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**AN ENHANCED SHARIAH AND LEGAL FRAMEWORK
GOVERNING ESTATE MANAGEMENT OF DIGITAL ASSETS
IN MALAYSIA**



**DOCTOR OF PHILOSOPHY
UNIVERSITI UTARA MALAYSIA
2025**

**AN ENHANCED SHARIAH AND LEGAL FRAMEWORK GOVERNING
ESTATE MANAGEMENT OF DIGITAL ASSETS IN MALAYSIA**



**Thesis Submitted to
College of Business,
Universiti Utara Malaysia,
in Fulfilment of the Requirement for the Degree of Doctor of Philosophy**



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ISLAMIC BUSINESS SCHOOL
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Abstract

The rapid growth of digital technology has transformed financial systems, prompting Malaysia to regulate crypto assets in response to their rising adoption. The increasing ownership of crypto assets among Malaysians presents challenges for Islamic estate planning and inheritance, as underdeveloped legal frameworks risk asset loss and may impact the socio-economic well-being of Muslim communities. This study aims to analyse the acceptance of crypto assets from a Shariah perspective, assess the adequacy of the current legal framework for Islamic estate planning of crypto assets in Malaysia, and explore related Shariah and legal issues. It also seeks to propose an improved Shariah-compliant and legal framework aligned with Malaysia's regulatory requirements. This study employs a qualitative socio-legal research design, using semi-structured interviews with key stakeholders and library-based research for data collection. Inductive, content, and thematic analysis methods were applied to ensure robust findings. The study reveals that crypto assets are recognised as *mal* (property) under Shariah law. However, it also identifies significant regulatory gaps and inconsistencies in inheritance processes. The proposed framework addresses these challenges by integrating digital asset management with Islamic principles. The findings highlight the need for collaboration among policymakers, estate planners, and digital asset exchange (DAX) providers to implement this framework effectively. This research contributes to the development of robust Islamic estate planning mechanisms that ensure Shariah compliance, regulatory alignment, and economic stability in Malaysia.

Keywords: Crypto assets, Digital assets, Islamic estate planning, Legal framework, Shariah

Abstrak

Pertumbuhan pesat teknologi digital telah mengubah sistem kewangan, mendorong Malaysia untuk mengawal selia aset kripto selaras dengan peningkatan penggunaannya. Peningkatan pemilikan aset kripto dalam kalangan rakyat Malaysia menimbulkan cabaran terhadap perancangan harta pusaka Islam, kerana rangka kerja perundangan yang masih belum mantap boleh menyebabkan kehilangan aset dan memberi kesan sosioekonomi kepada komuniti Muslim. Kajian ini bertujuan untuk menganalisis penerimaan aset kripto dari perspektif Syariah, menilai keberkesanan rangka kerja perundangan sedia ada bagi perancangan harta pusaka Islam melibatkan aset kripto di Malaysia, serta menyelidik isu Syariah dan perundangan yang berkaitan. Kajian ini turut berhasrat untuk mencadangkan rangka kerja Syariah dan perundangan yang dipertingkatkan selaras dengan keperluan kawal selia di Malaysia. Kajian ini menggunakan reka bentuk penyelidikan sosio-perundangan kualitatif, dengan pengumpulan data melalui temu bual separa berstruktur bersama pihak berkepentingan utama dan penyelidikan berasaskan perpustakaan. Kaedah analisis induktif, kandungan, dan tematik digunakan untuk memastikan dapatan yang kukuh. Kajian mendapati bahawa aset kripto diiktiraf sebagai *mal* (harta) menurut undang-undang Syariah. Walau bagaimanapun, terdapat jurang peraturan yang ketara dan ketidakselarasan dalam proses pewarisan. Rangka kerja yang dicadangkan menangani cabaran ini dengan menggabungkan pengurusan aset digital bersama prinsip Islam. Dapatan kajian menekankan keperluan kerjasama antara penggubal dasar, perancang harta pusaka, dan penyedia pertukaran aset digital (DAX) untuk melaksanakan rangka kerja ini secara berkesan. Kajian ini menyumbang kepada pembangunan mekanisme perancangan harta pusaka Islam yang kukuh, yang memastikan pematuhan Syariah, penjajaran peraturan, dan kestabilan ekonomi di Malaysia.

Kata kunci: Aset digital, Aset kripto, Kerangka perundangan, Perancangan harta pusaka Islam, Syariah

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List of Abbreviations

ADA	Cardano
AML/CFT	Anti-money Laundering and Counter Financing of Terrorism
ARB	Amanah Raya Berhad
AAOIFI	Accounting and Auditing Organisation for Islamic Financial Institutions
BCH	Bitcoin Cash
BNM	Bank Negara Malaysia
BTC	Bitcoin
CBDC	Central Bank Digital Currency
DAX	Digital Asset Exchange
DLT	Distributed Ledger Technology
EPF	Employees Provident Fund
ETH	Ethereum
FATF	Financial Action Task Force
FSB	Financial Stability Board
ICO	Initial Coin Offering
IEO	Initial Exchange Offering
IFAOIC	Islamic Fiqh Academy of the Organisation of the Islamic Conference
IFSA 2013	Islamic Financial Service Act 2013
IIFA	International Islamic Fiqh Academy
IMF	International Monetary Fund
IT	Information technology
KYC	Know Your Customer
LINK	Chainlink
LTC	Litecoin
P2P	Peer-to-peer
RM	Ringgit Malaysia
SAC	Shariah Advisory Council
SC	Securities Commission Malaysia
SOL	Solana
UNI	Uniswap
XRP	Ripple

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Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) Shariah Standard No. 42.

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Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019.

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Islamic Financial Services Act 2013 (Act 759).

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Public Trust Corporation Act 1995(Act 532).

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Small Estates (Distribution) (Amendment) Act 2022 (Act A1643).

Trustee Act 1949 (Act 208).

CHAPTER ONE

INTRODUCTION

1.1 Background of Study

The rise of new digital assets, such as crypto assets, has gained popularity globally because of its financial value, and it is evident with global ownership of crypto assets totalling 562 million in 2024 that marks a 34% increase from 2023 as reported by Triple A Technologies Inc (2024). Meanwhile, crypto assets adoption in Malaysia has also grown tremendously since 2020, when approximately 760,000 accounts opened across the four registered Digital Assets Exchanges (DAX) in 2021 compared to more than 190,000 accounts opened in 2020 (Bank Negara Malaysia, 2022). Across all registered DAXs, RM21 billion in digital assets were traded in 2021, as opposed to RM1.4 billion in 2020 (Bank Negara Malaysia, 2022). Crypto assets ownership in Malaysia saw a strong rebound in 2024, with 40% of Malaysians holding crypto assets, despite temporary declines in 2022 and 2023 (Oppotus, 2024).

The term crypto assets are commonly referred to as cryptocurrencies, digital assets, digital currencies, or virtual assets (Bains, Melo & Sugimoto., 2022; Bhat, 2022). The legal definition of crypto assets is yet to reach a consensus among regulators and is not globally harmonised (Narain & Moretti, 2022; Ismail Nawang & Abd Ghani, 2021). The Financial Stability Board (FSB) (2022) defines crypto assets as a type of digital asset that depends primarily on cryptography and distributed ledger technology (DLT) or similar technology. The World Bank defines crypto assets as private digital representations of value that can be used for payment or investment purposes, or to access goods or services and rely on DLT or similar technology (Feyen, Kawashima & Mittal., 2022). The Financial Action Task Force (FATF) (2021) uses the term virtual

assets as a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes. In Malaysia, the definition of crypto assets falls within the interpretation of digital assets i.e., digital currency or digital token as provided in Section 2 of the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019.

“Digital currency” means a digital representation of value which is recorded on a distributed digital ledger whether cryptographically secured or otherwise, that functions as a medium of exchange and is interchangeable with any money, including through the crediting or debiting of an account. (“P.U.(A) 12/2019 - s C”)

“Digital token” means a digital representation which is recorded on a distributed digital ledger whether cryptographically secured or otherwise.

Crypto assets are innovated based on the underlying technology of blockchain and produced by cryptographic algorithms (Nakamoto, 2008). The creation value and procedure of crypto-asset transactions are governed by the mining process in a blockchain system with the implementation of a set of mathematical algorithms (Adhami, Giudici & Matinazzi., 2018; Cennamo, Dagnino, Di Minin & Lanzolla, 2020). In other words, crypto assets are codes that can be stored and accessed digitally and may or may not be secured or backed by tangible collateral such as money and gold. Their value is indexed to the value of fiat money and fluctuates (Narain & Moretti, 2022). There are no specific regulatory bodies in the world or crypto that monitor, verify, and control transactions and transfers of value within the network (Alonso & Luis, 2019; Ng & Griffin, 2018; Yalaman & Yildirim, 2019). Nevertheless, the application of blockchain in crypto systems solves the problem of double spending and avoids the risk of digital tokens being fabricated or falsified (Chohan, 2017;

Treiblmaier, 2019). This makes transactions involving crypto assets more efficient, transparent, and trustworthy (Katuk, 2019; Rijanto, 2020).

Beyond the hype, people are currently using crypto to pay for goods and services in the real world (Dostov & Shust, 2014; Guadamuz & Marsden, 2015) and are widely and actively traded and serve as speculative (Menon, 2022; Feyen et al., 2022). The transaction of crypto assets can be initiated for those who have the private key of crypto assets since its ownership relies on that (Janpitak, Lilakiatsakun & Sathitwiriya, 2020; Saleh, Alazzam, Khalaf & Zavalna, 2020), and the transaction can be made to those who have a public key (Joo, Nishikawa & Dandapani, 2019), as illustrated in

Figure 1.1.

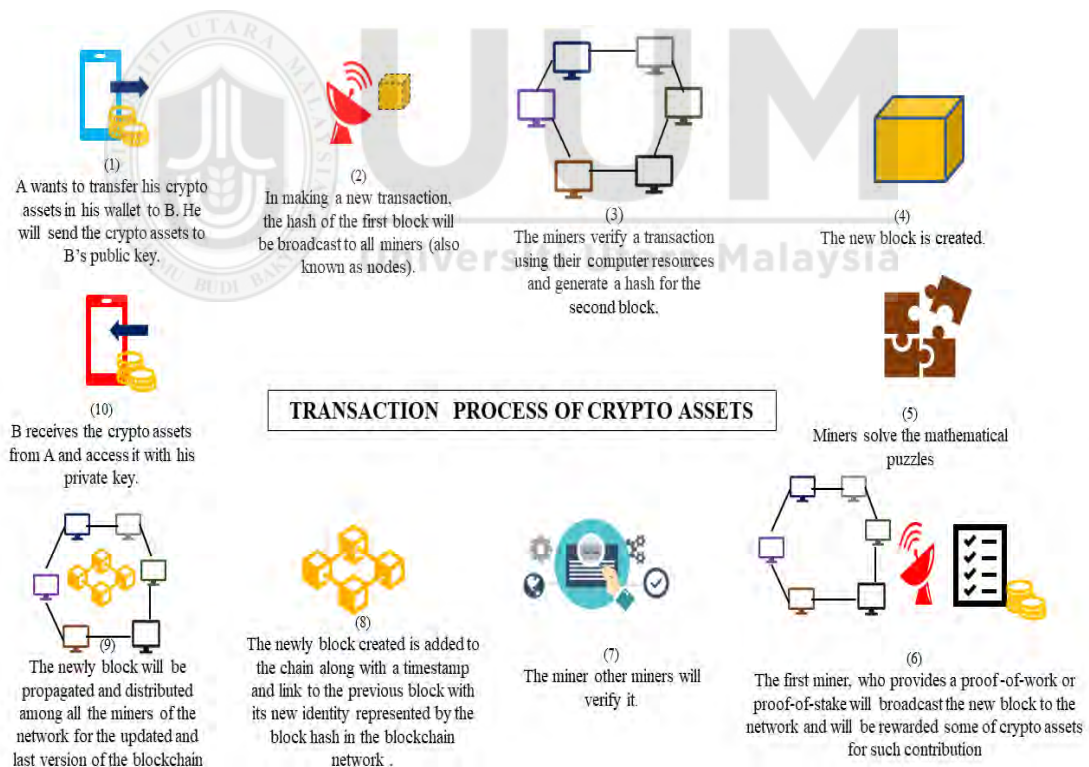


Figure 1.1
Transaction process of crypto assets.
 Sources: Joo et al. (2019)

When making a new transaction, the hash of the first block is broadcast to all miners (also known as nodes). Miners verify a transaction using their computer resources and generate a hash for the second block (Tama, Kweka, Park & Rhee, 2017). When a new block is created, each miner finds proof-of-work or proof-of-stake for that transaction, that is, an answer or solution for a mathematical puzzle. Then, the first miner, who provides proof of work or proof-of-stake, will broadcast the new block to the network and will be rewarded with some of the crypto assets for such a contribution (Nakamoto, 2008). However, other miners will verify this. The newly created block is added to the chain along with a timestamp and links to the previous block, with its new identity represented by the block hash in the blockchain network (Ghimire & Selvaraj, 2018). This new block will be propagated and distributed among all miners of the network for the updated and last versions of the blockchain (Rejeb, Rejeb & Keogh, 2021). The recipient then can access the crypto assets received with the private key (Uddin, Stranieri, Gondal & Balasubramanian, 2021).

The regulatory landscape of crypto assets is evolving continuously due to proliferation of interest and uses (Abed, Sheth, Dixon, & Kadamani, 2021). While promoting decentralisation and disintermediation in the crypto assets system, the rise of crypto assets demand has created opportunities for new centralised intermediaries, such as issuers, crypto assets exchanges, and crypto assets wallet providers (Bains et al., 2022). Nevertheless, the nature of the crypto assets system, which is anonymity or pseudonymous, borderless, and virtual, and the fact that everyone can create new crypto assets and send them to other addresses leads to financial integrity issues (Abed et al., 2021). In response to the development of crypto assets market, the regulators worldwide have stepped effort to address the concerns facing in the crypto market such as the threat of price volatility, speculative trading, hack attacks, money laundering, and terrorist

financing (Houben & Snyers, 2018; Bank Negara Malaysia, 2022; Narain & Moretti, 2022).

In promoting fair and orderly trading and investors safekeeping in Malaysia, crypto assets are jointly regulated by the Bank Negara Malaysia (BNM) and Securities Commissions of Malaysia (SC) (Bank Negara Malaysia, 2018; Bank Negara Malaysia, 2020a). The issuance and trading of crypto assets over the licensed and registered DAX in Malaysia if involved with the payment systems are subject to the laws and regulations of BNM (Bank Negara Malaysia, 2018; Bank Negara Malaysia, 2020a). For instance, BNM specifically issued Anti-Money Laundering and Counter Financing of Terrorism Policy for Digital Currencies (Sector 6) to regulate the dealing related to crypto assets in Malaysia and emphasised that it does not constitute as a legal tender in Malaysia (Bank Negara Malaysia, 2014; Bank Negara Malaysia, 2018; Bank Negara Malaysia, 2020b). Instead, crypto assets are prescribed to be securities in Malaysia as mentioned in Paragraph 3 of the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 and under the purview of Securities Commission of Malaysia (SC).

The regulations of SC on crypto assets are related to its issuance and trading at the licensed and registered DAX in Malaysia (Bank Negara Malaysia, 2018). For example, Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 has come into operation to regulate crypto assets in Malaysia in 2019, Guideline on Recognised Markets 2015 and revised in April 2023 and Guidelines on Digital Assets 2020 and revised in 19 August 2024, was issued by the SC pursuant to Section 377 of the Capital Markets and Services Act 2007 to set out the relevant requirements in issuance of crypto assets and the registration of initial exchange

offering (IEO) platform. As to date, only six (6) DAX are licensed and registered with SC which are Luno Malaysia Sdn Bhd, MX Global Sdn Bhd, Sinegy DAX Sdn Bhd, Tokenize Technology (M) Sdn Bhd, HATA Digital Sdn Bhd and Torum International Sdn Bhd (Securities Commission Malaysia, 2024) and only nine (9) types crypto assets are being permissible to be traded in the registered DAX platform in Malaysia which are a) Bitcoin (BTC); b) Ethereum (ETH); c) Bitcoin Cash (BCH); d) Ripple (XRP); e) Litecoin (LTC); f) Solana (SOL); g) Chainlink (LINK); h) Uniswap (UNI); i) Cardano (ADA) (Securities Commission Malaysia, 2024).

In the light of Shariah, despite of intense debates and different views on the permissibility of crypto assets among global Islamic jurists from the range of proponent, neutral to opponent. According to Ibrahim Saleh, Abu Bakar Ibrahim, Nordin and Mohd Mohadis (2020), the Shariah compliant is one of the most imperative factors that influence the users to adopt crypto assets in their daily operation. In fact, in Malaysia, the Shariah Advisory Council of Securities Commission Malaysia (SAC SC) in 2020 had issued their ruling that both digital currency and digital token are recognised as a wealth (*mal*) according to Shariah. Nevertheless, the Islamic law in Malaysia is under the state's jurisdiction as stipulated in List II, Schedule 9 of the Malaysian Federal Constitution. Perlis *Mufti* Department (2018) is the earliest state that had issued their *fatwa* on the permissibility of crypto assets namely Bitcoin with certain parameters in 2018, followed by Perak *Mufti* Department (2021), Selangor *Mufti* Department (2021), and Majlis Islam Sarawak (2021) which had issued their *fatwa* on the permissibility of crypto assets issued by registered dan licensed DAX(s) in Malaysia. Meanwhile, *Mufti* of Federal Territory's Office (2018) expressed their stance in 2018 that crypto like Bitcoin is prohibited to be used by the public since it does not fulfil the criteria of money and can cause harm and damages to the country's monetary system.

Over time, the owners of digital assets have started pondering about the status of their virtual assets, and the growing interest in digital inheritance has been noticed by Iryna, Larysa, and Viktoriya (2021), who studied digital inheritance of virtual property. Murugiah (2021) highlighted that many crypto assets' owners in Malaysia expressed their concerns about dying with their assets. It tends to disappear or vanish if no proper estate planning is done by the crypto assets' owner (Conway & Grattan, 2017; Beyer, 2019).

The volatility of crypto assets presents additional challenges to estate administration, especially in determining the monetary jurisdiction of the estate administration when the estate involves crypto assets that are highly volatile in terms of their rate of fluctuation (Cuervo, Morozova and Sugimoto, 2019).

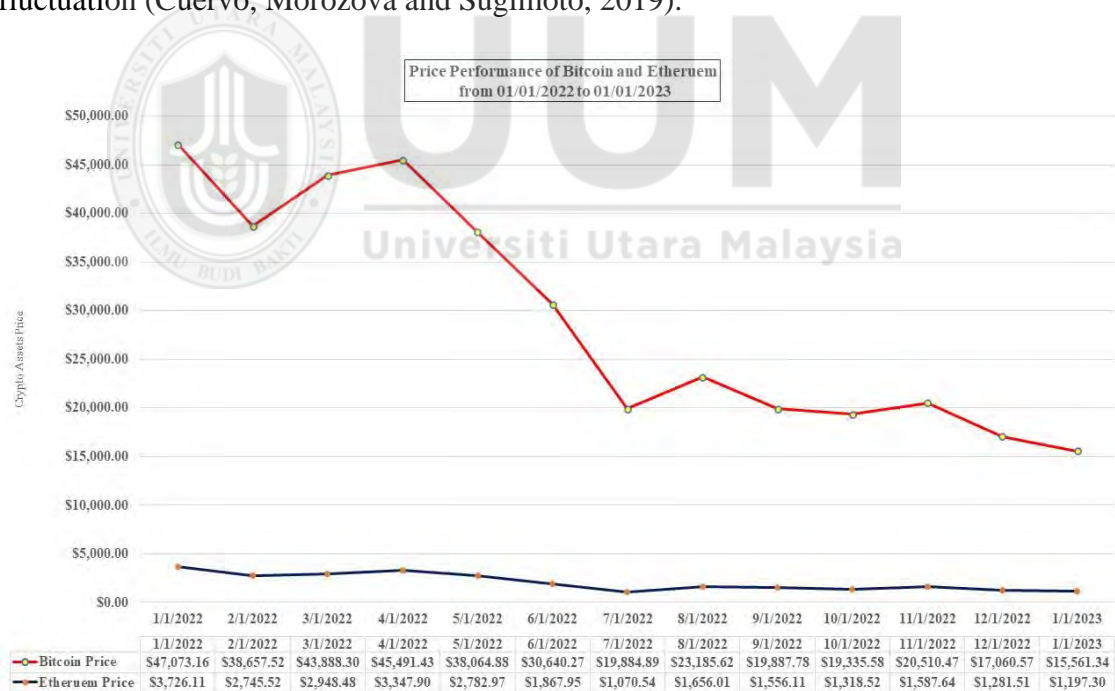


Figure 1.2
Price performance of Bitcoin and Ethereum from 01-01-2022 to 01-01-2023
 Sources: CoinDesk (2023)

For instance, Figure 1.2 indicates the price performance of Bitcoin and Ethereum fluctuated throughout the year from January 2022 to January 2023 (CoinDesk, 2023).

The price of Bitcoin in early January 2022 was high at USD \$47073.16 but then dropped in early February 2022 to USD \$38657.52. The Bitcoin price then increased in March and April 2022 to USD \$43,888.30 and USD \$ \$45,491.43. Again, the Bitcoin price de-escalated constantly in May 2022 at USD \$ 38064.88 and drastically dropped in July 2022 to USD \$19884.89 (CoinDesk, 2023).

Besides, cases such as *Robert Ong Thien Cheng v Luno Pte Ltd & Bitx Malaysia Sdn Bhd [2020] 1 LNS 2194* had highlighted potential legal disputes stemming from valuation uncertainties. In this particular case, the dispute is over whether the Appellant should return the Bitcoin that the Respondent mistakenly transferred to him in the Bitcoin units or the equivalent price in Ringgit Malaysia. In view of the above case mentioned, another dispute may arise in future if there is no specific law on crypto assets inheritance that governs its distribution in the form of crypto assets unit or equivalent price to Ringgit Malaysia.

Notwithstanding, crypto estate planning remained important and must be taken into consideration in inheritance planning, and it should be noted that crypto assets is distinguished from other property such as land, house, and money in the bank, where it has no ownership proof in any registry (Saleh et al., 2020). It also requires credential information whenever the owner wants to make any transaction using crypto assets (Carlson, Ammori, Dixon, Lomazzo, Liu, Moy, Serrano, Simpson & Gomez De La Villa, 2021; Hossain, 2021; Beyer & Nipp, 2019). Saleh et al. (2020) highlighted that crypto assets inheritance is technically impossible to be done to the legal heirs if the credential information does not exist, even if there is court's decision and owner's consent. McKinnon (2011) mentioned that crypto assets are apt to disappear if the owner fails to make the provision for its inheritance and will be vanished due to

inaccessibility once he dies (Brucker-Kley, Keller, Kurt, Pedron & Schweizer, 2013). Thus, the credential information that is required for crypto assets access must be effectively addressed with appropriate protocol to permit fiduciaries to access crypto assets (Genders & Steen, 2017).

