered DAX operators with Malaysian authority as viewed by the SAC of SC and fatwa issued by Fatwa Committee of Negeri Perak. Another view given on its permissibility to use cryptocurrency is more general regardless it is issued by the registered DAX operators with the authority in Malaysia or privately issued as viewed by Fatwa Committee of Negeri Perlis. The unstandardized of laws on cryptocurrency will complex the estate administration of cryptocurrency since there is lacuna on the laws on estate administration of cryptocurrency in Malaysia upon the death of the owner of cryptocurrency.

It should be noted that a dual system has been implemented in Malaysia in relation to estate matters, depending on the deceased's personal laws where the Federal Constitution states that intestate, testate, and succession issues for Muslims are governed and determined by Islamic law. Non-Muslim estates, on the other hand, are governed by specific Acts such as "the Civil Law Act of 1956", "the Inheritance (Family Provision) Act of 1971, and the Distribution Act of 1958" (Halim et al., 2019). Significant losses may continue to have an adverse effect on the country's economic growth in the absence of proper estate administration of cryptocurrency, as Md. Azmi & et al. (2011) contended that the empowerment of Civil Court and Syariah Court in estate administration

Thus, this study suggests that a comprehensive legal framework on cryptocurrency estate administration must be developed, as the issue of estate administration may arise in the near future and become a topic of interest, where the findings and discussion in this study may be the primary source for understanding the situation in cryptocurrency estate administration in Malaysia.

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