Apart from that, crypto assets are often inaccessible when the owner dies due to crypto assets service providers do not allow third party to access the assets since it is subject to the contract of the service provider (Bruker-Kley et al., 2013). Klasicek and Vucemilovic (2019) argued that the crypto assets inheritability distinct from other properties in terms of the intangible nature of crypto assets, password protection, and storage of some crypto assets at the service provider's facilities with licenses expiring upon death (Banta, 2019; Cahn, 2014; Lopez, 2016).

It is worth highlighting the economic impacts resulting from frozen estates in Malaysia remaining unsolved as the number of frozen estates constantly increasing from RM70 billion in 2020 (Harian Metro, 2020) to RM90 billion in 2021 as reported by Amanah Raya Berhad (Utusan Malaysia, 2021). Further, RM11 billions of unclaimed money was reported in 2023 by the Ministry of Finance (The Star, 2023).

In view of the legal and Shariah position of crypto assets in Malaysia, considering its features and ecosystem and lastly as an initiative to ensure the continuity of the crypto assets with fair and just to the legal heirs according to Shariah, the researcher highlighted the several issues surrounding crypto assets Islamic estate planning in the next section to implicate the urgency to employ this study.

1.2 Problem Statement

The inheritance of crypto assets under Islamic law in Malaysia faces both major and minor challenges due to regulatory, legal, and technological gaps. The major issue stems from the inconsistencies in Shariah perspectives on crypto assets, which contribute to delays in estate administration. The absence of standardised fatwas and a unified stance on their permissibility leads to uncertainty in inheritance matters. While the Securities Commission Malaysia's Shariah Advisory Council (SAC SC) has classified crypto assets as permissible digital assets (*mal*), it has not addressed their implications for inheritance (Zul Kepli & Bustami, 2021). This regulatory gap risks unregulated asset transfers that may not align with Shariah principles, posing significant challenges to the application of Islamic inheritance law (*faraid*).

The second major issue is the inadequacy of the existing legal framework governing the inheritance of crypto assets. Malaysia's minimalist regulatory approach does not sufficiently address fiduciary access, valuation, and the legal status of crypto assets stored in personal digital wallets. The volatility of crypto assets further complicates estate administration, making it difficult to determine the estate's monetary jurisdiction. Legal disputes, such as *Robert Ong Thien Cheng v Luno Pte Ltd & Bitx Malaysia Sdn Bhd* [2020] 1 LNS 2194, highlight the valuation uncertainties in estate distribution, particularly in determining whether crypto assets should be inherited as units or converted into fiat currency.

Several minor but crucial issues also exacerbate the problem. One such issue is the lack of fiduciary access mechanisms. Unlike conventional assets, crypto assets require private key credentials, which are often lost upon the owner's death, leading to irreversible asset loss. The anonymity of crypto transactions and the lack of legal

provisions for fiduciary access further increase this risk. Existing estate planning mechanisms, such as wills and trusts, may not be viable due to the public nature of probate records, which could expose sensitive credential information (Saleh et al., 2020).

Another minor yet significant issue is the restrictive contractual terms imposed by crypto asset service providers, which often prohibit third-party access to the deceased's holdings (Bruker-Kley et al., 2013). This, combined with the absence of clear legislative guidelines on digital asset inheritance, leaves beneficiaries without legal recourse. Additionally, the lack of ownership proof in official registries renders court orders ineffective if private keys are inaccessible.

Given these pressing concerns, there is an urgent need to establish a standardised Shariah-compliant legal framework to address the inheritance, access, valuation, and security challenges of crypto assets. Failure to do so risks undermining the integrity of Islamic inheritance law and depriving rightful beneficiaries of their due assets. In view of the highlighted above problems, the researcher urged that the study needs to be conducted to fulfil these loopholes by enhancing or developing the legal framework of Islamic estate planning for crypto assets.

1.3 Research Questions

Based on the above-mentioned issues, the researcher developed the following research questions (RQ) to guide this study: -

RQ 1 - To what extent crypto assets are accepted as *mal* from the Shariah perspective?

RQ 2 - Is the existing legal framework in Malaysia adequate to regulate Islamic estate planning of crypto assets?

RQ 3 - What are the Shariah issues related to Islamic estate planning of crypto assets in Malaysia?

RQ 4 - What are the legal issues related to Islamic estate planning of crypto assets in Malaysia?

RQ 5 - What would be the enhanced legal framework that can resolve the limitations of the existing Islamic estate planning of crypto assets in Malaysia?

1.4 Research Objectives

The aim of this qualitative study was to conduct an in-depth exploration on the legal framework for Islamic estate planning of crypto assets in Malaysia. The specific research objectives (RO) of this study are presented by the researcher as follows:

RO 1 - To analyse the acceptance of crypto assets as *mal* from the Shariah perspective.

RO 2 - To examine adequacy of existing legal framework in regulating Islamic estate planning of crypto assets in Malaysia.

RO 3 - To investigate the Shariah issues related to Islamic estate planning of crypto assets in Malaysia.

RO 4 - To investigate the legal issues related to Islamic estate planning of crypto assets in Malaysia.

RO 5 - To recommend an enhanced Shariah and legal framework of Islamic estate planning of crypto assets in Malaysia.

1.5 Significance of Study

The finding of this study can assist the relevant policy makers or regulators in developing the legal framework for crypto assets estate planning since the crypto assets regulation in Malaysia is still at infant level (Ehret & Hammond, 2021). It also can be used as reference and guidance to Malaysian Muslims crypto assets owners, their legal heirs and beneficiaries, the lawyers, the regulators related to estate administration in Malaysia. Further, an enhanced and comprehensive Shariah and legal framework of Islamic estate planning of crypto assets will contribute to curb the crypto assets from becoming part of frozen estates in Malaysia and the researcher expects the finding of this study to extend the literature on Islamic estate planning with the proliferation of crypto assets' owner in Malaysia (Sooi, 2022).

The significance of this study can be observed based on the benefits that specific groups gain, which in this case, the Muslims crypto assets owners, the estate planner, the lawyers, the policy makers, regulators, and academicians. This study presented the needs of Shariah and the legal framework of Islamic estate planning of crypto assets in Malaysia.

1.5.1 The Muslims crypto assets owner

The research offers a groundbreaking perspective on the importance of early and strategic planning for inheritance of crypto assets. It brings to light the unique risks and challenges associated with these digital assets, which differ significantly from traditional assets. By highlighting the need for proactive estate planning, this research provides a vital source for Muslim crypto assets owners, guiding them towards a systematic and secure inheritance method that is fully aligned with Shariah principles.

The findings will empower crypto assets owners to safeguard their wealth and ensure a seamless transfer to beneficiaries, reducing the risk of loss or dispute.

1.5.2 The legal practitioners

Given that the legal framework for crypto assets is still in its infancy, this research is crucial for legal practitioners including lawyers and judges. It identifies both Shariah and legal issues that may arise in the inheritance, administration, and distribution of crypto assets. The study's findings offer valuable insights for practitioners dealing with disputes or navigating the complexities of crypto assets inheritance. By shedding light on the current gaps in the law, particularly in estate administration, this research provides a robust foundation for lawyers to develop arguments in court, thereby shaping the evolving landscape of crypto assets law in Malaysia.

1.5.3 The policy makers

In the rapidly evolving world of digital assets, the need for a robust legal framework is critical. This study addresses key gaps in Malaysia's existing laws concerning the inheritance of crypto assets, offering invaluable insight for policy makers and regulators. By identifying potential risks, such as the loss of crypto assets due to inadequate legal protections, this research emphasises the urgency of developing specific laws to regulate crypto assets inheritance. The findings will guide institutions like the Securities Commission of Malaysia (SC), Bank Negara Malaysia (BNM), and the state fatwa committees in creating and strengthening legal and regulatory frameworks that safeguard both citizens and national wealth.

1.5.4 The estate planner

The study's findings will significantly enhance the Shariah and legal framework surrounding Islamic estate planning for crypto assets in Malaysia. By offering estate planners a clear and comprehensive guide to integrate these digital assets into their advisory services. By addressing the complexities and legal challenges of crypto assets, this research will enable estate planners to better advise their clients on managing and transferring these assets in accordance with Shariah law. Additionally, it will provide essential knowledge on the characteristics of crypto assets, ensuring that estate planners are well-equipped to handle the rising demand for digital asset estate planning.

1.5.5 The DAX providers

This research also holds significant value for DAX providers, as it highlights the critical role, they play in ensuring the secure management and transfer of crypto assets, particularly in the context of inheritance. The findings offer insights into the Shariah and legal compliant practices that DAX providers must adopt to align with the Islamic estate planning principles. This research equips DAX providers with the knowledge needed to enhance their services by addressing key concerns such as safeguarding user assets, facilitating the transfer of crypto assets to the rightful heirs, and mitigating risks of unauthorised access. Additionally, the research highlighted the importance of compliance with regulatory frameworks, which help DAX providers gain trust and legitimacy among Muslims users, thereby fostering greater confidence in digital asset transitions.

1.5.6 The academics

This research significantly contributes to the academic discourse of Islamic estate planning, especially in the context of crypto assets. By exploring the intersection of Shariah law and digital assets, this study extends the existing body of knowledge in Islamic finance and law, addressing critical gaps in the literature. The findings will stimulate further scholarly debate on the classification and permissibility of crypto assets, while also providing a new perspective on the development of Shariah and legal framework for their inheritance. Academics specialising in Islamic law, economics, and finance will find this research a valuable source, offering a new dimension in the study of Islamic estate planning in the digital age.

1.6 Scope of the Study

In this research, the researcher focuses on qualitative socio-legal research on the Shariah and legal framework governing Islamic estate planning for crypto assets in Malaysia. It specifically addresses the needs of Muslims crypto assets owners and excludes the estate planning concerns on non-Muslims individuals. The discussion on the compliance of crypto assets with Shariah law is strictly based on rulings issued by Islamic authorities in Malaysia. Therefore, conventional estate planning for non-Muslim crypto assets owners falls outside the scope of this research.

Additionally, the study is limited to crypto assets issued by registered and licensed DAX providers in Malaysia. As mentioned earlier, as of now, there are six such providers, namely Luno Malaysia Sdn Bhd, MX Global Sdn Bhd, Sinegy DAX Sdn Bhd, Tokenize Technology (M) Sdn Bhd, HATA Digital Sdn Bhd, and Torum International Sdn Bhd (Securities Commission Malaysia, 2024). Crypto assets issued

privately or through non-registered platforms with SC are not covered in this research since it is unlicensed and to avoid any unethical issues.

In terms of methodology of the study, the researchers employed qualitative socio-legal research design following Banakar's (2019) guidelines. The data was gathered through semi-structured interviews using purposive sampling, targeting key stakeholders in Islamic estate planning for crypto assets – such as Shariah experts, fatwa committee, lawyers, judges, estate planners and the DAX providers in Malaysia. The data will be analysed using general inductive, content, and thematic analysis techniques.

1.7 Definition of Key Terms

This section explains the related operational definitions of key terms used in this study. The purpose of establishing the operational definitions of key terms is to provide a clear and better understanding of the related terms used in a study.

1.7.1 Beneficiaries

The beneficiaries are those who benefit under a will.

1.7.2 The legal heirs

The legal heirs are those who inherit the deceased estate according to the Islamic inheritance law.

1.7.3 Crypto assets

Crypto assets refer to digital currency or digital token issued by the DAX, which is registered with the Securities Commission of Malaysia.

1.7.4 Owner

The owner is the legal owner of the crypto assets at the time of his death.

1.7.5 Digital asset exchange (DAX)

DAX provider refers to the DAX that has been registered and licensed with the SC.

1.8 The Organisation of the Study

This section provides an overview of the organisation of the thesis. The overview of each chapter is presented as follows:

Chapter One – Introduction

This provides an overview of the study by introducing the research domain and other areas of concern. The problem statement of this study is highlighted in this study and eventually presents the related research question and the research objectives that are aimed at being achieved in this study. This chapter also mentions the significance of the study to relevant key players in crypto Islamic estate planning and concludes with a summary of the remaining chapters in this study.

Chapter Two – Literature review

This chapter reviews the underpinning theory of this study which is the theory of asset (*mal*) based on the opinions of Islamic jurists comprises classic and contemporary Islamic jurists. The discussion includes the definition of assets, their classifications, and the rights of property in terms of heritable and non-inheritable. The chapter also reviews the evolution of crypto assets as digital assets and the opinion of contemporary Islamic scholars on crypto assets particularly. This chapter then reviews the legal framework of crypto assets in Malaysia. The discussion of estate administration in Malaysia will be

included. Crypto assets estate planning across the world also will be reviewed in this chapter. Finally, this chapter also reviews *maqasid shariah* in estate planning.

Chapter Three – Methodology

This chapter designates the methodology approach and overall research design in this study. A qualitative socio legal approach was applied in the study to answer the research objectives. In addition, the data collection of this study primarily on semi-structured interview and library-based search. Besides, all collected data was analysed using inductive, content, and thematic approach to derive the finding of this study. The validity and reliability of the collected data are also explained.

Chapter Four – Result and Analysis

This chapter presents the findings and analysis derived from the research on the Shariah and legal framework of Islamic estate planning for crypto assets in Malaysia. It aims to address the research questions by exploring various themes related to the acceptance, compliance, and legal complexities surrounding crypto assets from both legal perspectives. The findings also end with recommendations for enhancing both the Shariah and legal frameworks in Malaysia. The chapter suggests the need for specific regulation addressing the inheritance of crypto assets in Malaysia to ensure compliance with Islamic law and safeguard the interests of Muslims crypto assets owners.

Chapter Five – Conclusion and Recommendations

In this chapter, the researcher synthesises the key findings of the research on the Shariah and legal framework of Islamic estate planning for crypto assets in Malaysia. The chapter reveals significant gaps in the current legal framework, alongside inconsistencies in fatwas regarding the permissibility of crypto assets, which pose

challenges for Muslim asset owners. To address these issues, the researcher recommends the development of clear regulatory frameworks, the standardisation of fatwas, and the implementation of educational initiatives aimed at enhancing awareness and understanding among stakeholders. The implications of this research are also highlighted in this chapter.



CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

The divergence of crypto assets as new kinds of assets has led to the debate among the Islamic scholars. With respect to the highlighted issues of crypto assets inheritance, this study discusses and explains the underpinning theory of this study that is theory of asset (hereinafter referred to as “*mal*”) from the perspective of classic and contemporary Islamic jurists from the definition of *mal*, its classifications, and the rights of property in terms of its heredity. This chapter also highlighted the evolution of *mal* towards digital assets such as crypto assets by addressing the views of Islamic contemporary scholars on crypto assets. The regulatory framework of crypto assets in Malaysia is reviewed in this chapter as well as the existing estate administration in the country. The review continued with underlining the existing crypto assets estate planning and *maqasid shariah* in estate planning.

2.2 Theory of asset (*mal*) in Islam

In Islam, asset (*mal*) is recognised as an important aspect of the individual and community life (Haron, 2010). The encouragement to acquire and use assets with certain limitations has been mentioned in Al-Quran. Allah orders His vicegerents to acquire and use assets righteously and prohibited them to earn assets 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” (Surah An-Nisa:29).

The protection and usage of assets to avoid misuse and waste also have been emphasised as Allah says:

“And eat and drink but waste not extravagance, certainly He (Allah) likes not al-musfirun (those who waste by extravagance)” (Surah al- ‘Araf:31)

The Prophet (pbuh) also says:

“Nobody has ever eaten a better meal than that which one has earned by working with one’s own hands” (Sahih Bukhari, Book 34, Number 286).

In Al-Quran, the term *mal* has been written numerous times and according to Karim (2009), the term *mal* or *amwal* in its plural in Arabic language is mentioned 86 times in Al-Quran. For instance, the word *al-mal* has been mentioned in Al-Quran as one of the embellishments in this world as Allah says:

“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.” (Surah Al-Kahfi:46)

The word *mal* mentioned in Al-Quran can be interpreted in various meanings that suit the context of the verse. It does not have specific and fixed definition in Al-Quran nor *Sunnah* although it has been mentioned uncountable (Islam, 1999). Allah has given permission to His vicegerents to acquire and utilise *mal* in accordance with Shariah as Allah says:

“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.” (Surah Muzammil: 20).

Mal is crucial in human dealing and affairs as it plays the 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 (denoted as *ma’qud*

alaih) (Engku Ali, 2003). The presumption of permissibility is the general rule unless prohibition is applied in the Islamic law of transaction. Where anything in this world can be considered as *mal* unless there is specific prohibition mentioned in Al-Quran or *Sunnah* or *ijma'* or *ijtihad* of Islamic jurists based on the Islamic jurisprudence methods. Neither in Al-Quran or *Sunnah* of Prophet (pbuh) explicitly explain the theory of *mal* which opens for discussion of the Islamic jurists to interpret it in different views, and they are not mutually exclusive (Islam, 1999; Engku Ali, 2003).

Literally, the word *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 by human beings (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*). In other words, anything that cannot be possessed by a man cannot be considered as *mal* (Al-Zuhaili, 1996). According to Ibn Mandzur (1963), 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 but rather expanded to people's use and custom (Islam, 1999).

The definition of *mal* has been discussed by the classic and contemporary Islamic jurists that denotes variance legal definition due to the different views in describing *mal* in as aspects of things whether it is limited to corporeal matters or including usufruct and rights (Engku Ali, 2010). The majority of the classical Hanafi jurists were in favour of the first view in defining *mal* as limited to corporeal matters. They view *mal* as something that humans naturally love to and can be stored and used at time of necessity

or which humans tend to, either it can be used or otherwise, or something that can be owned and benefited in a normal situation (Abu Jaib, 1988; Al-Husain, 1995). Islam (1999) summarised the prevalent definition of *mal* according to the classic Hanafi jurists such the following term: (i) *mal* is anything that appeals to human nature, and which is capable of being stored or hoarded for the time of need (Ibn Abidin, 1992); (ii) It is anything that exists, to which human nature inclines, and to which prohibition and rule of expenditure is applied (Ibn Abidin, 1992); (iii) It is anything that can be stored with intention of utilising for beneficial use at time of necessity; (iv) It is anything that has been designated for the benefit of people, and with respect to which scarceness and stinginess apply (Al-Majalla, n.d).

The word *mal* is described in Article 126 of Al-Majalla (n.d), as a thing that is naturally desired by man, and can be stored for times of necessity. It is also made up of both movable and immovable *mal*. Further, Article 127 of Al-Majalla (n.d) states that for something to be deemed as a *mal*, it must be acquired and have benefits that can be obtained lawfully. Engku Ali (2010) found that according to Hanafi jurists, although usufruct can be owned, it is not property in its own right as provided in Article 125 of Al-Majalla (n.d). Usufruct according to Hanafi jurists can be owned, yet they are not *mal* because they cannot be made specific subjects to dealings and transactions (Ibn Abidin, 1992).

The view of the majority jurists on definition of *mal* is in favour of the second view which is not limited to corporeal things but usufruct and rights. 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 or resulting from material things. The absence of those

outcomes will affect human demand (Al-Zuhaili, 1996). According to Maliki jurist who defined *mal* as anything which ownership is conferring, the ownership is absolute once he assumes it and excludes others from interference (Al-Syatibi, 1996). The ownership is crucial elements of subject matter according to Maliki jurists (Islam, 1999).

Shafi'e jurist had made significant arguments in defining *mal* when Al-Zarkshi mentioned that *mal* is what provides benefit, and it can be physical objects or usufructs. Al-Suyuti (1983) stated that Imam Al-Shafi's had mentioned that the terminology of *mal* should not be construed except to what has value with which is exchangeable; and the destructor of it would be liable to pay compensation; and what the people would not usually throw away or disown. Further, Imam Al-Shafi'e highlighted two points in considering the valued *mal*, first, anything that is evaluated as effectively giving rise to benefit, and second, anything that appears to have high price at a high rate can be considered as financially valuable *mal* (Al-Suyuti, 1983).

Meanwhile, Hanbali jurists referred to *mal* as anything which there exists a lawfully benefit without resulting from pressing need or necessity (Ibnu Qudamah, 2013). Al-Buhuti (1983) explained that something which may exist benefits but is legally prohibited is excluded from the status of *mal* except in the dire and necessity situation where it can be permissible with certain parameters. Syabir (2004) concluded that the features of *mal* based on the opinion of Hanafi jurists are as follows: (i) Something that benefits according to custom, which humans tend to do by nature and not causing harm; (ii) Something that has a material value among humans that can bring about the occurrence of transaction, use and shortages; (iii) Something is '*ayn* that exists in real terms which can be stored until needed. In contrast, the majority of Islamic jurists viewed that the features of *mal* should be (i) Something that has financial value among

human beings; (ii) Something that has certain benefits; (iii) Something that can be benefitted according to Shariah in a normal circumstance not during time of necessity (Syabir (2004).

From the above interpretations, 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*) (Al-Zuhaili, 1996; Haron, 2010), where *mal mutaqawwam* is something that is in someone's possession which can be utilised according to Shariah in normal circumstances. In contrast, *mal gayr mutaqawwam* is an asset which does not belong to anyone like bird in the air, fish in the sea, or something according to custom do not have any value. It also can be anything that is illegal according to Shariah such as pig and liquor (A-Zuhaili, 1996). Meanwhile, the majority of Islamic jurists took a different view by not categorising *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 that has value according to the custom. Hence, in theory of *mal*, an item can be considered as *mal* if it is fulfilling several conditions in which it must be something that can be possessed by a person, transferable, usable, valuable, storable, and obviously needs to be Shariah compliant (Rosele, Muneem, Abdullah, Rahman, Sukor & Ali, 2022).

Nevertheless, contemporary Hanafi jurists attempted 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 recognised as having a useful purpose (Musa, 1996). The non-tangible things such as rights and benefits as valuable according to custom (*urf*), then can be considered as *mal* (Usmani, 2015). Rahmani (2010) explains that

everything can be considered as *mal* if it fulfils the following attributes: (i) it is permissible and lawful in Shariah, things that are illegal and prohibited according to Shariah are not considered as *mal*; (ii) It is capable of being owned and possessed; (iii) It is beneficial and useful; and (iv) it is automatically regarded as *mal* if the '*urf deemed* such a thing as *mal* (Rahmani, 2010).

In theory of *mal*, among the underlying rights attached in the property is the inheritance rights (Uddin, 2019). Nevertheless, not all estate can be inherited by the legal heirs upon the death of the owner. This is usually the case when the estate is considered to be heritable assets after deducting the expenditures such as funeral expenses, the owner's debt including dower of his widow; maximum of one-third for will (if the deceased leaves any) and the personal wages paid by the deceased owner before his death (Uddin, 2019).

Hence, the above literatures highlight the different views on the definition and features of *mal* that may affect in considering whether crypto assets as a *mal* according to Shariah since it is fully digital and has no physical features. Besides, if it is as *mal*, then elaboration on its inheritance must be further deliberated as mentioned by Mahomed and Ramadili (2017).

2.3 Crypto assets as digital assets

Historically, the barter system, which entails exchanging goods or services for other goods or services, used to conduct transactions prior to the invention of money. The system is straightforward and simple to implement, but in practice, it is difficult and complicated because it necessitates the coincidence of wants and the division of exchange goods for the demand for money to materialise (Ogachi, Mugambi, Bares & Zeman, 2021).

As a result, the production of money is to address issues with the barter system. People typically prefer anything that can be regarded as money because of trust and assume that the other party will do the same in exchange for goods and services (Ogachi et al., 2021). The money has three (3) primary uses: (i) as an accounting unit; (ii) as a store of value; and (iii) as a medium of exchange (Jevons, 2017).

Commodities, metallic money, and fiat money are just a few of the diverse types of money that have been used throughout human history (VasantKumar, 2019). Commodities, however, presented some challenges, including transportation costs and difficulties, storage costs, and variations in the quality of money, making them particularly attractive for debtors to use low-quality commodities to settle their obligations, which had unfavourable effects for creditors (Ogachi et al., 2021). Metals, which are more uniform, long-lasting, and divisible than other commodities like gold and silver, eventually came to predominate as money. The coinage system allowed for the standardisation and certification of metal currency. Additionally, they allowed the sovereign power to mint coins that were worth less intrinsically than their face value or nominal value (Ogachi et al., 2021).

A physical token that could be redeemed for goods of the same species served as the representative money for the money that was backed by the commodities. Often, this token was printed on paper. Nevertheless, the currency is no longer in use since the gold standard was dropped at the start of World War I (Menger, 1892). Cash refers to fiat money, which includes metal coins and banknotes. It has legal tender status, which means that a government decision determines its value. Fiat money was created with no intrinsic value and was not redeemable. However, since most transactions now take

place electronically, money has turned into scriptural (Da Cunha, Melo & Sebastião, 2017).

Money's development is still ongoing. Utilising the recent wave of financial technology (fintech) advancements, a number of new digital initiatives have begun to challenge the traditional institutional constraints of money (Da Cunha et al. 2017; Peneder, 2021). An important development in the immediate aftermath of the 2008 monetary crisis was the introduction of crypto assets based on blockchain technology. This innovation creates the first peer-to-peer electronic cash system that functions without the intermediary of any financial organisation, taking advantage of the new ICTs' tremendous functional growth over the past few decades (Peneder, 2021). Simply put, cryptocurrencies have four key characteristics: (i) decentralised online money that is free from government and intermediary control; (ii) the use of blockchain technology to prevent double spending; (iii) the ability for participants in crypto assets transactions to remain anonymous; and (iv) the creation of new coins using a proof-of-work system akin to Hashcash (Shrivastava & Sharma, 2020; Zul Kepli & Shahul Ikram, 2020). Intense legal debate over the creation of crypto assets has resulted in a variety of regulations around the world (Zul Kepli & Shahul Ikram, 2020).

In contrast to other distributed ledger technologies (DLTs), Berg, Davidson and Potts (2019) assert that Bitcoin automates trust with blockchain and distributes it. The three (3) functions of money are theoretically fulfilled by Bitcoin. Although its money functions are significantly limited in practice because of its extremely unstable exchange rate in comparison to other currencies, a lot of individuals think of Bitcoin as a speculative investment rather than usable currency (Weber, 2018).

Zul Kepli and Shahul Ikram (2020) mentioned that in Malaysian context, crypto assets can be defined as a type of digital assets – anything valuable that exists in digital format and comes with the right to use it- but not being used as currency or money. Both also referred to Digital Assets Guideline that issued by SC pursuant to S.377 of Capital Markets and Services Act 2007 (CMSA 2007) which provides official definition of digital assets which refers collectively to digital currency and digital token that is prescribed as securities under the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019. Zul Kepli and Shahul Ikram (2020) and Ismail Nawang and Abd Ghani (2021) stated the interpretation and technical definition of crypto assets in Malaysia as digital currency and digital token as stated paragraph 2 of the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019.

Zul Kepli and Shahul Ikram (2020) highlighted that crypto assets are not an e-wallet, online banking, a share, or used as currency or medium of exchange in Malaysia. Bank Negara Malaysia (2021) had compared crypto assets with fiat money, and e-money as can be seen in Table 2.1.

Table 2.1

Comparison on fiat money, e-money, and digital assets

Features	Issued and backed by a sovereign body	Privately issued and backed by assets		Privately issued and not backed by assets
	Fiat Money	Electronic Money (E-money)	Digital Asset	
Instrument	1. Bank notes and coins 2. Central Bank Digital Currency (CBDC)	e.g., Boost, Grab Pay, Setel, Shopee Pay, and Touch 'n Go	Stablecoin (e.g. Tether, USD Coin)	1. Exchange token. (e.g. Bitcoin, Ethereum) 2. Security token 3. Utility token.
Store of value	Value is backed by a sovereign body (e.g., Government, central bank)	Value is backed by fiat currency	Value is backed by assets (e.g., fiat currency, commodity)	No formal backing for its value and subject to market forces
Medium of Exchange	1. Widely used as a means of payment. 2. Some countries are exploring the feasibility of issuing CBDC (digital form of fiat currency)	Widely used as a means of payment	May potentially be used as a means of payment subject to effectiveness of value stabilisation mechanism	Not widely used as a means of payment due to various limitations (e.g., high price volatility, vulnerability to cyber threats, scalability issue)
Unit of Account	Widely used for pricing of goods and services.	Denominated in fiat currency	May be denominated in fiat currency (for stablecoins backed by fiat currency)	Not widely used for pricing of goods and services

Sources: Bank Negara Malaysia (2021)

According to Table 2.1, Bank Negara Malaysia (2021) provided a comparative analysis of crypto assets, fiat money, and e-money based on their key features. Fiat money, such as banknotes, coins, and Central Bank Digital Currency (CBDC), is issued and backed by a sovereign authority such as government or central bank, ensuring its stability as a store of value and its widespread use as medium of exchange or unit of account. E-money such as Boost or Grab Pay is privately issued but fully backed by a fiat currency, allowing it to function effectively as a medium of exchange while maintaining denomination in traditional currency. In contrast, crypto assets, which include stablecoins and digital assets instruments such as Bitcoin or Ethereum, are privately issued. Stablecoins are backed by assets like fiat currency or commodities, offering conditional stability for payments, while other digital assets instruments lack formal backing, making them highly volatile and less reliable as a store of value, medium of exchange or unit of account. The utility of crypto assets is largely subject to market forces (Bank Negara Malaysia, 2021).

According to *Muftic* (2016), the crypto assets' fundamental characteristics are as follows: (i) the system uses its own currency; (ii) Since there are no other parties involved in the transaction, there is a direct peer-to-peer logical relationship between the two transaction parties; (iii) User, account, and transaction anonymity are all features of the system; and (iv) no financial institution, regulatory agency, or governing body regarding finances has any control over the system. Hossain (2021) mentioned that decentralisation and anonymity are the two key features of transactions based on digital currency. The blockchain provided a solution for establishing and transferring monetary unit digital property rights decentralised from a central authority.

Carlson, Ammori, Dixon, Lomazzo, Liu, Moy, Serrano, Simpson and Gomez De La Villa (2021) stated that there are two (2) ways to obtain or own crypto assets: either through a third-party service, such as a crypto assets exchange, or by hosting it yourself. He also emphasised the distinctions between these two (2) methods of purchasing crypto assets, pointing out that setting up a wallet with an exchange operator is necessary if one wishes to purchase crypto assets through a third-party service such as an exchange operator. This wallet must include details like the user's name and identification registration number. Clients may have limited or no recourse if the exchange operator is compromised. The person who preferred to mine their own crypto assets instead of using a third party's hosting server is another (Carlson et al., 2021). The crypto assets can also be obtained by working for money or receiving payment, by participating in airdrops, in which tokens and coins are distributed at random to the wallet, or by using faucets, which allow users to obtain small amounts of crypto assets for free (Carlson et al., 2021).

However, Beyer and Nipp (2019) and Beyer (2019) highlighted that despite the existence of crypto assets exchanges that facilitate the exchange of crypto assets, many crypto assets owners are unaware of how they operate. According to Carlson et al. (2021), Hossain (2021), Beyer, Nipp (2019) and Beyer (2019), there are four (4) critical steps in the operation of crypto assets. First, create a crypto assets wallet, which can be stored both online and offline and contains both the private and public keys for the currency. Second, transacting in crypto assets both ways. The private key's role in this step is crucial. The private key is essential in this step because it is used to send and retrieve crypto assets crypto assets. The private key serves as a transaction's digital signature, validating and authenticating it. While receiving is being processed, the public key serves as a blockchain network address that is used to validate a digital

signature or the sender's identity. Third, mining and transaction verification for cryptocurrencies. The nodes will validate and verify the transaction through the mining process once the sender has propagated it throughout the blockchain network. Fourth, transaction recording and tracking. When a transaction is verified by a node, it is permanently and irreversibly recorded in the blockchain and cannot be changed. The wallet allows you to track all the transactions which are visible publicly done using the private key (Carlson et al., 2021; Hossain, 2021; Beyer & Nipp, 2019 and Beyer, 2019).

From the above literature, crypto assets are indeed different from physical assets, there is gap that needs to be considered in the above literature particularly on the ways to inherit crypto assets after the demise of the owner since it is digital assets that requires private key to allow the transfer (Saleh et al., 2020).

2.4 Crypto assets in Islamic perspective

The Shariah scholars define money as something that satisfies the following attributes: (i) medium of exchange; (ii) unit of account; and (iii) store of value (Usmani, 2015).

According to Shariah law, using money to make a profit or earn interest is forbidden. Instead, it is used as a medium of exchange. The only legal profit is that which results from the exchange of goods or services for cash or from the conversion of one currency into another. Ibn Qayyim (1973) explains that the creation of money is to enable the transactions of things, not because it is desired in and of itself. Money is different from commodities since it has no intrinsic use and purpose like commodities (Ibn Taymiyah, 1995).

Although Al-Quran does not explicitly define money, it does explain how previous societies used gold (*dinar*) and silver (*dirham*), for instance, in *surah Al-Imran*, verse, and *surah Yusuf*, verse 20. Al-Mawardi, Abu-Ubayd, Al-Ghazali, Ibn Khaldun, and Al-

Maqrizi are among several traditional Islamic scholars who viewed money as dinars and dirhams (Yuneline, 2021). On the other hand, modern Islamic scholars categorise money into two (2) types, which are natural money and customary money (Abubakar, Ogunbado & Saidi, 2018). Natural money, such as *dinar* and *dirham*, is a category of currency with monetary value that is designed to be used as a medium of exchange. Contrarily, customary money is money made with the intention of being used as a unit of account and a medium of exchange. Commodity money and fiat money are the two categories into which it can be divided. Despite the earlier reference to money that has intrinsic value and being usable for other things, it lacks intrinsic moneyness (*thamaniyyah*). The latter, on the other hand, alludes to government-issued paper money that has no inherent value or moneyness (*thamaniyyah*) (Abubakar, et al., 2018).

Crypto assets have attracted the attention of Shariah scholars, and they have conducted new research and adopted different opinions to decide on its legality from a Shariah perspective (Billah, 2019; Md Nor, Mirza, Bakri, Abdul Aziz, Md Razak, Abdul Hamid, Zainal & Zaharin, 2022). The opinions of Shariah scholars are divided into three: prohibition, permissibility, and abstaining (Mohd Hashim, Muhammad, Idris, Muhammad, Muhammad, Iskandar Mirza, Abojeid, Wan Husin & S. Ali, 2022).

Regarding the first viewpoint, this viewpoint was issued by the national fatwa council from nations including Egypt (*Dar al-Ifta' Al-Misriyyah*), Palestine (*Dar al-Ifta' Al-Palestiniyyah*), Kuwait, Turkey, and Indonesia (Billah, 2019; Che Rani & Salleh, 2019). Using crypto assets for leases, sales, and other transactions is not permitted, according to *Dar al-Ifta' Al-Misriyyah* (2018), for a variety of reasons, including (i) the crypto assets are not under the control of any centralised authority, (ii) it is against any nation's centralised financial system, (iii) it is a medium used to carry out illegal

activities while evading the law, (iv) the crypto assets are frequently used to finance terrorists, armed gangs, and the sale of drugs, (v) the transaction is entirely online, decentralised, and physical formless electronic currency trading, and (vi) there are unknown (*jahalah*)-related elements in this transaction (Dar al-Ifta' Al-Misriyyah, 2018; Che Rani & Salleh, 2019).

Other national fatwa councils have banned crypto assets because they are not accepted as payment methods by the public, they do not meet the requirements for currency, and transactions involving them involve gambling (*maysir*) and a degree of uncertainty (*gharar*) (Che Rani & Salleh, 2019; Md Nor et al., 2022). Due to their non-compliance with Shariah, their suitability for use in illegal activities like money laundering and gambling, as well as their high volatility, which poses a risk of danger (*khatar*) and harm (*darar*) to their users, the sale and purchase of crypto assets are classified as unknown sales (*bay' al-majhul*) and uncertain sales (*bay' al-gharar*) (Che Rani & Salleh, 2019; Md Nor et al., 2022).

The South African *Mufti* and other eminent authorities on Islamic finance, such as Mohd Daud Bakar, however, have expressed the second opinion, which claims that using crypto assets in Islam is permitted and compliant with Shariah (Che Rani & Salleh, 2019; Bakar 2019; Md Nor et al., 2022). It was universally agreed that crypto assets can be thought of as an asset because they have value (*mutaqawwim*) and price inherent to it (*mal*) (Che Rani & Salleh, 2019; Bakar 2019; Md Nor et al., 2022). They held the following arguments in support of the crypto assets' legality: (i) According to the legal principle that the original is permissible (*al-asl ibahah*), crypto assets are permissible unless there is a specific legal statement that forbids it. (ii) The public accepts crypto assets because of their value, making them assets (*mal mutaqawwim*).

(iii) There is no legal justification for the notion that money can only be used if it has been issued by the relevant authority, and despite the fact that crypto assets is not issued by governments, they are increasingly taking the place of physical money (Che Rani & Salleh, 2019; Bakar 2019; Md Nor et al., 2022).

The latter view argued that the fiat currency and stocks also experienced value fluctuations, refuting the previous view that against the use of crypto assets by arguing that such fluctuations should not affect their prices (*thamaniah*). They further argued that the ban on crypto assets should not be based on the lack of an authoritative body that can issue them, as the value of crypto assets depends on technology rather than an authoritative body, and this should not be the basis for their ban. This justification should not be used as a justification for the law to forbid crypto assets use (Bakar, 2019).

Moreover, Bakar (2019) disagreed with the idea of banning crypto assets on the grounds that they are not widely accepted as payment methods. He suggested evaluating this according to an Islamic jurisprudence methodology (*usul fiqh*) known as custom (*'uruf*), which states that any currency that is acknowledged and accepted by a community or a nation at an international level abides by shariah law. This is the methodology and technique that is most appropriate for use in the current debate.

With regards to this issue, the International Islamic Fiqh Academy (IIFA) (2019) issued Resolution 237 (8/24) on electronic currency, particularly on crypto assets, but postponed the Shariah ruling due to doubts about the precise definition of crypto assets,

including whether it is a good, a benefit, an investment asset, or digital asset (International Islamic Fiqh Academy, 2019; El Maknouzi & Sadok, 2021).

Hence, the different views from the Shariah perspective on legality of crypto is the biggest gap that drove the researcher to conduct this study. The Shariah views on crypto assets will determine the inheritability of crypto assets, and confusion against its legality according to Shariah will lead to delay in inheritance of crypto assets (Abdul Rahman and Hasan, 2020).

2.5 Crypto assets regulatory framework in Malaysia

Malaysian regulators are one of the 46 global regulators that legalise digital assets such as crypto assets (Ehret & Hammond, 2021). The rising demand in crypto assets had made the Malaysian regulators update the laws and regulations in relation to crypto assets and not be oblivious with the development of technology in the financial landscape (The Star, 2017).

Earlier in 2014, BNM issued the official statement that crypto assets such as Bitcoin were not recognised as legal tender in Malaysia, and they did not regulate the operation of Bitcoin and advised the public to be cautious with the risks associated with it (Bank Negara Malaysia, 2014). Nevertheless, in 2017, the BNM was taking the reins in digital technology in the financial sector by making positive moves in regulating the digital currencies in Malaysia. Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) – Digital Currencies (Sector 6) was officially issued in 2018 to regulate crypto assets in Malaysia. All digital exchanges either from Malaysia or foreign are subject to Malaysian Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) as mentioned in Paragraph 4.2 of Sector 6.

Hence, they are obliged to conduct Know Your Customer (KYC) to assess the risk of terrorism and money laundering in their business activities.

In providing clarity on the role of BNM in regulating the crypto assets in Malaysia, the BNM and SC had made a joint statement in 2018 that initial coin offering (ICO) issuers and DAX are required to strictly follow BNM laws and regulations if involved with the issuance or dealing of crypto assets involving payments and currency matters. Meanwhile, SC regulates the issuances of crypto assets via ICO and its trading via DAX in Malaysia to bring crypto assets within the remit of securities laws to promote fair and orderly trading and ensure investor protection (Bank Negara Malaysia, 2018). This joint statement reiterated in 2020 by BNM and SC as there is public confusion on the role of BNM and SC in regulating crypto assets in Malaysia (Bank Negara Malaysia, 2020a).

Later in 2019, the Malaysian government enacted Capital Market and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 to legally recognise the crypto assets under the purview of securities under the jurisdiction of Securities Commission Malaysia (SC). Where trading of crypto assets is only allowed through the registered digital asset exchanges DAX with SC. The DAX(s) are subject to all requirements stipulated in the Guidelines on Recognised Market (2015) (revised in 2023). Guidelines on Digital Assets were issued in 2020 to regulate the Initial Exchange Offering (IEO) provider and Digital Assets Custodian, which lays down all requirements that must be fulfilled accordingly (Securities Commission Malaysia, 2023). As to date, only six licensed and registered DAX in Malaysia, which are Luno Malaysia Sdn Bhd, MX Global Sdn Bhd, Sinegy DAX Sdn Bhd, Tokenize Technology

(M) Sdn Bhd, HATA Digital Sdn Bhd, and Torum International Sdn Bhd (Securities Commission Malaysia, 2024).

In view of the above literature, there is lacuna in the legal framework of crypto assets in Malaysia as the government has taken only a minimalist approach to regulate crypto assets in Malaysia (Zulhuda & Sayuti, 2017). The comprehensive framework is required, including the inheritance of crypto, which could fill the gap of this study.

2.6 Estate administration in Malaysia

The locus for estate administration in Malaysia is depending on the religious status of the deceased, the types of estate either movable or immovable, the value of the estate either small estate or non-small estate, and either the deceased dies testate or intestate (Halim, 2018). These factors shall determine the administrative bodies that are responsible for administering the deceased estate in Malaysia either the Civil High Court, the Estate Distribution Division, or the Public Trust Corporation (hereinafter referred as *Amanah Raya Berhad*) (Halim, 2018). The jurisdiction of the Shariah Court is limited to issuance of *faraid* certificate and any order on any issue of *hukm syara'* related to the deceased's estate as conferred in the List II, Schedule 9 of the Federal Constitution, which established the jurisdiction of Shariah court to handle the matters related to Islamic law in relation to inheritance and shall apply only to Muslim (Halim, 2018; Md Said, Drs Nasrul, Abdul Hak & Mohd Salim, 2021).

The *faraid* certificate serves as an official legal document, detailing the valuation of the estate and the identification of rightful Muslim heirs, based on *faraid* calculations. The estate's value plays a critical role in determining the jurisdiction of the Shariah courts. If the estate's total value does not exceed RM100,000, the matter falls under the jurisdiction of the Syariah Lower Court. Conversely, if the estate value exceeds

RM100,000, the case must be handled by the Syariah High Court. This distinction ensures that estate distribution follows the appropriate legal channels based on the size and complexity of the inheritance (Zul Kepli & Bustami, 2021).

The jurisdiction of the Estate Distribution Division in estate administration, which previously covered small estates consisting wholly or partly of immovable (movable and immovable) property not exceeding RM 2 million, was increased to RM5 million following the Small Estates (Distribution) (Amendment) Act 2022. This act amended the Small Estates (Distribution) Act 1955 in 2021 [Section 3(2)] and expanded the definition of a small estate to include both movable and immovable property (Drs Nasrul, Mohd Alam Shah, Mohd Yusof & Md Said, 2023). According to Ismail, Ibrahim, and Sapian (2023), heirs seeking to claim an estate must undergo a structured legal process, beginning with an online application and culminating in a hearing or trial session at the Estate Distribution Division. The study highlights that heirs must fulfil multiple procedural steps before their inheritance rights can be established. The initial stage involves submitting an online application through the designated agency's portal, using Form A for new applications or Form P for subsequent ones. Applicants are required to gather and submit all necessary documentation to the Estate Distribution Division within 21 days. Once the submission is processed, a Trial Notice is issued for a hearing under Form D or Form S applications, during which the court verifies the rightful heirs, confirms property ownership, and determines the distribution of the estate. Following this, the Distribution Order and Administrative Power of Attorney must be presented to the relevant agency for execution.

Ismail et al. (2023) also identify key challenges faced by heirs during this process. Many find the procedural requirements to be complex, time-consuming, and costly,

which may discourage them from pursuing their rightful claims. Furthermore, frozen assets often result from heirs' lack of awareness, limited time for estate management, and insufficient understanding of administrative and legal procedures (Ismail et al., 2023). Kamarudin and Muhamad (2018) emphasise that proper estate management and early inheritance planning are essential to ensuring a smooth transition of wealth and preventing disputes after the owner's passing.

In contrast, the jurisdiction of *Amanah Raya Berhad* in estate administration remained movable estate only that valued less than RM600,000 as provided under Section 17 of the Public Trust Corporation Act 1995. In addition to that the Civil High Court shall have the exclusive jurisdiction for issuing a Grant of Probate i.e., a grant under the seal of the court authorising the executor named therein to administer the estate of the testator, if the deceased has left a valid will and regardless of its monetary value stated in Section 24 (f) of the Courts Judicature Act 1964 (Ab. Aziz, Nooh, Khairi, Johari & Iskandar Mirza 2014). Mohd Alam Shah, Nasrul, Hak, and Halim (2022) highlight that Section 24(f) of the Courts of Judicature Act 1964 grants the Civil High Court exclusive jurisdiction over testate estates, regardless of their value. This jurisdiction allows the court to issue probates of wills and testaments within its territorial authority. However, in cases of intestate estates, the Civil High Court's jurisdiction is restricted based on the value and classification of assets. The court is responsible for issuing letters of representation, including the Grant of Probate for testate estates and letters of administration for intestate estates (Mohd Alam Shah et al., 2022).

Probate proceedings are further categorised into contentious and non-contentious cases. Order 72, Rule 1(2) of the Rules of Court 2012 defines contentious probate proceedings as legal disputes concerning the Grant of Probate, letters of administration, or the

validity of a will. These cases often involve allegations of fraud, forgery, dishonesty, or bad faith, necessitating extensive court hearings. Conversely, non-contentious probate proceedings are uncontested, making them simpler and faster to process. Contentious probate disputes typically arise in cases involving contested wills, misinterpretation of testamentary instructions, conflicts over applicable laws, disputes concerning the deceased's domicile, and challenges to the appointment of executors or administrators. Given the potential for legal complexities and prolonged litigation, probate proceedings adhere to strict procedural safeguards to prevent unexpected disputes during the trial process.

Halim, Salim, Hassan, Noor and Arshad (2015) have reviewed the procedure of the estate administration in Malaysia that despite of the organisational differences, except the Shariah court, the other administrative bodies are empowered to appoint the personal representative before the deceased's estate can be processed for its distribution to the legal heirs. Mohd Noor and Halim (2013) and Sidhu (1998) agreed that the personal representative is entrusted with the highest level of trust and honesty in fulfilling his legal obligation to administer the deceased's estate to the end of the process. This appointment of personal representative is governed by the Probate and Administration Act 1959 and once the letter of representation is issued, the personal representative may proceed with his duties as following: - (i) to uphold the rights and beneficial interest of the beneficiaries in the deceased's estate by collecting, transmitting, converting, and paying debt and liabilities of the deceased.; and (ii) to distribute the balance of the deceased estate to the legal beneficiaries (Halim, 2018).

Besides, the Probate and Administration Act 1959 also empowered the personal representation of certain powers while carrying his duties as follows: (i) power to

dispose of property as provided in Section 60 of the Probate and Administration Act 1959; (ii) Power to enter a contract as provided in Section 72 of the Probate and Administration Act 1959; (iii) Power to appropriate as provided in Section 74 of the Probate and Administration Act 1959; (iv) Power to appoint a trustee to a minor's property as provided in Section 75 of the Probate and Administration Act 1959; and (v) power to postpone distribution as provided in Section 77 of the Probate and Administration Act 1959.

One of the personal representative duties is transmitting the deceased estate and in exercising this duty, the personal representative needs to oblige the specific law or regulation that governs the asset. For instance, the process of transmission of land i.e., acquiring any estate, share and interest in land consequent to the death of the 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 (Halim, 2018).

Similarly, in the process of transmission of intangible estate such as share must comply with the laws and regulations provided in the Companies Act 2016 where in the event of the shareholder died, the personal representative will have a legal right to the shares of the deceased shareholder and his shares are transmitted to the personal representative by the operation of law as stated in Section 109 of the Companies Act 2017. This provision also provides that the transmission must be registered for the personal representative to be legally recognised as having title to the share Halim et al. (2015) highlighted that the rights of personal representative on the shares transmitted to him are limited to each company's memorandum and article of association. Hence, in

performing the duty as personal representative, specific law and regulation governing the kind of estate must be complied with.

While existing provisions provide clarity on the estate administration of shares and other regulated assets, significant gaps remain in the literature regarding the inheritance of digital assets, particularly crypto assets. Unlike shares, which follow a structured legal transmission process, crypto assets are not governed by any specific estate administration laws in Malaysia. The lack of statutory recognition of crypto assets as inheritable property raises critical legal and Shariah uncertainties, particularly in four key areas: legal recognition and jurisdictional gaps, regulatory and procedural uncertainties in estate administration, Shariah compliance and *faraid* distribution challenges, and the absence of a structured legal transmission mechanism. To address these gaps, this research aims to enhance the existing Islamic estate planning framework in Malaysia to ensure that crypto assets are effectively integrated into the inheritance process in compliance with both Shariah and legal requirements.

2.7 Islamic estate planning in Malaysia

Islamic estate planning in Malaysia is firmly rooted in Shariah principles, ensuring the orderly distribution of assets upon a Muslim's passing. The foundation of this framework is *faraid*, the Islamic inheritance system that governs estate division based on Quranic mandates, particularly in Surah *An-Nisa* (4:11, 4:12, and 4:176). This system guarantees equitable allocation among heirs, particularly women, marking a departure from pre-Islamic traditions (Hennigan & Powers, 2000). *Faraid* consists of three fundamental components: (a) the deceased, referring to the individual who has passed away, leaving behind an estate; (b) the heirs, who are the surviving individuals entitled to inherit the deceased's property; and (c) the estate or assets, encompassing all

movable, immovable, tangible, and intangible possessions owned by the deceased at the time of death (Mohd Salim, 2024). The validity of *faraid* depends on the confirmation of the deceased's death, the existence of rightful heirs under Islamic principles, and an estate free from unresolved debts and testamentary bequests exceeding one-third of the total assets.

To complement *faraid*, Islamic estate planning incorporates various legal instruments, including *wasiyyah* (Islamic wills), *hibah* (inter vivos gift), *hibah amanah* (trust gifts), and *wisayah* (Islamic entrustment). *Faraid* serves as the default mechanism for asset distribution and is enforced by the Syariah Court through the issuance of a *faraid* certificate (Kamarudin & Nor Muhammad, 2018). However, in situations where a testator wishes to allocate a portion of their estate to non-legal heirs, *wasiyyah* allows for this under specific conditions. Initially mandated in surah *Al-Baqarah* verse 180, its application was later repealed by surah *An-Nisa* verse 11 and 12 and reinforced by the *hadith*:

“Give one-third (in charity) and that is quite enough. To leave your heirs rich is better than to leave them poor, begging from people...” (Book 13, Hadith Number 3991).

Wasiyyah is structured around four fundamental pillars: *al-musi* (testator), *al-musa lahu* (beneficiary), *al-musa bihi* (bequeathed asset), and *sighah* (declaration of the will). The validity of *wasiyyah* requires that it does not exceed one-third of the estate unless approved by all heirs, the testator is of sound mind and acts voluntarily, the beneficiary is a valid recipient under Islamic law, and the asset is lawful and transferable. The declaration of *wasiyyah* can be made explicitly (*sarih*) or symbolically (*kinayah*), either verbally or in writing, with the latter often facilitated through agencies providing documentation services (Hussain & Sulaiman, 2013; Kamaruddin & Ahmad, 2012).

Jurisdiction over *wasiyyah* falls under the Ninth Schedule, List II, State List, of the Federal Constitution, granting states the authority to legislate on Islamic inheritance matters. Consequently, each state in Malaysia administers *wasiyyah* through its respective Islamic Religious Administration enactments or Syariah Court statutes. As of now, six states have enacted specific laws governing *wasiyyah*: Muslims Wills Enactment (Selangor) 1999 (No.4/1999), Muslims Wills Enactment (Negeri Sembilan) 2004 (No.5/2004), Muslims Wills Enactment (Negeri Melaka) 2005 (No.4/2005), Muslims Wills Enactment (Negeri Kelantan) 2009, Muslim Wills Enactment (Pahang) 2017, and Muslim Wills Enactment (Sabah) 2018 (Abdullah, Awang & Nor Muhamad (2021).

Hibah provides another mechanism for wealth distribution, allowing voluntary lifetime asset transfers. This practice is encouraged in Islam, as indicated in Surah An-Nisa (4:4): “*And give the women (on marriage) their dower as a free gift.*” The act of gifting is further reinforced by the *hadith* of Prophet Muhammad (PBUH): “*Give gifts and you will love one another*” (Book 30, Hadith 594). *Hibah* is a contract that grants property ownership to a designated recipient and must be executed voluntarily without coercion or expectation of reward (Muda, 2008). The asset, whether tangible or intangible, must be fully owned by the provider at the time of transfer and cannot include debt, usufruct, or interests. The contract takes effect during the provider’s lifetime and does not involve reprisal (*iwad*). Additionally, *hibah* requires four essential elements: the provider, recipient (who may be an heir or non-heir), asset, and expression, which includes an offer and acceptance to ensure validity (Laluddin et al., 2012).

In Malaysia, *hibah* has been developed further through *hibah amanah*, integrating trust elements that enable donors to retain certain rights over the gifted assets until specific

conditions are met. Under the *hibah* trust concept, a donor may designate a trustee to oversee the *hibah* asset until its final transfer, even if the recipient is legally competent, has reached maturity, and is capable of managing the asset independently. The key distinction between direct *hibah* and *hibah* trust (*hibah amanah*) lies in the transfer of ownership. In direct *hibah*, ownership is immediately conferred upon the donee, whereas in *hibah* trust, despite the asset being allocated to the donee, its management and control remain with the appointed trustee until the conditions set by the donor are fulfilled (Hassan & Mohamad Zaizi, 2020).

Wisayah, or guardianship, refers to the legal authority granted to an individual to manage the affairs of minors or legally incapacitated individuals (Abdullah et al., 2021). In Islam, guardianship is an essential mechanism to ensure the welfare and financial security of those unable to act on their own behalf. The concept of *wisayah* is supported by Quranic injunctions such as *Surah An-Nisa* verse 5 and 6, which prohibits giving wealth to those who are weak-minded but instead instructs their guardians to provide for them appropriately.

Abdullah et al. (2021) viewed that there are six primary differences between *wisayah* and *wasiyyah*: the fundamental principles and conditions, guardianship of minors, the one-third estate limit, bequests to heirs, legal enactments and statutes, and the management of secured assets. While both involve appointing a *wasi* (executor/trustee), the appointment of a *wasi* is an essential requirement for *wisayah*, whereas it is not a fundamental condition for *wasiyyah*. (Al-Bakri, 1997). In *wasiyyah*, the key pillars include the testator, beneficiary, bequeathed asset, and the offer and acceptance. For *wisayah*, the main elements consist of the testator, appointed trustee, the beneficiary under guardianship, and the offer and acceptance. *Wisayah* emphasises the appointment

of a guardian (*wasi*) as a mandatory condition, whereas *wasiyyah* does not require a beneficiary to be specified unless their competency is an issue. Recipients of *wisayah* often include minors, individuals with mental or physical disabilities, and others deemed legally incapable, such as children under 18, as per the Children's Act 2001 (Abdullah, et al., 2021).

Sarip and Mohd Jusoh (2017) found that the concept of trusteeship in the Employees Provident Fund (EPF) revealed that contributors' understanding of trustee appointments remains at a moderate level. The practice of naming a nominee or trustee aims to expedite the Islamic estate distribution process. However, if the community continues to perceive Islamic inheritance as the sole determining factor in estate management, it does not align with the comprehensive principles of Islamic estate planning. Similarly, Ab Rahman, Kalid and Jaafar (2019) highlighted that while Islamic inheritance law has been implemented in Malaysia for centuries, its administration still requires refinement, particularly in terms of management systems and procedural clarity, which remain ambiguous and often cause confusion.

A major issue in Islamic estate planning is the inconsistency of fatwas and jurisdictional conflicts, for instance, *hibah amanah* in Takaful policies and nomination arrangements in institutions such as EPF and Takaful operators. The *Muzakarah* of the Fatwa Committee of the National Council for Islamic Affairs issued a fatwa in 1978 stating that nomination by Muslims in financial institutions is invalid if the nominee is the direct beneficiary of the property. Instead, the nominee must act as a trustee (*wasi*) to distribute the assets in accordance with Shariah. However, in 2001, the Mufti of the Federal Territories issued another fatwa clarifying that nominees under EPF, Post Office Savings, banks, insurance, and cooperative societies must enforce the will or act

as trustees to distribute the money strictly according to *faraid* (Mohd Salim, Halim & Drs Nasrul, 2024). These discrepancies in fatwas have led to uncertainty in estate administration (Abdul Rahman & Hassan, 2020).

The legal complexity is further highlighted in cases such as *Latifah Mat Zin v Rosmawati Sharibun & Anor* [2007] 5 MLJ 101, where the Federal Court ruled that civil courts had jurisdiction over estate disputes involving trusts and nominee arrangements, despite their Islamic nature. Similarly, in *TM Feroze Khan & Ors v Meera Hussein TM Mohamed Mydin* (2006) 1 CLJ (Sya) 250, the court reaffirmed that civil law prevails in cases involving *hibah* trusts, irrespective of the religious background of the parties. These cases illustrate the challenges in determining the appropriate legal forum for *hibah amanah* disputes, leading to prolonged litigation and uncertainty in estate administration (Hassan & Mohamad Zaizi, 2020).

According to Hasan and Mohamad Zaizi (2020), the Shariah Advisory Council (SAC) of Bank Negara Malaysia is empowered to issue rulings on *hibah amanah* under the Central Bank of Malaysia Act 2009 (Act 701). Section 51 of the Act grants the SAC the authority to ascertain Islamic law for financial matters regulated by Bank Negara Malaysia, including Islamic estate planning instruments. This ensures that *hibah amanah* is structured in accordance with Shariah principles while remaining consistent with Malaysia's financial regulatory framework. The SAC's rulings provide guidance for financial institutions offering *hibah amanah*-based products, ensuring compliance with both Syariah and civil law requirements.

In view of the above, Islamic estate planning in Malaysia operates within a complex legal framework that integrates both Syariah and civil law. While mechanisms such as *faraid*, *wasiyyah*, *hibah*, and *wisayah* provide a structured approach to estate

distribution, jurisdictional conflicts and evolving asset types, such as crypto assets, present ongoing challenges.

2.8 Existing practice of crypto assets estate planning

In continuing the legacy of crypto assets to the next generation, the incorporation of specific plans needs to be started for managing crypto assets. The unique qualities and characteristics of crypto assets require special treatment regarding estate planning, as well as objective considerations related to the estate planning of the crypto assets accessed (Paulger, 2022). Similarly, Saleh et al. (2020) mentioned that due to the characteristics of crypto assets, inheritance of crypto assets could be done by traditional estate planning, technological or mixed methods. However, the law allows any individual to legally transfer his assets to any beneficiaries (except for some cases under Shariah rulings) that he intends to give by drafting the will or bequest. In the classic or traditional will, the testator tends to put the details of the crypto wallet and the access key to it (Saleh et al., 2020), or the testator might only put a general testament without providing any details about crypto assets. The latter is not suitable for handling the crypto assets inheritance due to the working operation for transferring crypto assets to the beneficiaries requiring credential access information (Seres et al., 2020). Meanwhile, Beyer and Nipp (2019) do not recommend mentioning information such as the private key of the crypto assets wallet since the will becomes a public document once admitted to probate.

It was suggested that to keep the information of the private key separate from the text of the will or in other words, the information of the private key should be put in other safe tools such as a safe deposit box, and the testator must provide clear and adequate instructions on obtaining the credential access information (Paulger, 2022; Saleh *et al.*,

2020). Trust is another standard method of estate planning where the crypto assets owner entrusted his digital assets to another person or institution. Trust can be either revocable or irrevocable depending on the crypto assets' net worth, i.e., the low net worth assets for a revocable trust and vice versa. Crypto assets are risky assets to put in the trust as the exposure of being sold by the trustee without consent of the settler is higher if there are no proper steps taken to curb such risk. Further, the price of crypto assets is volatile and would require the trustee to sell any assets within the trust (Saleh et al., 2020). Transferring crypto assets, wallets, and private keys to the legal heirs can be done by storing such information in encrypted electronic storage based on blockchain technology. This technological method allows the transfer of such information to the third party assigned upon submitting the death certificate of the owner's crypto assets (Singh, Shrivastava & Ruj, 2022).

The other way is by combining the traditional method and technology, where the crypto assets owner will provide sufficient instruction to the executor or to the beneficiaries concerning the way to obtain the information related to access to crypto assets, including its private key, such as its location. The access information can be stored in electronic storage such as secret disks or the storage application in the phone or online tools. Online storage and tools allow crypto assets owners to configure the account settings so that the access information of crypto assets can be transferred to the beneficiaries (Kirillova, Blinkov, Ogneva, Vrazhnov, & Sergeeva, 2020). Still, it is subject to the agreement with the service provider or subscription fees (Klasicek & Vucemilovic, 2019).

From the above literature, it indicates that there exists a gap that needs to be fulfilled by establishing specific estate planning for crypto assets. Hence, this study is consistent with the gap highlighted in the above literature.

2.9 *Maqasid Shariah* in Islamic estate planning

In this world, Allah is the ultimate owner of all in the heavens and the earth and bestowed it on His Mankind as a blessing as He mentioned in Al-Quran (*Surah Al-Araf: 96*). Nevertheless, Allah reminds His vicegerents repeatedly in Al-Quran that Allah is the ultimate owner, and the vicegerents are only His trustee and servant as stated in Al-Quran (*Surah Al-Baqarah:30*). Muslims scholars unanimously agreed that the ultimate objective of Shariah (*maqasid Shariah*) is to serve the interest of all people and save them from any harm (Dusuki & Bouheraoua, 2011).

Imam Al-Ghazali in defining *maqasid Shariah* has stressed the safeguarding of five (5) objectives in the category of necessities (*al-dharuriyyah*) and one of the objectives is the preservation or protection of the wealth. All transactions cannot be completed in the absence of any asset as highlighted by Haron (2017) in referring to the verse in Al-Quran, where Allah had said:

“O ye who believe! Shall I lead you to a bargain that will save you from a grievous penalty? That ye believe in Allah and his messenger and that ye strive (your utmost) in the cause of Allah, with your property and persons: That will be best for you, if ye but knew! He will forgive you your sins, and admit you to gardens beneath which rivers flow, and to beautiful mansions in gardens of eternity: that is needed the supreme achievement. And another (favour will he bestow) which ye do love, help from Allah and a speed victory. So, give the glad tidings to the believers” (Surah As-Saf: 10-13).

The assets are required to be protected, and the vicegerent must effectively need to plan all for its protection and preservation and finally its deposition to his legal heirs and

relatives. The need for mankind to plan their assets has been emphasised in Al-Quran as asserted by Allah that:

“He (Prophet Yusuf) said: you shall sow for seven years continuously, what you reap leave it in its ear except a little of which you eat. Then shall come after the seven years of hardship which shall eat all that has beforehand laid up in the store for them, except a little of what you shall have preserved. Then there will come after that a year in which people shall have rain and in which they shall press (grapes)” (Surah Yusuf: 47-49).

Islamic law did not limit the possession and creation of wealth through investing and trade; instead, it elaborates on the preservation, distribution, and purification of the accumulated resources. Nowadays, wealth emerges in several forms, including digital ones, it could be acceptable so long as it does not contravene Shariah laws (Rosele et al., 2022). However, it must be under inspirational accountability to Shariah guidelines and principles that aim beyond pure wealth maximisation rather than fulfilling public rights and interests (Aliyu, Hassan, Yusof & Naiimi, 2017).

In the light of estate planning of digital assets, the digital assets have been recognised as a *mal* under the category of *urudh* by the SAC SC. As time marches by, the digital assets become the assets that have financial value and El-Salvador and the Republic of African are the two (2) countries that declared Bitcoin as a legal tender in the country, respectively. The other countries such as Australia, Denmark, France, Germany, Iceland, Japan, Mexico, Spain, the United Kingdom, and the United States also consider Bitcoin transactions legal and have developed the regulations on its use and trade (Finsmes, 2022).

As mentioned previously, the number of digital assets owners is proliferating. Thus, like the other assets, these digital assets also must be well planned for their inheritance

particularly. The estate planning of digital assets will promote *maqasid Shariah* by way of wealth circulation. Allah has asserted in Al-Quran that:

“So that it may not be [a benefit] going around and around among such of you as may (already) be rich” (Surah Al-Hasyr 59:7).

In this regard, the conceptions of Shariah scholars towards the preservation of wealth are unanimously agreed upon and are counted as part of the Shariah objective that gives room for other financial activities (Dusuki & Bouheraoua, 2011). Noticeably, Islamic laws permit us not to hand over the wealth of those who cannot manage wisely until they reach the position to manage it effectively (*Surah An-Nisa: 5-6*). The ruling is applied to young people, those with insanity and erratic behaviour, and those with weak intellects, especially when they inherit wealth, they cannot manage.

Therefore, the property and wealth of the unwise people shall be held to the time they can handle it wisely. However, the guardians of orphans must return their wealth when they reach puberty. Preservation of wealth is one of the Shariah objectives that provides a unique procedure for personal and financial well-being. Thus, Islamic law did not allow devouring of wealth illegally, and as such, it encouraged trade and investment activities. As highlighted in other literature, the consideration of wealth circulation and economic growth via crypto assets estate planning can be done through inheritance (Zuleika & Desinthya, 2013). The Islamic law of inheritance is one of the economic instruments taught by Shariah principles to achieve a proper economic order in society, in addition to the principle of trust, property rights and ownership (Mawdudi, 2011). On this note, Islamic finance prohibits any form of illegal devouring of wealth, especially after the demise of the property owner.

Therefore, crypto assets must adhere to the above ruling and transfer the heirs' wealth after the original owner's death. Hence, this study is conducted to ensure *maqasid Shariah* of protection of wealth i.e., crypto assets in this study must be preserved.

2.10 Summary of the Chapter

This chapter had reviewed the literature regarding the theory of *mal* which highlights the different views from Islamic jurists on its definition, features and the inheritance right attached to it. The review continued with discussion on crypto assets as digital assets by understanding its nature and characteristics as well comparing it with other financial assets such as fiat money, electronic money, and other digital assets. The crypto assets are new to the society and have triggered debates among the Islamic scholars. Thus, this chapter has reviewed the opinions of Islamic scholars on crypto assets from Islamic perspective and two different views are pointed out. This chapter also reviewed the regulatory approach in Malaysia in regulating crypto assets and development of law and regulations of crypto assets in Malaysia is positive but still at infancy level. The literatures on estate administration in Malaysia are presented and emphasised on the process involved in estate administration and the roles of personal representative particularly relating to the intangible estate. Apart from that, this chapter reviewed the existing literature on practice of crypto assets estate planning which has been discussed by the previous researchers. Finally, this chapter reviewed the *maqasid Shariah* in Islamic estate planning. The above literature reviews help in highlighting the gaps of the study as well as will support to achieve the objectives of this study.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

This chapter outlines the methodology employed to achieve the objectives of this study, which examines the socio-legal aspects of Shariah and legal framework for Islamic estate planning of crypto assets in Malaysia. The chapter details the research design, data collection, and analysis methods, as well as consideration for ensuring data validity and reliability.

3.2 Research Design

The research design for this study incorporates qualitative socio-legal research design because it is best suited to explore the intersection between law, Shariah principles, and social phenomena surrounding the acceptance and regulation of crypto assets in Islamic estate planning in Malaysia. The complexities of integrating crypto assets into Shariah law and Malaysian legal framework required a method that could delve into both the normative aspects of law and the social realities influencing these legal processes. This allows for a deeper exploration of how laws function in practice and how they impact society, as highlighted by Mohamed (2016) and Abdullah (2018). The research design adopted for this study is systematically aligned with specific objectives to provide comprehensive insights into the complex interplay between Shariah principles and legal framework governing Islamic estate planning for crypto assets in Malaysia.

The researcher opted for socio-legal research because it is advantageous since it focuses on how legal phenomena operate within their social, historical, and cultural contexts (Webley, 2019). In this study, the socio-legal approach allows the researcher to explore

how Shariah principles, which are inherently social and religious, interact with legal frameworks governing crypto assets. For instance, by examining how different state fatwa committees in Malaysia interpret the permissibility of crypto assets, the study considers the societal and religious influences that shape these legal rulings.

Moreover, the socio-legal approach aligns with the study's aims to investigate both the legal framework and the religious acceptance of crypto assets in Malaysia. This dual focus ensures that the study captures the social realities of how Muslims in Malaysia engage with crypto assets, reflecting the unique nature of Islamic estate planning, which is deeply tied to religious and legal considerations.

According to Bhat (2020), qualitative socio-legal research is valuable for studying phenomena in their natural settings, understanding the feeling, perceptions, and experiences of people, and providing a broader view of social life. In this research, qualitative methods such as interviews with Shariah experts, legal experts, judges, estate planner, and DAX providers were used to understand how these stakeholders perceive and engage with crypto assets in the context of Islamic estate planning. This provided rich, detailed data that quantitative research could not capture, allowing the researcher to identify significant differences in opinion among the stakeholders (Creutzfeldt, Mason and McConnachie, 2019).

Qualitative methods provide the depth necessary to explore the complexities of religious rulings and legal principles, particularly in a domain where the views are still evolving. Creutzfeldt et al. (2019) emphasised that socio-legal research, through qualitative methods, identifies significant similarities and differences across cultural and social divides, which is crucial in a study developing both enhanced Shariah and legal framework of Islamic estate planning for crypto assets.

3.3 Research method

In conducting this study, the choice of research method is critical as it determines the reliability and validity of the findings. Abdullah (2018) emphasises that the research method encompasses the techniques and tools employed for data collection and analysis, serving the foundation for addressing the research objectives. The choice of method, therefore, must align with the nature inquiry to ensure the researcher collects data that adequately addresses the objectives of the study. For this study, the research aims to analyse the acceptance of crypto assets as *mal* from Shariah perspective and examine the adequacy of the current legal framework in regulating Islamic estate planning for crypto assets in Malaysia. The study also aims to investigate the Shariah and legal issues surrounding crypto assets in the context of Islamic estate planning and proposes recommendations for an enhanced legal framework to address the limitations of the existing system. Hence, the study follows a socio-legal research approach as outlined by Budianto (2020), utilising a combination of library-based search and semi-structured interview.

3.3.1 Library – based search

The researcher began the research with library-based search to align effectively with answering the research questions by providing foundations of data essential to socio-legal analysis. The library-based search method is indispensable in this socio-legal study for several key reasons. First, it offers comprehensive access to secondary data. As noted by Kharel (2018), this method provides a rich array of resources, including legal theories, statutory materials, and court rulings, all of which are fundamental to doctrinal legal research. These resources form the core of the study, enabling the

researcher to explore both Shariah and civil law perspectives on crypto assets and estate planning.

Additionally, it facilitates a deeper understanding of legal doctrines. As Mullekyal Devadasan (2019) explains, library-based search equips the researcher with tools to comprehend the legal principles and doctrines that underpin societal structures. In this context, it allows a critical examination of how Malaysia's legal mechanisms address the complexities of managing crypto assets within the framework of Islamic inheritance.

Finally, it aids in identifying gaps in literature. According to Mohamed (2016), this method is vital for pinpointing deficiencies in existing research. By carefully analysing prior studies and legal sources, the researcher can develop research questions that target unresolved issues in the regulation of crypto assets and Shariah compliant estate planning, paving the way to further practical exploration.

As mentioned earlier, library-based research was conducted to address the research objectives of the study, specifically to RO1, RO2, RO3, and RO4. The method was crucial for accessing a broad range of secondary data such as legal texts, statutory materials, fatwas, and scholarly articles, which provided the foundational knowledge necessary to critically analyse the issues.

To analyse the acceptance of crypto assets from a Shariah perspective, the researcher referred to classical Islamic jurists such as Al-Suyuti (1983), Al-Buhuti, (1983), Ibn Qudamah (2013), Ibn Taymiyah (1996), Islam (1999) and others who contributed foundational views on the concept of *mal*. By analysing these classical interpretations, the researcher evaluated how these views apply to modern digital assets like crypto assets. Furthermore, the researcher referred to the Accounting and Auditing

Organisation for Islamic Financial Institutions (AAOIFI) Shariah Standard No. 42 and the Islamic Fiqh Academy of the Organisation of the Islamic Conference (IFA-OIC)'s resolution - Article 3/3/3/1 IFA-OIC Resolution no. 43 (5/5), which recognised intangible assets under Shariah, providing a modern framework for considering crypto assets as *mal* if they meet Shariah criteria.

In addition, Rosele et al., (2022) was reviewed to understand contemporary Islamic scholars' varied interpretations of crypto assets, allowing the researcher to identify differences in scholarly opinions. The debates on crypto assets permissibility were further supported by Billah (2019) and Md Nor et al. (2022), highlighting ongoing disagreement among Islamic scholars. Usmani (2015) was crucial in explaining the Shariah perspective on money's characteristics, which was used to argue whether crypto assets fit into this framework. Finally, Bakar (2019) offered a legal justification for accepting crypto assets under Islamic law, presenting an argument for their permissibility using Islamic jurisprudence.

For evaluating the adequacy of the legal framework in Malaysia for regulating crypto assets in Islamic estate planning, the researcher critically reviewed the evolving legal framework surrounding crypto assets in Malaysia. BNM provided key insights into the official stance and regulatory actions taken by Malaysian authorities, beginning with the 2014 declaration that crypto assets were not recognised as legal tender. The joint regulatory efforts of BNM and SC in 2018 and 2020 indicated an evolving legal approach, with crypto assets being brought within the purview of laws governing financial institutions.

Further support came from SC, by issuance of Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 which

explicitly recognised crypto assets as securities, subjecting them to regulatory control. The researcher also referred to Zul Kepli and Shahul Ikram (2020), who provided a detailed analysis of how crypto assets are treated as digital assets under Malaysian law. Additionally, the researcher explored the case of *Robert Ong Thien Cheng v Luno Pte Ltd & Anor* [2020] 1 LNS 2194, which helped clarify the classification of crypto assets as commodities under Malaysian legal standards, thus demonstrating the legal framework's adequacy in managing estate planning for these assets.

The researcher explored Shariah issues by reviewing both classical and contemporary sources. The Quran verse from *surah Al-nisa* verse 11 and *surah Al-Kahfi* verse 46 provided foundational guidance on wealth distribution and inheritance, aligning these principles with the concept of crypto assets inheritance under Islamic law.

Additionally, the researcher examined the evolving stance of different states fatwa committees in Malaysia regarding crypto assets. For example, the *Mufti* of Federal Territory initially took a cautious approach during its 106th meeting January 2018 (*Mufti* of Federal Territory, 2018 (a)), calling for further study before making a ruling on Bitcoin. By November 2018, however, the stance shifted towards prohibition, citing speculative risks and potential illegal activities (*Mufti* of Federal Territory, 2018 (b)). Interestingly, in 2021, the *Mufti* of Federal Territory allowed crypto assets to be used as dowry under certain conditions of stability and mutual agreement and gazette fatwa on obligation of zakat on digital assets (*Mufti* of Federal Territory, 2021), showing a refinement, case by case approach to crypto assets in Shariah compliant transactions.

Moreover, the researcher referred to the State fatwa of Kelantan (2018), which strictly prohibited the use of Bitcoin for transactions due to concerns over security, uncertainty, and potential for illegal use. This position sharply contrasted with the more progressive

stance of the State fatwa of Perlis (2018), which permitted the use of Bitcoin as a digital asset under specific conditions, including its use as a medium for money transfers and asset storage.

The researcher also examined fatwas issued by the State fatwa Committee of Perak, Sarawak, and Selangor (2021), which allowed crypto assets transactions but imposed strict conditions, such as conducting transactions through licensed DAX regulated by the SC. The State fatwa of Sarawak further defined crypto assets as intangible digital assets with value, provided they are transferred peer-to-peer without third party involvement.

In addition to fatwa reviews, Mahomed and Ramadili (2017) identified gaps in existing Shariah ruling on the inheritability of crypto assets, further illustrating the legal ambiguities in this area. Moreover, Abdul Rahman and Hasan (2020) emphasised how unresolved Shariah issues could impede the timely distribution of digital wealth to rightful heirs.

To investigate legal challenges, the researcher viewed the legal framework for estate administration as outlined by Halim (2018) and Drs Nasrul et al. (2023). These works provided understanding of estate administration in Malaysia and how it applies to movable property, helping the researcher frame crypto assets within this legal context.

The researcher also referred to the Probate and Administration Act 1959, the Small Estate (Distribution) Act 1955 and the Public Trust Corporations Act 1995, legal texts that outline the estate administration process and jurisdiction in Malaysia. These statutes were crucial in understanding how the law handles crypto assets within estate planning.

Furthermore, Saleh et al. (2020) discussed the practical challenges in inheriting crypto assets, particularly in relation to access to private keys and transferring digital ownership. Finally, Beyer, Nipp (2019) and Seres et al. (2020) provided detailed insights into the legal complexities of managing private keys and ensuring secure transfer of crypto assets during inheritance. These works underscored the legal risks and practical difficulties associated with administering digital assets.

In summary, the library-based research method was justified due to the complex socio-legal nature of the research topic, and it enabled the researcher to explore a vast array of resources, including legal theories and Islamic jurisprudence. This helped bridge the gap between theoretical principles and practical application, especially in a field that lacks extensive empirical data, such as intersection of crypto assets and Islamic estate planning.

3.3.2 Data collection method

In this research, semi-structured interviews were selected for this study due to their capacity to balance structure with flexibility, making them highly appropriate for addressing the research objectives. This method allows the researcher to explore complex, subjective viewpoints while still ensuring that key topics are covered in systematic manners (Evans & Lewis, 2018; Adams, 2015). Besides, it is an effective way of exploring personal and sensitive issues, as emphasised by Dejonckheere and Vaughn (2019). This method encourages participants to express their in-depth thoughts, feelings, and beliefs, which is crucial for understanding complex socio-legal topics (Mulcahy, Rossner and Tsalapatani, 2021).

The adaptability of semi-structured interviews is another key justification for their use in this study. As Adams (2015) explains, this method provides a structured framework

to ensure the essential topics are addressed while allowing the flexibility to explore unanticipated motivations, attitudes, and insights. The researcher views that it is particularly valuable because it offers participants the freedom to share their experiences in their own terms, fostering a natural and in-depth dialogue. The conversational flow of this approach is especially useful in socio-legal research, as it enables the collection of rich data on how participants perceive and interact with legal and Shariah-related issues.

Thereby, the researcher adopted this method following the five-step interview question development process of Kallio, Pietila, Johnson and Kangasniemi (2016), which enhanced the rigor, objectivity of the study, and findings' credibility. This process, combined with relational focus of semi-structured interviews, is essential for capturing the real-world impacts of legal phenomena, as Webley (2019) suggests. Additionally, semi-structured interviews are valuable in capturing participants' voices and the meaning they assign to their experiences, contributing to the ethical depth of qualitative research (Rabionet, 2014).

3.3.2.1 Phases of semi-structured interview

In this study, the researcher implemented the semi-structured interviews process following the phases outlined by Kallio et al. (2016). There are five phases which are (i) identifying the pre-requisites to use semi-structured interview; (ii) retrieving and utilising the previous knowledge; (iii) formulating the preliminary semi-structured interview guide; (iv) pilot test; and (v) presenting the complete interview question (Kallio et al., 2016). To conduct a high quality semi-structured interview-based study, it is essential to approach each phase of the research process systematically. This ensures that the data gathered are both meaningful and aligned with the research

objectives. Below is a detailed explanation of each phase as applied to this research, including the sampling strategy, the development of interview questions, steps taken prior, during and post interviews.

Phase 1: Identifying the pre-requisites for semi-structured interviews.

This phase involves determining whether semi-structured interviews are the most suitable method for addressing the research objectives. In this research, when investigating the extent of crypto assets acceptance as *mal* from Shariah perspective (RO1), semi-structured interviews provided the flexibility to delve into participants' delicate understandings and interpretations of Islamic principles. Moreover, this method facilitates on examining the adequacy of Malaysia's existing legal framework for regulating Islamic estate planning of crypto assets (RO2) by enabling a deeper inquiry into participants' practical experience with current regulations.

Furthermore, the semi-structured format also proves advantageous in examining the Shariah and legal issues surrounding Islamic estate planning of crypto assets (RO3 and RO4), as it allows the researcher to uncover both anticipated and unexpected challenges in practice. This flexibility ensures the complex nature of these issues can be fully addressed. Finally, in relation to identifying potential enhancement to the Shariah and legal framework of estate planning for crypto assets to overcome the limitations in the current system (RO5), semi-structured interviews enable the researcher to gather diverse and innovative suggestions from participants, leading to more comprehensive understanding of possible improvements.

Hence, in view of the above, the utilisation of semi-structured interviews is highly suitable for this study as it aligns with the research objectives by enabling a deep,

flexible exploration of Shariah and legal dimension within crypto assets regulation and Islamic estate planning.

Phase 2: Retrieving and utilising the previous knowledge

In this phase, the researcher systematically retrieves and uses previous knowledge to develop a comprehensive understanding of the subject, forming a solid conceptual basis for the interviews. This phase requires both a critical appraisal of existing literature and, where necessary, the incorporation of complementary empirical knowledge to fill gaps in the theoretical background (Kallio et al., 2016).

The researcher conducted an extensive literature review focused on the purpose of the study. The review involves examining existing studies, theories, and findings relevant to the research topic. In this case, which is for a study of Shariah compliant crypto assets and Islamic estate planning, the researcher had reviewed literatures in the field of Shariah law, Islamic finance, digital assets regulation, and Islamic estate planning. Key sources would include articles on the acceptance of crypto assets within Islamic law, relevant case law, and discussion around the jurisdictional complexities in managing crypto assets under Malaysian estate law. Table 3.1 indicates the summary of the gathered knowledge to guide the construction of the interview question.

Table 3.1
Summary of sources in construction of interview questions

No.	Theme	Sources
1.	Shariah perspective of crypto assets.	Yuneline (2021); Bakar (2019); Rosele et al. (2022); Abu Bakar et al. (2018); Billah (2019); Md Nor et al. (2022); Che Rani et al. (2019)

Table 3.1 (continued)

2.	Shariah perspective on estate planning and distribution of crypto assets	Mahomed and Ramadili (2017); Zul Kepi & Bustami (2021)
3.	Regulations related to crypto assets.	Zul Kepli and Shahul Ikram (2020); Securities Commission Malaysia (2019); Ismail Nawang & Abd Ghani (2021)
4.	Management of crypto assets inheritance	Conway and Grattan (2017); Beyer and Nipp (2019); Seres et al. (2020); Saleh et al. (2020); Halim et al. (2013)

This comprehensive appraisal enables the researcher to identify knowledge gaps in literature and establish a predetermined framework for the interviews (Turner, 2014). For example, the researcher found that the literature lacks detailed discussion on the practical challenges faced by Islamic legal professionals when addressing crypto assets in estate cases. This gap in the literature informs the development of interview questions aimed at exploring such challenges in depth.

Phase 3: Formulating the preliminary semi-structured interview guide

In formulating the preliminary semi-structured interview question, the researcher systematically integrates both main themes and follow up questions, ensuring a balanced and flexible structure for the interviews. The guide is designed to cover the

main content of the research subject while allowing the participants the freedom to discuss their perceptions and experiences (Kallio et al., 2016).

In this phase, the researcher started by identifying main themes that correspond to the key areas of inquiry in the research. These themes represent the core topics to be explored during the interviews and ensure that the conversation remains aligned with the research objectives. The identified main themes are as follows: -

- i) Shariah perspective of crypto assets.
- ii) Shariah perspective on estate planning and distribution of crypto assets.
- iii) Regulations related to crypto assets.
- iv) Management of crypto assets inheritance.

The above themes provide clear structure for the interviews, guiding the researcher to focus on relevant issues. Within each main theme, the researcher prepared follow-up questions that encouraged participants to elaborate on their answers. These follow-up questions help to probe deeper into specific areas, clarifying points or exploring issues that may not have been fully addressed in the initial responses. Those questions also ensured that the discussion remains dynamic and allows the researcher to gain richer insights into the participants' perspectives.

By carefully designing the semi-structured interview question with main themes and follow up questions in a logical and progressive order, the researcher ensures that the participants can express their views freely while remaining focused on the research objectives. The thoughtful structure helps create a comfortable environment for participants while enabling the researcher to gather rich and meaningful data.

Phase 4: Pilot test

In the fourth phase of developing a semi-structured interview question, the researcher conducted a pilot test to assess the content and implementation of the preliminary guide. The purpose of this phase was to ensure that the questions were relevant and adequately covered the research objectives, and to identify any necessary adjustments before conducting the main interviews.

Moreover, the pilot test allowed the researcher to confirm whether the questions in the interview guide aligned with the core themes of the research. By testing the interview question, the researcher could verify that the questions were clear, meaningful, and capable of eliciting the depth of response needed to address the research objectives. Besides, this phase was crucial for identifying potential gaps or issues in the preliminary guide. If certain questions were found to be confusing, too complex, or irrelevant, they could be reformulated to ensure clarity and focus (Barriball & While, 1994).

Through this process, the researcher can make informed changes and adjustments to improve the guide, ensuring it would yield high-quality data during the actual interview (Kallio et al., 2016; Chenail, 2014). This testing phase also enhanced the overall quality of data collection by ensuring that the guide was well-structured and capable of exploring participants' insights effectively.

In accordance with Kallio et al. (2016), the researcher incorporated expert assessment in the pilot test. Academic experts with knowledge of crypto assets, Islamic inheritance and estate administration, namely Mr. Azizi Che Seman from University Malaya, Associate Professor Dr Akmal Hidayah Halim from International Islamic University Malaysia and Nur Syamilah Md Noor from Kolej Universiti Islam Perlis were consulted to provide feedback on the guide's relevance and appropriateness. This step ensured

that the interview question met high standards of research integrity and was both practically and ethically sound (Chenail, 2014). The proof of assessment and validation by academic experts is attached to **Appendix A**.

Phase 5: Presenting the complete interview question

In the fifth and final phase of the development process, the researcher presented the complete semi-structured interview question in this research as attached in **Appendix B**. The finalised guide reflected the cumulative insights gathered from previous phases of the development process. It also was specifically designed to respond to the aims of the study.

The researcher also took steps to make the interview question universal, meaning it could be used by other researchers conducting similar studies. The interview questions were developed with the clear instructions and logical progression of questions, making it adaptable to different research contexts, while still retaining its core focus topics such as Shariah law, regulation and crypto assets inheritance. This universality enhanced the value of the interview question as a resource for future research in the field.

3.3.3 Data collection procedures

In accordance with Banakar (2019), whose emphasis is on providing factual data that answers research questions and ensuring that the research is replicable, the researcher in this research implemented a detailed and structured approach to data collection through semi-structured interviews. The data collection process was divided into three key stages: pre-interview, during interview, and post-interview as recommended by the experts (Eppich, Gormley & Teunissen, 2019; Griffee, 2005) This structured methodology enhanced the reliability and validity of the findings.

3.3.3.1 Pre-interview stage

The pre-interview stage involves creating a well-structured interview question, identifying suitable participants, and organising the logistical aspects of the interview process (Eppich et al., 2019; Griffee, 2005). In this stage, the researcher undertook several critical tasks to ensure a smooth and effective data collection process. These steps include developing well-crafted interview questions, selecting appropriate informants, and planning the logistics of the interviews. Each aspect was handled carefully to align with the research objectives and methodological rigor.

3.3.3.1.1 Developing well-crafted interview questions

The researcher began by designing a semi-structured interview question, which meticulously aligned with the research questions and objectives. As explained earlier in Paragraph 3.3.5.2.1, the interview questions were formulated to extract in-depth insights from the informants about the core issues surrounding crypto assets in Islamic estate planning. Expert validation was sought to refine these questions, ensuring they were clear, relevant, and aligned with the research focus. The clarity of the questions was further tested through a pilot test, where feedback was gathered to improve the final interview questions. All interview questions were attached as **Appendix 3** for reference.

3.3.3.1.2 Sampling design

In this research, the researcher employed purposive sampling to identify key informants, ensuring that the participants were selected based on their relevance expertise in Islamic estate planning and crypto assets. Guided by Stewart and Cash (2003), the selection criteria focused on the informant's level of knowledge, availability, willingness, and ability to provide detailed and accurate information. This

non-probabilistic technique was chosen because it allows the researcher to gather rich, targeted data crucial to answering the research questions (Palinkas, Horwitz, Green, Wisdom, Duan & Hoagwood, 2015).

The selection process involved establishing clear criteria based on job description, title, organisation, and specialisation, which were critical for individuals who would offer expert insights. These roles of key-informants were drawn from professionals such as Shariah experts, judges, lawyers, estate planners, and digital asset exchange DAX providers, all of whom possess significant practical experience and in-depth knowledge. The selection of informants is to ensure a diverse range of perspectives.

Table 3.2
List of key-informants

No	Role	Affiliation	Code
1	Shariah expert	Former Chairman, Shariah Advisory Council, Securities Commission	R1
2	Shariah expert	Member of Perlis fatwa Committee and professor in Islamic finance.	R2
3	Shariah expert	Former Head of Shariah department, regulatory institution of capital market in Malaysia and registered Shariah consultant by Securities Commission.	R3
4	Judge	Shariah High Court judge.	R4
5	Lawyer	Shariah and civil lawyer, Ikbal Salam & Associates	R5
6	Lawyer	Shariah and civil lawyer, Zamri Zaini & Nazliyah	R6
7	Lawyer	Shariah and civil lawyer Termizi & Co.	R7
8	Judge	Civil High Court Judge.	R8

Table 3.2 (Continued)

9	Estate planner	Wasiyyah Shoppe representative	R9
10	Estate planner	As-Salihin representative	R10
11	Estate planner	MyPusaka representative	R11
12	DAX Provider	MX Global representative	R12
13	DAX Provider	Tokenize Technology (M) Sdn Bhd. Representative	R13
14	DAX Provider	Luno Malaysia Sdn Bhd. Representative	R14

Table 3.2 listed the informants in this research and their affiliation, including individuals like former chairpersons of Shariah Advisory Councils, professors, judges, lawyers, estate planners, and representatives from major DAX providers such Luno Malaysia, Tokenize Technology (M) Sdn Bhd, and MX Global.

In this research, semi-structured interviews were conducted with both a Syariah Court judge and a Civil High Court judge, as these judicial bodies have jurisdiction over estate administration in Malaysia. Their insights provided a comprehensive legal and Shariah-based perspective on the complexities of crypto asset inheritance, ensuring that the study effectively addressed the core regulatory and procedural challenges within the existing legal framework.

However, the investigation did not extend to estate administrative bodies, such as the Estate Distribution Division and Amanah Raya Berhad (ARB), due to significant practical and institutional limitations. First, obtaining meaningful feedback from these institutions proved challenging, as responses were difficult to secure despite multiple attempts at engagement. Second, at the time this study was conducted, ARB explicitly stated that it did not have a mandate regarding crypto asset estate administration. This

limitation posed additional barriers that hindered the collection of relevant data within the research timeline.

In this study, digital asset holders were not chosen as primary research subjects due to several methodological and practical considerations. The primary objective of the research is to propose a Shariah and legal framework governing the estate planning and inheritance of crypto assets, rather than the personal experiences or preferences of individual asset holders. To achieve this, the study focused on gathering insights from key stakeholders involved in estate administration and regulatory oversight, such as judges, legal practitioners, Shariah scholars, estate planners, and DAX providers. These informants provided expert perspectives on the policy, procedural, and legal gaps within the current regulatory framework, ensuring that the findings contribute meaningfully to institutional and legislative developments.

However, it is important to note that among the key informants interviewed, some were also crypto asset holders, including R1, R6, R12, R13, and R14. Their dual role as both industry professionals and asset holders allowed the study to incorporate practical insights from those who actively engage with digital assets while maintaining a structured Shariah and legal based approach. This ensured that the research benefited from first-hand experiences without compromising its methodological focus on institutional and regulatory perspectives.

3.3.3.1.3 Sampling size

In this research, the sample size was determined based on the nature of qualitative research, which emphasises depth of understanding and richness of data over generalisability. The selection of fourteen (14) key informants, as listed in Table 3.2, was justified by the need to gather detailed insights from individuals with specialised

knowledge in Islamic estate planning and crypto assets. Besides, the researcher wanted to ensure a comprehensive exploration of the topic from multiple expert perspectives.

This approach aligns with the guideline provided by Abdullah (2018), which recommends a small yet targeted number of informants in qualitative research, with at least five (5) informants. This rationale is to have a greater engagement with fewer to highly knowledgeable individuals in order to enable in-depth exploration of complex legal and regulatory issues, thus achieving the objectives of the study effectively. Therefore, the chosen sample size is appropriate, as it facilitates the collection of rich, meaningful data while maintaining focus on the specific research questions.

3.3.3.1.4 Planning logistic

The final aspects of pre-interview preparation involved planning logistics of the interview. This includes scheduling interviews based on the availability of informants and determining whether the interviews would be conducted face to face or online, depending on logistic constraints. The researcher ensured that all necessary tools, such as audio recording devices or online meeting platforms, were prepared in advance to minimise the disruptions.

Additionally, ethical considerations were considered during this stage in which the researcher ensured that the consent was obtained before conducting the interview. The researcher also ensured confidentiality was maintained, and participants were informed about the purpose and scope of the study.

3.3.3.2 During interviews stage

This study employed both face-to-face and online interviews in this study to accommodate needs of key-informants and maximise the quality of data collection.

Face-to-face were selected due to their ability to capture non-verbal cues, such as facial expressions, gestures, and body language, which enrich the context of the discussion and help build rapport with key-informants (Balushi, 2018; Vogl, 2013). These interviews took place in private, comfortable settings to encourage open communication, providing a conducive environment for key informants to share their perspectives.

Meanwhile, online interviews were conducted via video conferencing, with the participants who were unavailable for in-person interviews. This approach offered flexibility without compromising data quality, as online interviews can capture in-depth responses despite the absence of non-verbal cues (Balushi, 2018).

In this study, key informants participated in both face-to-face and online interviews, with Table 3.3 providing a summary of the methods used to conduct these interviews.

Table 3.3
Methods of interview with key-informants

No	Key-informants	Interview method
1	R1	Face-to-face
2	R2	Face-to-face
3	R3	Face-to-face
4	R4	Face-to-face
5	R5	Face-to-face
6	R6	Face-to-face
7	R7	Face-to-face
8	R8	Face-to-face
9	R9	Face-to-face
10	R10	Face-to-face

Table 3.3 (Continued)

11	R11	Online
12	R12	Face-to-face
13	R13	Online
14	R14	Online

Indeed, conducting effective interviews with key-informants is critical for qualitative research, as it ensures the collection of valuable and insightful data. The interview process in this research followed several key stages such as (i) opening the interview; (ii) interviewing the informants; and (iii) recording the data.

3.3.3.2.1 During interviews stage

In line with Gerson (2020), the researcher began by establishing trust and making a personal connection with the key informants. This was done through a clear introduction of the research objectives and an explanation of how the data would be used. Building rapport at the outset helped create a comfortable environment, encouraging key-informants to share openly. Ethical considerations, such as confidentiality, were emphasised to reassure key informants, and permission to record the interview was obtained. This step was essential for maintaining ethical integrity (Gerson, 2020).

3.3.3.2.2 Interviewing the informants

The researcher followed a semi-structured question, allowing for flexibility in the conversation while maintaining a focus on key topics. This approach aligns with Hicks, Millar, Girling, Cummins and Yamashita (2021), who emphasise the importance of understanding the interviewee's expertise and remaining open to additional information

beyond prepared questions. Probing techniques were used to dig deeper into responses, encouraging participants to expand on important points. Non-verbal cues were noted alongside the recording, helping to capture contextual information that might not be evident in the audio.

3.3.3.2.3 Recording the data

All interviews, whether face-to-face or online, were recorded electronically to ensure a complete and accurate capture of the data. While recording can sometimes affect the quality of the data by making key informants more formal or hesitant (Al-Yateem, 2012), strategies were implemented to minimise this effect. The researcher emphasised confidentiality and trust to help key informants feel more comfortable, thereby reducing any reluctance during recording. Additionally, for virtual interviews, potential challenges such as technical difficulties were considered (Hicks et al., 2021) to ensure that interviews proceeded smoothly, and the data collected remained reliable and comprehensive.

3.3.3.3 Post-interview stage

In the post-interview stage, the researcher followed a methodical approach to ensure data was properly captured and ready for analysis. In ensuring the data are ready, the step that needs to be taken after the interviews was transcribed verbatim, following the guidance of Magnusson and Marecek (2015). This was done as soon as possible after the interviews to capture subtleties like tone and contextual cues, which could provide deeper insight into key informants' responses. Recognising the time-intensive nature of transcription, the researchers allocate adequate time to complete this task meticulously.

Ensuring confidentiality was a priority throughout transcription. To protect key informants' privacy, the researcher deidentified them by removing any identifying information, adhering to ethical standards outlined by Stuckey (2014). Besides, reviewing transcripts post-interview was another crucial step. This allowed the researcher to evaluate the responses aligned with the research objectives and make necessary adjustments to the interview questions for future sessions (Stuckey, 2014). This iterative review process ensured the data collected was both relevant and comprehensive.

Finally, the researcher prepared the transcripts for coding and analysis. By systematically organising the data, the researcher ensured that subsequent analysis was evidence based, providing a strong foundation for reliable and accurate research findings (Stuckey, 2014).

3.4 Research ethics

In conducting socio-legal research, research ethics plays a critical role in ensuring the protection of participants and upholding the integrity of the research process. This is particularly important in studies dealing with sensitive topics, such as the intersection of Shariah law, laws, crypto assets and Islamic estate planning, as addressed in this research. As Brooks' (2019) notes, socio-legal research often involves navigating complex ethical approval processes, especially when human subjects are involved. In this study, the researcher followed established ethical protocols to ensure the protection of participants and the quality of data collection.

3.4.1 Protecting informants

In this study, the researcher prioritised the well-being of informants, recognising the need to protect them from potential risks associated with the study. This involved

safeguarding their dignity, privacy and personal safety throughout the research process. Informants were fully informed about the research's aims and their rights through comprehensive informed consent in the interview guide as in Appendix B.

By clearly outlining the purpose of the research, and the use of data, the researcher ensured the participants felt comfortable and respected in their involvement. Additionally, the researcher took care to avoid any situations that could threaten their own safety. This was particularly relevant in discussion surrounding sensitive topics, such as Shariah law and crypto assets, where the researcher navigated this discussion with sensitivity and respect.

3.4.2 Reflexibility and positionality

In line with Banakar (2019), who emphasised reflexibility and critical reflection, the researcher consistently reflected on her positionality and the potential power dynamics involved in the research. This practice is essential in ensuring the research process does not marginalise or silence certain groups based on gender, ethnicity, or religion. Following Hutchinson and Duncan's (2012) suggestion, the researcher borrowed social science methodologies, integrating reflexivity, and positionality into the research design. In that manner, the researcher not only maintained ethical standards, but also ensured the research questions were framed in a neutral and respectful manner.

Finally, in alignment with Banakar's (2019) guidelines for socio-legal research, the researcher maintained a strong focus on ethical considerations throughout the design and execution of the study. This commitment to ethical principles not only guided the methodology but also reinforced the overall integrity and validity of the research outcomes (Afandi, 2022). In this study, the researcher successfully navigated the ethical approval process while incorporating the protocol in the research method such as semi-

structured interviews. The pilot testing of the interview question and the expert assessment and validation further ensured that the study met ethical standards and maintained research integrity, as Chenail (2014) suggests.

3.5 Data analysis

In this research, the data was analysed using a combination of general inductive analysis, content analysis, and thematic analysis because these combinations of analysis are deeply connected to the nature of the research questions and the broader objectives of the study. These methods were chosen because they enable the researcher to explore the complex interactions between Shariah law, legislations, crypto assets, and estate planning in Malaysia, while allowing for the discovery of deeper insights beyond the initial assumptions.

Furthermore, socio-legal research benefits from the combination of these methods of analysis as it facilitates a multidisciplinary approach to examining the role of law within its broader social, cultural and religious context. According to Creutzfeldt et al. (2019), qualitative methods enable the researcher to capture complexity of legal phenomena and their interplay with social realities. This approach moves beyond merely identifying what the law is to critically analysing how it operates in practice, influences societal behaviour, and addresses emerging challenges, thereby providing deeper insights into the law's functional and societal impacts.

3.5.1 General inductive analysis

General inductive analysis was employed in this study to allow theory and insights emerge directly from the data, rather than imposing preconceived frameworks. This approach is especially valuable in socio-legal research, which examines the dynamic

interaction between law, society and culture (Creutzfeldt et al., 2019). In the context of this research, where the acceptance of crypto assets from a Shariah perspective (RO1) is not fully understood or established in legal scholarship, inductive analysis provided the flexibility to develop new insights directly from Shariah sources, fatwas, and expert interpretations.

As Webley (2019) notes, socio-legal research often deals with how law, legal phenomena, and/or phenomena affected by law and the legal system occur in the world interact with each other, and impact upon those who are touched by them. Therefore, the open-ended nature of inductive analysis was ideal for exploring the interplay between Shariah law and the emerging crypto assets space. The insights generated through this approach were grounded in the real-world application and interpretation of Islamic jurisprudence regarding crypto assets, rather than being constrained by pre-defined theoretical categories.

Moreover, inductive analysis was essential for addressing RO2, which investigates the adequacy of Malaysia's legal framework for regulating Islamic estate planning of crypto assets. Since this is a relatively new area, patterns, gaps, and themes needed to be identified directly from primary legal documents, regulatory texts, and case law. This data-driven approach ensured that the analysis remained rooted in the specific socio-legal context of Malaysia.

3.5.2 Content analysis

In this research, content analysis was utilised to systematically review the legal and Shariah texts, providing a structured means of analysing complex legal provisions and religious rulings. This method is particularly useful for examining text that form the basis of Shariah and legal frameworks. As highlighted by Creutzfeldt et al. (2019),

content analysis enables the identification of underlying assumptions, biases, and power dynamics embedded within legal texts and practices. In the context of RO3 and RO4, which deals with the Shariah and legal issues surrounding Islamic estate planning of crypto assets in Malaysia, content analysis allowed for a systematic exploration of how Islamic principles and Malaysian legal regulations interact and diverge on key issues such as inheritance, distribution and cybersecurity issues.

Through content analysis, the researcher was able to highlight the details of Shariah and legal provisions, revealing contradictions, gaps, and overlaps that are essential for comprehending the Shariah and legal issues. For instance, by analysing Islamic estate planning regulations in the context of new asset classes like crypto, the researcher could systematically categorise different Shariah and legal concerns that arise in these contexts, as shown in Table 3.4.

Table 3.4
Shariah and legal concerns in Islamic estate planning for crypto assets in Malaysia.

Concern		Descriptions
Shariah	Inconsistencies of <i>fatwa</i>	Variation in fatwa regarding the permissibility and handling of crypto assets issued by the State <i>fatwa</i> Committee in Malaysia.
	Unclear guidelines for cut-off date value of crypto assets	The unclear guidelines on determining the value of crypto assets at the time of the owner's death.
	Execution and recognition of <i>hibah</i>	Issues related to the proper execution and acknowledgment of <i>hibah</i> of crypto assets.
Legal	Unclear legal jurisdiction	Ambiguity surrounding legal jurisdiction in the estate administration of crypto assets in Malaysia.
	Illegal disclosure of access information in wills.	Issues related to unauthorised disclosure of access information for crypto assets in wills.

Table 3.4 (Continued)

Legal	Breach of trust by a personal representative.	Concerns about personal representatives violating trust regarding the management of crypto assets.
	Uncertainty in distribution of crypto assets to the legal beneficiaries.	Challenges in distributing crypto assets by unit or their equivalent value in Malaysian Ringgit.
	Obligation of DAX providers	Questions regarding the obligation of DAX to transfer crypto assets to rightful beneficiaries.

3.5.3 Thematic analysis

In this research, thematic analysis was essential for uncovering patterns and hidden meanings across the Shariah and legal texts, which may not be immediately apparent. Thematic analysis allows for the reading of texts for presence and absence, spatial assumptions, metaphors, absences, and biases (Creutzfeldt et al., 2019), providing a deeper level of insight into the cultural, economic, and political dimensions embedded in both Islamic jurisprudence and legal frameworks.

Themes were developed through a systematic process that began with coding relevant textual data. These codes were then grouped into broader categories and refined to ensure coherence, alignment with research objectives, and significantly addressing the key issues under study. Specifically, for RO5, which aims to propose an enhanced Shariah and legal framework that addresses the limitation of the existing Islamic estate planning framework, thematic analysis enabled the researcher to reach on the key theme for RO5 which is the suggestion of shariah and legal frameworks of Islamic estate planning for crypto assets in Malaysia.

This theme highlighted the necessity for specific fatwas regarding the inheritance of crypto assets and the need for comprehensive regulations governing the inheritance of

crypto assets in Malaysia. By organising the findings into coherent themes, the researcher could develop a holistic framework that integrates both Shariah and legal considerations, ensuring a practical and compliant solution to the regulatory challenges posed by crypto assets.

3.5.4 Analysis procedure

The researcher conducted a detailed content and thematic analysis using ATLAS.ti to address the research questions regarding the acceptance, Shariah compliance, and legal framework surrounding Islamic estate planning of crypto assets in Malaysia. The process involved systematic steps to ensure that the analysis was comprehensive, reliable, and aligned with the objectives of the research. The researcher outlines the step-by-step process taken place in this research.

First step: Data collection and familiarisation

The first step in the analysis was to collect and familiarise the researcher with the collected data. This involved gathering a wide range of materials, including Shariah sources, such as Al-Quran and hadith text, fatwas, and expert commentaries, relevant to acceptance of crypto assets in Islamic finance; and legal texts, including statutes, regulations, court cases, and policy documents related to estate planning and crypto assets, within the Malaysian legal framework.

From data collection, the researcher engaged in data familiarisation, which involved repeatedly reading the materials to gain a deep understanding of their content (Braun & Clarke, 2006). This step was crucial to all analysis methods, as it allowed the researcher to immerse herself in the data, thereby identifying preliminary insights and themes that would be explored further.

Second step: Coding data (content analysis)

Next, the researcher employed content analysis using ATLAS.ti to systematically code the data, ensuring that all relevant Shariah and legal texts were categorised. Content analysis involves identifying and labelling key concepts, phrases, or sections of the text that are relevant to the research questions (Krippendorff, 2018). In this phase, the researcher developed a coding framework to systematically categorise the data. This involved defining initial code where the researcher identified key concepts relevant to research questions. The researcher utilised the word frequency feature in ATLAS.ti to quantitatively assess the prevalence of key terms and concepts across the collected data. The word frequencies revealed the significant concepts relevant to research questions as shown in Figure 3.1 below.



Figure 3.1
Key concepts relevant to research questions
Sources: author's own (2024)

Besides, the researcher used ATLAS.ti to systematically code the data by highlighting relevant quotations as the researcher read the text, relevant passages to the defined codes were highlighted. The researcher also assigned the appropriate codes to these

highlighted codes. ATLAS.ti allowed for easy applications of multiple codes to a single text segment if it addressed more than one theme.

The systematic coding process allowed for the identification of underlying assumptions and contradictions within the texts, following the recommendation of Creutzfeldt et al. (2019).

Third step: Identifying theme (thematic analysis)

After coding, the researcher proceeded with thematic analysis to identify broader themes from coded data. This involved organising the coded data into meaningful categories that address the research questions (Braun & Clarke, 2006).

In this stage, the researchers perused the earlier codes by reviewing the initial codes and their corresponding data segment to ensure they accurately represented the underlying themes. If certain codes were too broad or overlapping, the researcher refined them by merging or spitting codes as necessary. This iterative process helped enhance the specificity and clarity of the coding scheme.

After coding the data, researchers grouped related codes into broader themes. This involved examining the coded segments to identify patterns and relationships among the codes. The researcher developed main themes that encapsulated the overall findings from the data. The researcher used co-document analysis in ATLAS.ti to explore how the views and insights given by the informants were related. This involved comparing transcripts of each informant to see where similar codes or themes appeared across multiple texts. Figure 3.2 visualised the flow of relationships between key themes (on the left) and the informants (on the right).

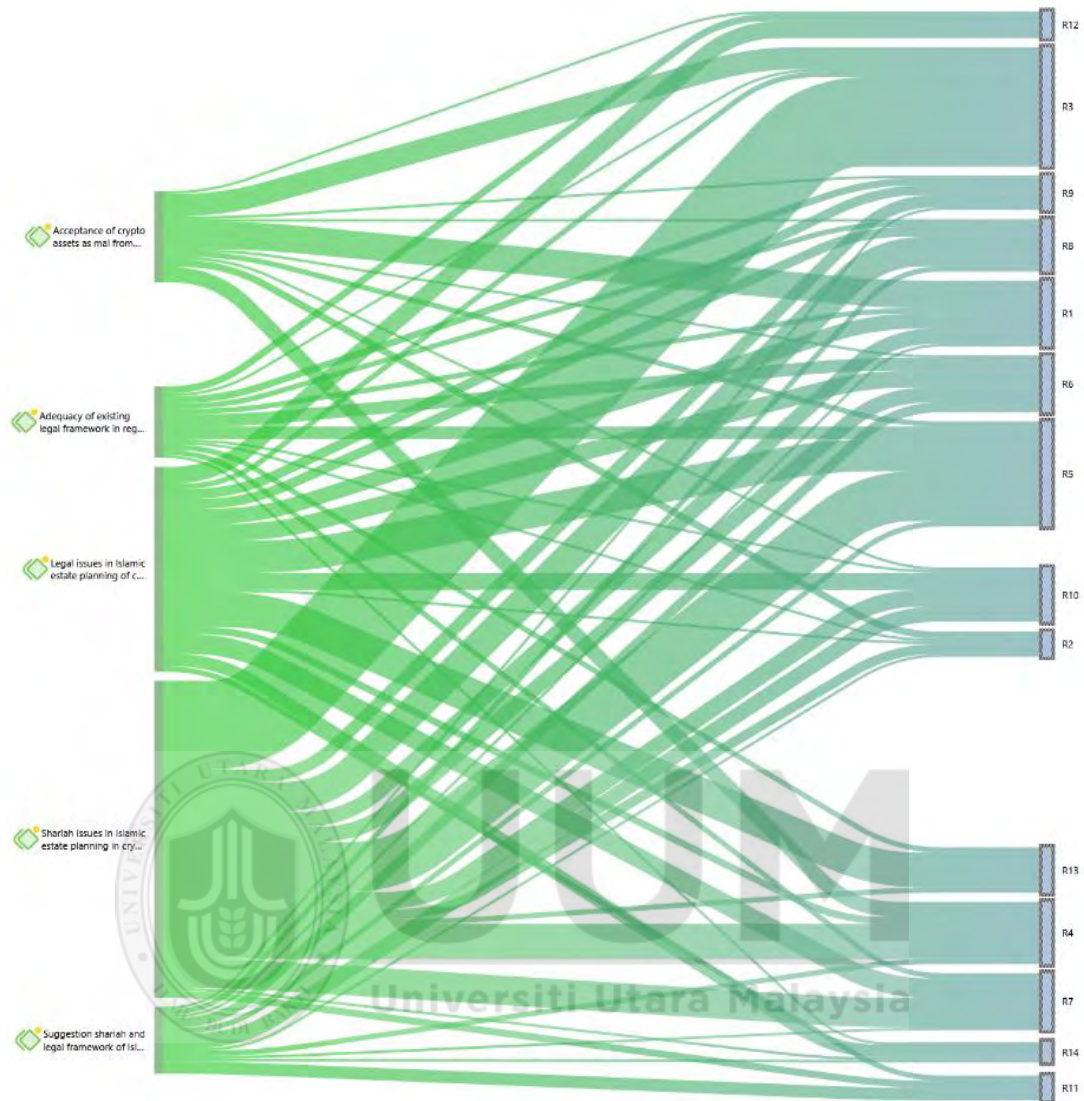


Figure 3.2
Sankey diagram
 Sources: Author's own (2024)

The Sankey diagram in Figure 3.2 reveals the degree of involvement each informant had with specific themes, which helps the researcher to understand the depth and diversity of the responses. Figure 3.2 shows that the informants R1, R2, R3, R4, R8, R9, R10, R12, and R14 are linked with the theme acceptance of crypto assets as *mal* from a Shariah perspective and the informants R1, R3 and R4 are heavily connected to

this theme, suggesting that these informants provided substantial insights on the Shariah-compliance of crypto assets as *mal*. This theme appears to be one of the most discussed, involving the views of nine informants, thus highlighting its significance in the study. The broad contribution points to a critical focus on how Islamic jurisprudence approaches the categorisation of crypto assets within the context of property rights.

Figure 3.2 also indicates that the theme of adequacy of existing legal framework in regulating Islamic estate planning of crypto assets in Malaysia is linked with R1, R2, R5, R6, R7, R8, R9, R10, R12, R13, and R14. With 11 informants contributing, this theme shows extensive discussion, particularly from R5, R6, and R8, who are prominent voices. The theme focuses on the evaluation of current legal frameworks governing the regulation of crypto assets in estate planning, and the broad engagement reflects the importance of this theme, indicating widespread concerns about whether the current regulations are sufficient to address the complexity introduced by digital assets particularly in Islamic estate planning.

Besides, Figure 3.2 reveals that except R12, all informants in this research were linked with the theme of Shariah issues in Islamic estate planning of crypto assets. The involvement of most of the informants indicates the significance of Shariah principles in guiding estate planning for crypto assets, with diverse perspectives shaping the discussion. The presence of R4, who may not have been as engaged with other themes, suggests a specialised contribution in discussing the religious complexities of including crypto assets in estate planning.

Meanwhile, for the theme of legal issues in Islamic estate planning of crypto assets in Malaysia, only R3 was not actively participating in the discussion related to this theme as seen in Figure 3.2. This figure also implies that R5 and R7 have provided focused

insights on legal challenges on estate planning of crypto assets. The theme's broad engagement highlights significant concerns about legal disputes, uncertainties, and potential loopholes in estate planning for crypto assets, as perceived by Shariah experts, lawyers, judges, estate planners as well as the DAX providers.

The involvement of all informants in the themes of suggestion for Shariah and legal framework of Islamic estate planning of crypto assets in Malaysia was seen in Figure 3.2, making it the most extensively discussed and the contributions come from a broad mix of informants. This indicates that the suggestion for reform both in terms of Shariah and legal frameworks is the key aspect of the research, and many respondents offered forward -thinking ideas to resolve the challenges raised in earlier themes. The wide variety of informants contributing to this theme also highlights the collaborative effort to develop solutions and improve the integration of crypto assets into Islamic estate planning.

3.6 Validity and reliability of data

In conducting the validity and reliability of data for this research, the researcher employed a multi-faceted approach to ensure the findings were both credible and trustworthy (Cypress, 2017). The research method – semi structured interviews within a socio-legal framework – naturally lent itself to a qualitative approach. The flexibility of semi-structured interviews facilitated the gathering of in-depth, broader data, while the general inductive, content and thematic analysis enabled the exploration of the interplay between law and societal practice. In this research, by employing triangulation, peer review, and thick description, the research strengthened both the internal and external validity of the findings (Cresswell, 2014). Reliability was addressed by cross-verifying data through multiple methods and engaging with peers

to reduce potential researcher bias (Carter, Bryant-Lukosius, Dicenso, Blythe & Neville, 2014).

3.6.1 Triangulation

Triangulation of data is a research method used to enhance the credibility, validity, and reliability of findings by integrating multiple sources of data. In socio-legal qualitative research, triangulation ensures that conclusions are not drawn from a single perspective but are instead cross-verified through various methods and sources. This approach minimises bias and strengthens the depth and accuracy of the research findings (Carter et al., 2014; Natow, 2020).

The first step in data triangulation involves identifying multiple sources of data to ensure a well-rounded understanding of the research problem. In this study, primary data were collected through semi-structured interviews with key stakeholders, including Shariah experts, judges, lawyers, estate planners, and Digital Asset Exchange (DAX) providers. These interviews provided first-hand insights and expert opinions on the challenges of Islamic estate planning for crypto assets in Malaysia. Meanwhile, secondary data were obtained through document analysis of Shariah texts, legal statutes, court cases, policy documents, journal articles, and textbooks. This combination of qualitative interview data and documentary evidence allowed the researcher to examine the legal and Shariah perspectives comprehensively (Patton, 1999).

Once the data were collected, a cross-verification process was conducted to compare findings from different sources. When multiple sources highlighted the same issue—such as the absence of clear fiduciary access to crypto assets in estate planning—it reinforced the validity of the findings. However, in cases where inconsistencies

emerged, further analysis was conducted by referring to statutory provisions, case law, and Shariah rulings to clarify the legal and religious positions on crypto asset inheritance. This iterative process of comparing interview responses with documented legal frameworks ensured that no single perspective dominated the analysis and that findings remained balanced and objective.

The final stage of triangulation involved integrating the data to construct a multi-dimensional analysis. Legal and statutory data were examined to ensure that the study's findings aligned with existing laws and judicial precedents, while Shariah sources validated the research within Islamic jurisprudence. Additionally, insights from industry practitioners provided a practical perspective on real-world challenges and implementation issues in estate planning for crypto assets. This holistic approach ensured that the study's recommendations were not only theoretically sound but also practically feasible.

By employing data triangulation, the study strengthened its methodological rigor, ensuring that the research findings were reliable, well-supported, and applicable to the legal and Shariah frameworks governing Islamic estate planning for crypto assets in Malaysia. This approach also minimised bias and subjectivity, allowing the study to present a comprehensive, well-balanced analysis that could inform future legal and Shariah reforms in digital asset inheritance management (Natow, 2020; Carter et al., 2014).

3.6.2 Thick and rich description

In this research, the principle of thick and rich description was applied to enhance the transferability of the research finding and guided by the principles of linked narrative as established by Younas, Fabregues, Durante, Escalante, Inayat and Ali (2023). This

approach allowed the researcher to create a comprehensive account of participants' data, interconnected with the socio-cultural context, and consistent with the research questions and methods employed. The focus was not only gathering data but also ensuring data interpretation was deeply rooted in participants' social and cultural beliefs.

Following Younas et al. (2023), the linked narrative was developed by clear justification for methods and data. The researcher employed semi-structured interviews, which allowed the participants to provide in-depth responses shaped by their socio-cultural background. The choice of semi-structured interviews was justified by their flexibility, which enabled the collection of rich, qualitative data that explored the complex dynamics of Islamic estate planning in the context of crypto assets.

Also, the researcher linked data and social cultural context to develop a thick and rich description. The informants' transcripts were interpreted within the broader social and cultural context of Islamic finance and Shariah law in Malaysia. As Stenius, Makela, Miovisky and Gabrhelik (2017) emphasised, the interpretation of data was directly linked to field notes, Al-Quran and hadith, fatwas, legal and policy documents analysed in parallel. This ensured that the findings were not isolated from the real-world context but rather interwoven with the existing socio-legal framework. This process helped the researcher understand how Shariah principles and Malaysian law influence estate planning involving crypto assets.

The researcher also incorporated multi-informants verbatim to support the thematic findings. Consistent with Lingard (2019), the use of several quotes from diverse informants ensured that their perspectives were well-represented, creating a strong link between the empirical data and the conclusions drawn. By connecting the informants'

quotes to broader themes and research questions, the researcher established a cohesive narrative that aligned with the research objectives and demonstrated how informants' views were shaped by their social and legal contexts.

In conclusion, the triangulation of data sources, peer-review, and thick and rich descriptions enhanced the credibility, dependability, and transferability of research, making it a robust contribution to the new insights on Islamic estate planning in the context of crypto assets.

3.7 Summary of the Chapter

This chapter outlines the research methodology used to examine the socio-legal aspects of Shariah and the legal framework of Islamic estate planning for crypto assets in Malaysia. Table 3.5 summarises the research design of the study.

Table 3.5
Summary of research design

Research question (RQ)	Research objective (RO)	Data collection	Analysis method	Validity and reliability
RQ 1	RO 1	Library-based research; semi-structured interview	General inductive analysis	Triangulation; thick and rich descriptions
RQ 2	RO 2	Library-based research; semi-structured interview	General inductive analysis	
RQ 3	RO 3	Library-based research; semi-structured interview	Content analysis	
RQ 4	RO 4	Library-based research; semi-structured interview	Content analysis	
RQ 5	RO 5	Library-based research; semi-structured interview	Thematic analysis	

In summary, Table 3.5 indicates that this chapter outlines a qualitative socio-legal approach to answer the research questions and achieve the objectives of the study. Employing library-based research and semi-structured interviews, the study collects data from diverse stakeholders, including Shariah experts, judges, lawyers, estate planners, and DAX providers. Data analysis combines general inductive, content and thematic methods to explore socio-legal phenomena, enabling in-depth insights into the intersection of Shariah principles, Malaysian law, and the evolving domain of crypto assets. Triangulation, thick descriptions, and rigorous ethical protocols ensure the validity and reliability of findings, culminating in a comprehensive framework addressing the objectives of the study.



CHAPTER FOUR

FINDINGS AND DISCUSSION

4.1 Introduction

This chapter presents the findings and analysis to answer the research questions of this study. It begins by examining the permissibility of intangible assets in Islam, laying the groundwork for accepting crypto assets in Islam. The application of Islamic legal maxims, such as the original is permissibility in financial and business transaction (*al-asl fi al-mu'amalat al-ibahat*) (Bakar, 2019) and custom is an arbiter (*al-'adah muhakkamah*) (Laldin, Bouheraoua, Ansary, Abdul Khir, Ali, Mustafa, 2013) are discussed to highlight their relevance to crypto assets. The characteristics that qualify crypto assets as *mal* in Islam, including their value, utility, ownership, storability, and transferability, are thoroughly analysed.

The chapter then addresses the legal complexities and ambiguities in Malaysia framework for crypto assets in the contexts of Islamic inheritance and estate planning, focusing on the emphasis on intermediaries over end-user protection, the ambiguity in classifying crypto assets as securities.

Shariah-specific issues are also explored, including inconsistencies in gazette and non-gazette *fatwas*, deciding crypto assets values posthumously, and the application of *hibah* principles. Legal issues pertinent to Islamic inheritance and estate planning are examined, covering legal jurisdictions for estate administration of crypto assets, public disclosure of access information, potential breaches of trust, uncertainties in distribution methods, and the obligations of DAX.

This chapter concludes with recommendations for enhancing the Shariah and legal framework to ensure compliance and clarity in the estate planning process for crypto assets in Malaysia.

4.2 Acceptance of crypto assets as assets (*mal*) from the Shariah perspective

The rapid growth of digital finance has brought crypto assets to the forefront of contemporary Shariah scholars discussions. Within the Islamic finance framework, a critical question arises in this study: to what extent can crypto assets be accepted as assets (*mal*) from a Shariah perspective? To answer this research question, the researcher analyses the acceptance of crypto assets as *mal* under Islamic law.

Crypto assets, commonly known as cryptocurrencies, have ignited considerable debate within Islamic scholars about their classification as money or currency (Che Rani & Salleh, 2019; Bakar, 2019; Billah, 2019; Mohd Noh, 2022). The primary contention is not about recognising crypto assets as assets but rather figuring out whether they qualify as money or not. According to informant R1:

“The different argument (khilaf) on crypto is not about whether it is an asset but more on whether it is money or not”.

The researcher observed that prior discussion by Islamic scholars on crypto assets predominantly focused on their status as money from an Islamic perspective. These scholars concluded that crypto assets do not entirely fulfil the characteristics of money as defined by Shariah principles, citing concerns related to volatility, intrinsic value, and governance (Che Rani & Salleh, 2019; Bakar, 2019; Billah, 2019; Mohd Noh et al., 2022; Wartoyo & Haerisma, 2022; Mohd Noh, 2022).

Indeed, the features of crypto assets does not fully meet the criteria of fiat money, and this matter is affirmed by statement of BNM in 2021 that crypto assets do not fully meet the criteria of fiat money and cannot be considered as money (Bank Negara Malaysia, 2021) which emphasised their stance since 2014 that crypto assets cannot be considered as legal tender in Malaysia (Bank Negara Malaysia, 2014).

Nevertheless, the researcher discovered that crypto assets had been acknowledged as one type of digital assets by the financial regulators worldwide such as the World Bank (Carlson et al., 2022), the International Monetary Fund (IMF) (Bains et al., 2022), the Financial Stability Board (FSB), (2022), including SC (Securities Commission, 2024). Crypto assets, as defined by the various international organisations and regulatory bodies, are digital assets secured by cryptographic techniques to facilitate transactions and regulate the creation of new units. They are typically decentralised and operate on blockchain technology, a distributed ledger supported by a network of computers. The World Bank, IMF and FSB all describe crypto assets, i.e. in similar ways, emphasising their digital and cryptographic characteristics (Carlson et al., 2022; Cuervo et al., 2019; Bains et al., 2022; Financial Stability Board, 2022). In Malaysia, the introduction of Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 established a minimalist regulatory framework that classifies digital assets, including crypto assets, as digital representations of value recorded on distributed ledgers. These assets are a subset of digital assets primarily used as decentralised mediums of exchange (Ismail Nawang & Abd Ghani, 2021).

Pertaining to acceptance of crypto assets as *mal* from Shariah perspective, it remained a complex and contentious issue among Islamic scholars. The researcher identifies three distinct Shariah perspectives on the classification of crypto assets as assets in

Islam, as reported by Mohd Hashim et al., (2022) and Kamis et al. (2023). The first perspective, supported by Islamic scholars and organisations, hereinafter referred to as the proponent, such as Dar Uloom Zakariyya from South Africa, Mohd Daud Bakar, Sheikh Nizam Yaakub, and Zaharuddin Abd Rahman, all of whom view crypto assets as permissible and considers them valuable assets (*mal mutaqawwam*) that can be beneficially used (Mohd Hashim et al., 2022; Rosele et al., 2022).

The second perspective, represented by institutions like *Dar Ifta'a Misriyyah*, *Dar Ifta'a Palestine*, the Institute for the Revival of Traditional Islamic Sciences, Wifaq al-Ulama United Kingdom, Directorate Religious Affairs Turkey, and Islamic scholars such as Sheikh Ali Mahyuddin Al-Qaradaghi, and Sheikh Sulayman Ruhaylee, later referred to as the opponent, deems crypto assets prohibited under Islamic law and argues that they cannot be considered as assets due to concerns about speculative trading, lack of intrinsic values, and potential involvement in non-compliant activities (Mohd Hashim et al., 2022).

Meanwhile, the third perspective, adopted by Islamic Institution and scholar such as the International Islamic Fiqh Academy (IIFA) and *Mufti Taqi Uthmani*, takes a cautious stance (*tawaqquf*), refraining from issuing a definitive ruling on crypto assets due to complex nature of technology and its implications for Islamic finance (Mohd Hashim et al., 2022; Kamis et al., 2023).

In analysing the acceptance of crypto assets as *mal* under Shariah law, it was noted that there are inconsistencies in fatwas issued by various state fatwa committees in Malaysia concerning the permissibility of crypto assets. The discussion below outlines how crypto assets are recognised as *mal* within this context.

4.2.1 Crypto assets as intangible assets are permissible in Islam

As previously discussed, crypto assets are a category of digital assets, and they indeed fall under classification of intangible assets. In Islam, the permissibility of intangible assets also has been a subject of discussion among various Islamic schools of thoughts (*mazahib*) and contemporary scholars (Engku Ali, 2010; Rahmani, 2010; Usmani, 2015). For instance, the prevailing Hanafi school of thought asserts that *mal* is traditionally defined as something that possessed physical characteristics. According to this view, articulated by scholars such as al-Sarakhsi and Ibn Abidin, intangible assets like usufructs and rights are not considered as property due to their lack of physical form and the inability to be possessed over time (Al-Sarakhsi, 1993; Ibn Abidin, 1992).

What is considered a tangible asset must be indemnified if destroyed, even if it is not classified as "property" in the traditional sense, such as human lives or marital rights. The equivalence between tangible assets and benefits in terms of financial value is made clear through defective contracts, as liability under such contracts is determined by equivalence, just as it is in cases of destruction. This is unlike the scent of musk; if someone smells another person's musk, they are not liable for anything because scent is not considered a benefit but rather a vapor emanating from the substance, like the smoke of burning wood. For this reason, scent cannot be the subject of a rental contract—if someone were to rent musk for the purpose of smelling it, the contract would be invalid—and it is not subject to liability under a valid or defective contract.

Our evidence for this is the ruling of Umar and Ali (may Allah be pleased with them), who decreed that the child of a deceived person (*magrūr*) was free and had to be compensated at its value. They also ruled that the deceived person had to return the female slave along with her compensation for lost virginity (*'aqr*), but they did not require compensation for the service she had provided, despite knowing that she had been used as a servant and that the claimant had demanded full rights. If such compensation were obligatory, they would not have remained silent about it. Their mention of compensation for virginity does not imply compensation for labour, because what is taken through

intercourse is akin to part of the body itself and is thus subject to valuation in cases of ambiguity, unlike benefits derived from labour.

The reason behind this is that benefits (*manāfi'*) are not tangible assets and therefore cannot be subject to indemnification if destroyed, similar to alcohol and carrion. The financial value of something is determined by its usability and storability for future needs, but benefits do not persist over time—they are transient attributes that disappear as soon as they come into existence. Therefore, they cannot be stored or accumulated, which means they are not considered tangible assets in the context of debt settlement or inheritance. For example, if a terminally ill person assists someone physically or lends them an item for temporary use, the value of that benefit is not deducted from their estate's disposable third.

This is because an asset cannot be considered tangible before it exists—what is non-existent cannot be deemed a tangible asset, since it is nothing. After coming into existence, something must be capable of being stored or preserved to be considered a tangible asset, and benefits do not meet this criterion since they do not last for more than a moment. Accordingly, they cannot be classified as tangible assets. Consequently, destruction cannot be attributed to benefits either, because destruction applies only to existing entities, and benefits do not persist long enough for their destruction to be relevant.

However, through contractual agreements, benefits acquire the status of being storable and tangible in Islamic law, but this is an exception to general legal principles, justified by necessity. This necessity arises from the fact that the object from which the benefit is derived serves as a proxy for the benefit itself. This necessity does not apply in cases of wrongful appropriation, so the original legal classification remains unchanged, meaning benefits do not become tangible assets subject to destruction or indemnification.

In cases of dowry (*ṣadāq*) or when a guardian rents out a property, benefits acquire the status of being storable and tangible due to contractual necessity. The concept of "property" (*māl*) refers to things created to serve human needs, but this is contingent on their ability to be stored and preserved. Just as the value of tangible assets fluctuates based on the utility they provide, the value of perfume varies based on its fragrance, yet this does not mean that scent itself is a tangible asset.

Even if we were to concede that benefits are tangible assets, they remain inferior to physical objects in terms of financial value. Liability for wrongful appropriation is determined by equivalence according to explicit legal texts. For example, property is not indemnified proportionally, and debts are not subject to indemnification in this manner (Al-Sarakhsi, 1993)

His statement “because the benefit (*manfa‘ah*) is not wealth” means that the owner has the right to lease it in exchange for compensation because he owns it by virtue of owning the property itself. The tenant, in turn, has the right to sublease it, even though he only owns the benefit, because he acquired it through a contract of exchange (*mu‘āwadah*), making it a valuable asset (*māl*) (Ibn Abidin, 1992).

In contrast, the majority view among Islamic jurists, including Maliki jurist and Shafi’i jurists, expands the concept of *mal* to encompass both tangible and intangible assets (Al-Zarkashi, 1982; Al-Suyuti, 1983). They define *mal* as anything capable of providing benefit and considered valuable from a Shariah perspective (Al-Zarkashi, 1982; Al-Suyuti, 1983). Similarly, Hanbali jurist emphasises that *mal* includes anything from which benefit can be derived under non-necessity circumstances (Ibn Qudamah, 2013; Al-Buhuti, 1983).

The research also found that the views of contemporary Islamic scholar’s institution such as the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) and the Islamic Fiqh Academy of the Organisation of the Islamic Conference (IFAOIC) on definition of assets including intangible assets are also aligned with the majority view. They assert that intangible assets possess monetary value and are entitled to legal protection, as articulated in resolutions of AAOIFI Shariah Standard no.42, and Article 3/3/3/1 IFA-OIC Resolution no. 43 (5/5) respectively.

AAOIFI defines intangible assets in Standard no.42 as follows:

“Property rights that apply to intangible matters, entitling their owners to the exclusive rights to any proceeds arising from them.”

Meanwhile, IFA-OIC Resolution no.43 (5/5) states that:

“Business name, corporate name, trademark, literary production, invention or discovery, are rights belonging to their holders and have in contemporary times, financial value which can be traded. These rights are recognised by Shariah and should not be infringed.”

In the light of this discussion, R3 viewed that the above resolution recognises intangible assets as equivalent to physical assets. R3 opined:

“In that resolution, it mentions and discusses trademark, business name, company logos, considering all these are intangible assets. And in this view, it is good, as an asset, and it can be tradable. So, it means that intangible assets are the same as tangible assets and are considered as property.”

Based on the above discussion, the researcher views that the recognition of intangible assets by contemporary scholars and institutions like IFA-OIC and AAOIFI as real property with financial value and tradability is vital for considering crypto assets within Islamic finance. This acceptance establishes a precedent for crypto assets, affirming their legitimacy and tradability under Shariah law. This perspective is further supported by contemporary Islamic scholar Sheikh Dr. Nizam Mohammed Saleh Yaquby, who recognised intangible assets, including crypto assets, can be permissible under Shariah law, if they are beneficial and not harmful to society (IslamicCoin, 2022).

4.2.2 The application of the legal maxim of original is permissibility in financial and business transactions in crypto assets.

In evaluating the legitimacy of crypto assets according to Shariah, the legal maxim of original is permissibility in financial and business transactions (*al-Asl fi al-mu'amalat al-ibahat*) is being applied by the proponent (Bakar, 2019). The Islamic scholars took consideration into this legal maxim, where unless there are indications from 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 as derived in Al-Quran and *Sunnah* (Laldin et al., 2013). The authority of this maxim is Al-Quran and *Sunnah*.

“It is He who created for you all of that which is on the earth”. (Surah al-Baqarah: 29)

The above verse says that the general permissibility of all things unless specifically prohibited. Additionally, the Prophet Muhammad (pbuh) mentioned that:

“So, what He made lawful is lawful, what he made unlawful is unlawful, and what he said nothing about is allowable.” (Sunan Abu Dawood 3800, Book 28, Hadith 65)

The invention of digital assets including crypto assets is suggested by default presumption of permissibility for assets unless there are clear prohibition elements such as usury, uncertainty, and gambling exist in crypto assets itself (Bakar, 2019; Rosele et al., 2022; Mohd Hashim et al, 2022).

However, the opponent alleged that crypto assets are associated with elements of usury. Due to their lack of real assets backing and regulatory backing (*Dar al-Ifta' Al-Misriyyah*, 2017; Billah, 2019; Che Rani & Salleh, 2019). For instance, *Dar al-Ifta' Al-Misriyyah* issued their fatwa number 4205 dated December 28, 2017, on buying, selling, and dealing with digital currency known as Bitcoin as followed:

After conducting research and consulting with economic experts, financial authorities, and specialists in digital currencies—particularly Bitcoin—*Dar Al-Ifta' Al-Misriyyah* is of the view that trading and dealing with such currencies, whether through buying and selling or otherwise, is prohibited (haram) according to Islamic law.

This prohibition is based on several factors, including the negative impact of such currencies on the economy, the risks involved in their circulation, and the absence of legal legitimacy and financial oversight necessary to regulate them. Additionally, they lack essential guarantees and are associated with fraud, deception, and ignorance in transactions, making them a potential medium for illegal activities.

Due to these reasons, the use of Bitcoin is forbidden in Islamic law, as it exposes individuals and institutions to severe financial risks. Moreover, it contradicts established Shariah principles related to transparency, risk mitigation, and financial stability. The only exception to this prohibition would be in cases of extreme necessity (*darurah*), where such transactions become unavoidable.

This view was rebutted by the proponent on the ground that crypto assets are free from usury due to its nature, mining process and usage do not lead to any elements of usury (Bakar, 2019).

The opponent also contended that crypto assets are impermissible due to the presence of elements of uncertainty and gambling, making transactions akin to unknown sales and uncertainty sales. They also argued that crypto assets exhibit high volatility, posing high risk and harm to the users and crypto assets transactions often linked to illegal activities such as money laundering, gambling, and funding of armed gangs and terrorists (Dar al-Ifta' Al-Misriyyah, 2018; Billah, 2019; Che Rani & Salleh, 2019).

This view was rejected by the proponent on the grounds that crypto assets have their own denomination based on digital currency which can be used as a unit of account i.e.

one of the criteria of pricing (Rosele et al. 2022). The price of crypto assets in the market is not pre-determined but something relates directly to the supply and demand which is inevitable, and it is outside the control of Shariah as well as humans, which are similar like the price of gold, silver, currency, and other goods (Bakar, 2019). R3 explained that due to external factors, the price of crypto assets fluctuated but internally, it has its own value as he asserted that:

“... today some people say that crypto is not permissible because it is very volatile, right? But that is an external factor; internally, it has its own value. It is just that due to external factors, its price fluctuates.”

Hence, the arguments that the high volatility in the price of crypto assets leads to elements of uncertainty and gambling associated with crypto assets as alleged by the opponent is incorrect. R7 argued that crypto assets should be accepted as *mal* because the opponent arguments are not concrete. R7 opined that:

“The arguments that reject crypto are, in my opinion, not strong. If we consider issues like uncertainty and fraud, all investments have these issues.”

Moreover, the precise definition of assets is not provided in Al-Quran nor *Sunnah*. In discussing whether crypto assets can be considered as property in Islam, R1 highlighted that the theory of property in Islam should be the yard stick in consideration of whether crypto assets is *mal* according to Shariah because the precise definition of assets is not provided in Al-Quran nor the *Sunnah*. R1 mentioned:

“...in any discussion, we need to get back to this theory as basis of discussion because no fixed definition of assets mentioned and stated in al-Al-Quran nor Sunnah. Assets are something that have value that can be acquired and owned. Hence, we cannot limit the definition of assets to any specific asset.”

The view given by R1 is consistent with the previous of Islamic scholars (Islam, 1999; Engku Ali, 2003), who asserted that the theory of *mal* is open for discussion to the Islamic jurist to interpret anything as a *mal* as it is not mutually exclusive since no clear explicit definition of *mal* mentioned in Al-Quran and *Sunnah* of the Prophet (pbuh) (Islam, 1999; Engku Ali, 2003).

The researcher viewed that the absence of explicit prohibition in Al-Quran and *Sunnah* means that crypto assets should be considered permissible by default as per legal maxim permissibility is the original (Laldin et al., 2013). The researcher agreed that if the opponent viewed that crypto assets violate the principles of prohibition usury, uncertainty, and gambling, it can be rebutted that not all crypto assets inherently involve those elements. In the event the elements are eliminated, the crypto assets remain permissible. Moreover, the legitimate concerns about volatility and misuse of crypto assets can be addressed through proper regulatory framework and risk management strategies as viewed by Bakar (2019).

In view of the explicit texts are lacking in relation to crypto assets, the researcher then assessed the legality of crypto assets as *mal* by employing the Islamic methodology of custom (*'urf*) as suggested by Bakar (2019), deeming this method suitable for modern instrument such as crypto assets as below.

4.2.3 The application of the legal maxim of custom is an arbiter in acceptance of crypto assets as *mal*

In assessing crypto assets as *mal* according to Shariah, the legal maxim of custom is an arbiter (*al-'adah muhakkamah*) provides a framework for their recognition as legitimate property (*mal*) in Islamic jurisprudence (Laldin et al., 2013). This maxim suggests that customary practices have a legal authority in Shariah, if they do not

contradict any explicit Shariah ruling. This principle derives from Al-Quran and *Sunnah*, where Allah acknowledges the role of custom in various verses. For instance, verse 199 in Surah Al- Araf, Allah advises us:

“Be tolerant and enjoin what is right (al- ‘urf) pay no attention to foolish people.” (Surah Al- Araf: 199)

‘Urf in this verse refers to those customs that were not opposed by any Shariah texts (Laldin et al, 2013). Besides, exists *Sunnah* which justify custom as the legal basis in ascertaining the Shariah issue. For instance, in *hadith* Sahih al-Bukhari 5:2052, hadith no. 5049 stated that

‘Aishah related that Hind bint ‘Utbah said, “O Messenger of Allah! Abu Sufyan is a miser and does not give me what is sufficient for me and my children. Can I take of his property without his knowledge?” The Prophet (pbuh) said, “Take what is sufficient for you and your children, and the amount should be reasonable (ma’ruf).”

Another often-cited rationale for the legal authority of custom is the statement by Abd Allah ibn Mas’ud (r.a.) companion of the Prophet (pbuh) stated that:

“What the Muslims consider good is good in the sight of Allah, and what the Muslims consider bad is bad in the sight of Allah.”

The researcher found that the opponent viewed that crypto assets should be prohibited as it is not a payment instrument accepted by the public (Che Rani & Salleh, 2019). The view was rebutted by the proponent using the principle of custom (*urf*). In opposing the view of the opponent, Bakar (2019) opined that this ground should be assessed by custom, one of methodology in Islamic jurisprudence.

Consequently, the legal maxim of custom is an arbiter (*al- ‘adah muhakkamah*) is applied to establish Shariah ruling for crypto assets as *mal* since they are not explicitly

mentioned in Al-Quran and *Sunnah*. R2 highlighted the role of customary norms in determining whether crypto assets can be considered *mal* under Shariah and assessing their value based on this custom. R2 said:

“If we want to determine whether it is an asset or not. Refer to ‘urf, whether it has value or not...”

R3 opined that ‘urf relates to the contemporary environment, particularly within industry contexts where it is seen as commercial custom or business practices. Although the public might not widely acknowledge crypto assets, it is accepted among industry professionals. Likewise, in the crypto space, there are established common practices among its participants. R3 said:

“In the context of ‘urf (custom), it is more related to the current environment. For instance, when we discuss on ‘urf in the industry, we refer to its commercial custom, or business practices. Although it may not be widely recognised by the public as an ‘urf, it is considered as ‘urf among us as practitioners or players in the industry. Similarly, I believe that in the realm of crypto, there are players who have established common practices among them.”

R3, who also owned and experienced using crypto assets, affirmed that industry players, particularly in the corporate world, have accepted the practice of utilising crypto assets in their business. He explained that:

“For example, if I do not have money and someone comes to my office, instead of paying them, I gave them crypto. This has become an accepted practice in the corporate world, involving contractors, lawyers, and accountants.”

In the case of Malaysia, the researcher found that the acceptance of crypto assets as customary practice is evolving. Oppotus (2024) revealed that forty percent of Malaysians own crypto assets, and seventy nine percent of Malaysians are also aware of the trend of crypto assets. This indicates a trend towards broader acceptance, which,

if deemed beneficial and non-harmful, could align with Islamic principles through the concept of *'urf*.

The researcher summed that the opinion given by R1, R2, R3, and R4 in determining the crypto assets as *mal* is in line with the view of the majority of Islamic jurists that anything that has value according to the custom can be considered as valuable property (*mal mutaqawwam*) (Shahir, 2004; Al-Zuhaili, 1996; Haron, 2010). Islamic jurisprudence emphasises that an asset's value is determined not only by its inherent properties but also by its acceptance and recognition by society (Al-Zuhaili, 1996; Haron, 2010; Laldin et al., 2013). This principle is rooted in the concept of custom, which refers to the customs and practices of a community that are not in conflict with Shariah principles.

Therefore, the researcher viewed that application of the legal maxim custom as an arbiter supports the acceptance of crypto assets as *mal* in Islam. Contemporary application and utility of crypto assets align with the principle of *'urf*, making them recognised as valuable property.

4.2.4 Characteristics of crypto assets as *mal* in Islam

Unlike physical assets such as gold or real estate, crypto assets exist solely in digital form and lack tangible presence. The rise of crypto assets has prompted Islamic scholars to examine whether these assets fulfilled the elements of *mal*. According to Rosele et al. (2022), crypto assets can be considered as *mal* if they meet specific elements. These elements include possessing value, beneficial, ownership and possession capabilities, storable, and transferable. R3 explained that crypto assets can be considered as *mal* as it fulfilled the elements of *mal* which will be elaborated further in each characteristics of crypto assets as *mal* in Islam as explored by the researcher in detail, providing

evidence and argument to support that crypto assets can align with the concept of *mal*, thus offering a perspective on their acceptance in Islam.

4.2.4.1 Crypto assets have value

The value of an asset is the primary criteria for classification as *mal* in Islam. An asset must possess intrinsic or recognised value to be considered as *mal* (Shahir, 2004; Al-Zuhaili, 1996; Haron, 2010; Rosele et al., 2022). R3 enlightened that to recognise something as valuable property (*mal mutaqawwam*) according to Shariah, it must possess a value. In the case of crypto assets, R3 opined that crypto assets have value which is determined by supply and demand of crypto assets. R3 stated that:

“...it must have value, so called mal mutaqawwam or to be recognised as asset that has value according to Shariah. So, if we see on crypto, it has value... the value is based on supply and demand...”

R1 also supported that crypto assets are assets because they have their own value which allow the utilisation of crypto assets for many transactions such as trading, security, mortgage and capital. R3 reasoned that:

“...it is an asset that has value that can be used for trading, security, mortgage and the community had used it as capital.”

The researcher agreed that valuation of crypto assets is influenced by various factors, including scarcity, utility, and market demand (Sovbetov, 2018). For instance, Bitcoin’s value is partly driven by its limited supply of twenty-one million coins, making it a scarce asset. Moreover, those crypto assets, such as Bitcoin and Ethereum, have demonstrated substantial value over time, as reflected in their capital market capitalisation and widespread acceptance (CoinDesk, 2023). Thus, this inherent value supports the argument that crypto assets can be classified as *mal* under Islamic law.

4.2.4.2 Crypto assets are beneficial

The principle of utility is essential to the classification of *mal*. An asset must have benefits which means it should provide usability and fulfil the basic human needs and interests (Ibn Abidin, 1992; Al-Zuhaili, 1996; Al-Suyuti, 1983; Ibn Qudamah, 2013; Al-Buhuti, 1983). In respect of crypto assets, R3 mentioned that:

“...it has benefits. It has benefits based on custom... it needs to be understood in term of the bigger picture how crypto which derived from blockchain technology and the use of blockchain need to be investigated in detail...”

The researcher learned that crypto assets offer numerous benefits that enhance their utility and appeal. One of the primary advantages is the speed and efficiency of transactions. Traditional financial systems often involve intermediaries, leading to delays and higher transaction costs (Nakamoto, 2008). In contrast, crypto assets transactions are processed directly on the blockchain, resulting in faster and cheaper transactions (Muftic, 2016). Moreover, crypto assets offer significant diversification benefits in investment portfolios, especially during uncertain economic environment (Huang, Han, Newton, Platanakis, Stafylas & Sutcliffe, 2022). This is due to low correlation with traditional assets, despite risks like high volatility. They present potential returns despite being digitally stored assets (Van Der Merwe, 2021). Hence, the benefits derived from crypto assets make crypto assets highly functional and useful and this aligns with the concept of *mal* in Islam.

4.2.4.3 Crypto assets can be owned and possessed

Ownership and possession are crucial aspects of *mal* in Islam, as they define the legal relationship between a person and the assets in question. Ownership refers to the legal right of an individual to possess, use, and dispose of an asset. It grants the individual

control over the asset, authorising them to utilise it and restrict others from using it without consent (Al-Syatibi, 1999; Islam, 1999; Engku Ali, 2003).

Given that, the researcher considers that crypto assets meet this criterion evidenced by ownership of the private keys associated with crypto assets, which grant individuals control over their assets. Ownership of crypto assets is recorded on the blockchain, a decentralised ledger that ensures transparency and security. In ensuring a clear and verifiable title of ownership, which is essential for establishing legal ownership, transactions involving crypto assets are recorded by the blockchain ledger which provides transparent and immutable history of ownership (Carlson et al., 2021; Hossain, 2021; Beyer & Nipp, 2019 and Beyer, 2019).

Additionally, possession in the context of crypto assets can translate into having control over the private keys. If the individual possesses the private keys, they effectively control and possess crypto assets. Besides, crypto assets are stored in digital wallets, which can be accessed only by the person who possesses the private keys (Carlson et al., 2021; Hossain, 2021; Beyer & Nipp, 2019 and Beyer, 2019). The researcher views the capability to securely own and possess crypto assets confirm their alignment with the Islamic requirement of *mal*. Furthermore, R1 asserted that crypto assets fulfilled the requirement of *mal* in Islam since it can be owned and benefitted as he said:

“It can be owned and provide benefits. So, the conditions to allow it to define as property is fulfilled...”

4.2.4.4 Crypto assets are storable

Another element of *mal* in Islam that must be considered in determining whether crypto assets are *mal* is the element of storability of assets. An asset must be kept for future use or benefit without significant deterioration or loss of value. The Islamic jurists

emphasised the importance of this attribute, as it ensures the assets can provide ongoing utility during necessity and serve as a store of value (Abu Jaib, 1988; Al-Husain, 1995; Islam, 1999).

In the light of crypto assets, the researcher opined that, although crypto assets lack physical form, they satisfy the element due to their digital nature based on blockchain technology. The digital nature does not diminish storability of crypto assets. They can be stored electronically without the risk of physical degradation, where crypto assets are stored in digital wallets, which can be categorised into hot wallets (online storage) and cold wallets (offline storage). These wallets provide secure storage and easy access to the assets (Carlson et al., 2021; Hossain, 2021; Beyer & Nipp, 2019 and Beyer, 2019).

The underlying blockchain technology ensures that crypto assets are securely recorded, verified, and maintained in a decentralised ledger. Crypto assets are protected by cryptographic security, making it difficult to counterfeit or steal without private keys. If the key is securely stored, the assets themselves are safe (Carlson et al., 2021; Hossain, 2021; Beyer & Nipp, 2019 and Beyer, 2019).

The researcher argues that crypto assets satisfy the essential element of storability of *mal* in Islam. Their digital nature, secure storage methods, and durability align with the element of storability, ensuring they can serve as a viable and valuable form of property. This argument is supported by the view given by R3 that crypto assets can be stored since it has ability to be consumed and transferred, hence fulfil the element of storability under Shariah requirement of *mal* as he asserted:

“...It has ability to be consumed and to be transferred. And if there is a buyer, then transfer of ownership can occur. And he can store it and trade it right?”

4.2.4.5 Crypto assets are transferable

The element of transferability of assets is crucial in classifying whether such assets are *mal* in Islam. Where it is a key attribute of *mal*, as it allows assets to be exchanged or transferred between individuals. In Islamic law, transferability is crucial for economic activities and transactions (Rosele et al., 2022). It ensures that wealth can be distributed, exchanged, and utilised effectively within the community and eventually preserve the objective of Shariah, protection of wealth.

Pertaining to crypto assets, they are inherently transferable, enabling seamless transactions across borders without the need of intermediaries. This feature is facilitated by blockchain technology, which records and verifies transactions in a decentralised manner (Carlson et al., 2021). The ease of transferring crypto assets enhances their utility and makes them suitable for various financial activities. In fact, transferring crypto assets occurs through digital wallets. The sender initiates the transfer by authorising the transaction with their private key, and the blockchain network verifies and records the transaction (Joo et al., 2019).

Hence, the transferability of crypto assets aligns with the Islamic criterion of *mal*, supporting the classification of crypto assets as permissible *mal*.

4.3 The unclear legal framework governing Islamic estate planning for crypto assets in Malaysia

In Malaysia, the rapid adoption of crypto assets has prompted significant regulatory attention (Islami Nawang & Abd Ghani, 2021). However, the existing legal framework struggles to keep pace with the unique characteristics of these assets, particularly in the context of Islamic inheritance and estate planning (Zul Kepli & Bustami, 2021). The decentralised and pseudonymous nature of crypto assets presents unprecedented

challenges in asset management and transfer upon death, raising cryptical questions about the adequacy of existing legal framework for Islamic inheritance and estate planning of crypto assets in Malaysia. To answer this research question, the researcher examines the adequacy of existing legal framework to regulate Islamic inheritance and estate planning of crypto assets in Malaysia.

The researcher found that the regulatory landscape for crypto assets in Malaysia has evolved considerably over the past decade, with significant efforts by regulatory bodies such as SC and BNM to establish a legal framework for digital currencies and digital tokens (Zul Kepli & Shahul Ikram, 2020). For instance, in January 2014, BNM issued a cautionary statement to the public regarding the use of virtual legal currencies, such as Bitcoin. BNM emphasised that these virtual currencies were not recognised as legal tender in Malaysia. This initial stance highlighted the central bank's concerns about the risk associated with virtual currencies, including their potential use for money laundering and other illegal activities (Bank Negara Malaysia, 2014).

In 2018, BNM took a more proactive approach by incorporating digital currency exchange into the existing anti-money laundering (AML) and counter-terrorism financing (CTF) regulatory framework by issuing anti-money laundering and counter-financing of terrorism policy (AML/CTF) – digital currencies (Sector 6). Under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2021 (AMLA), DAXs were required to register as a reporting institution. This move aimed to enhance the transparency and accountability of digital currency transactions and mitigate the risks associated with their use (Bank Negara Malaysia, 2018).

In 2019, a significant milestone in the regulation of crypto assets in Malaysia was remarkable by the issuance of the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 by Securities Commission. This order classified digital currencies and digital tokens as securities under the Capital Markets and Services Act 2007 (CMSA). Entities dealing with these classified digital assets were required to comply with relevant securities laws, including the need to obtain necessary licenses and adhere to regulatory requirements. Besides, the Guidelines of Recognised Markets (SC-GL 6/2015), which was issued in 2015 has been amended in 2019 by inserting new chapter that sets out the additional requirements for DAX operators i.e. Chapter 15 (Securities Commission).

In January 2020, the SC released the Guideline on Digital Assets (SC-GL/1-2020), providing a comprehensive regulatory framework for digital assets offerings, including initial coin offerings (ICOs) and DAX. This guideline aimed to promote responsible innovation in the digital assets space while ensuring investor protection and market integrity. Key provisions included requirements for issuers to seek the SC approval before conducting ICOs and for DAX to comply with rigorous standards.

Until 2024, the SC continues to refine its regulatory framework for digital assets by issuing updated guidelines to address emerging risks and challenges. These updates included enhanced requirements for cyber security, risk management, and governance for digital assets operators. The SC has also increased its engagement with industry stakeholders to ensure the regulatory measures remain relevant and effective in the rapidly evolving digital assets landscape (Securities Commission Malaysia, 2024).

While the regulatory framework for crypto assets in Malaysia has made significant movement, when it comes to regulation on its inheritance, R5, R6 and R7 unanimously

opined that as to date, there are no regulations on inheritance of crypto assets, and it has remained uncertain. As highlighted by R6, he said:

“The legislation regarding the inheritance of crypto assets is still unclear.”

R6, who had experienced and owns crypto assets stated that the regulation of crypto assets is at an early development phase and has never seen any recent case related to inheritance of crypto assets. He said:

“Because this is something new, I have not seen any real cases about this yet. But I have thought about it for a long time. I was involved with an exchange that was not recognised at the time. Sometimes, I wonder, if I were to pass away, what would happen to my assets?”

With this regard, the researcher agreed that the government’s approach leans towards a minimalist regulatory framework to foster innovation and development in the crypto assets sector as viewed by Ismail Nawang and Abd Ghani (2021). However, there exists several legal gaps that current legal provisions do not adequately address the matters pertaining to inheritance and estate planning of crypto assets in Malaysia which are presented in the next section.

4.3.1 The legal framework of crypto assets prioritises intermediary regulation over end-user protection

Evidently, over the past ten years, the regulations on crypto assets in Malaysia only provide a structured approach for intermediaries (Zul Kepli & Shahul Ikram, 2020). The legal framework for crypto assets in Malaysia tends to prioritise the regulation of intermediaries such as exchanges, wallets providers, and other services operators. This focus ensures that these entities operate transparently, securely, and in compliance with regulatory standards. For instance, the Guidelines on Digital Assets (SC-GL/1-2020 (R2-2024)) are specifically applied to issuers raising funds through digital token

offering, operators of IEO platforms, and those providing digital assets custody services as provided in Paragraph 2.01, Chapter 2 of this guideline.

2.01 These Guidelines apply to –

- (a) all issuers seeking to raise funds through digital token offerings.
- (b) all persons intending to operate an IEO platform; and
- (c) all persons intending to provide the services of safekeeping, storing, holding or maintaining custody of digital assets for the account of another person.

This guideline is divided into four parts and the summary of key provisions is as seen in Table 4.1.

Table 4.1
Summary of Guidelines of Digital Asset 2015, revised in August 2024

Part	Section	Description
A	Introduction and applicability	This part defines the scope and application of the guidelines to all activities related to digital assets in Malaysia. This guideline applies to issuer rising funds through digital token offerings, operators of IEO platforms, and those providing digital assets custody services.
B	General requirements	This section outlines the pre-requisites for issuers of digital tokens, including registration and compliance with the guidelines.
	Issuer obligations	This section specifies the responsibilities of issuers, including accurate records, ensuring transparency, and fulfilling reporting requirements.
	White paper requirements	This section details the necessary information that must be included in a white paper for a digital token offering, including project details, risk disclosures, and financial projections.

Table 4.2(Continued)

C	Registration and application	This section describes the process of IEO operators to register with the SC.
	Financial and operational requirements	This section establishes the financial stability and operational capabilities required for IEO operators.
	Obligations of IEO operators	This section lists the duties of IEO operators, including safeguarding client assets, managing conflict of interest, and ensuring compliance with anti-money laundering regulations.
D	Custodian Responsibilities	This section details the responsibilities of digital assets custodians, including secure storage, transaction handling, and record-keeping.
	Security measures	This section mandates the implementation of robust security mechanisms, such as multi-factor authentication and secure key management practices.
	Segregation of assets	This section requires a custodian to keep client assets separate from their own to maintain accurate and up to date records.

Sources: Securities Commission of Malaysia (2024)

Although the Guideline on Digital Assets sets out in paragraph 27.03 (b) that digital assets custodians must safeguard the rights and interests of clients in terms of access and prevent unauthorised access to their digital assets. The guideline provides that:

“27.03 A digital asset custodian must –

(b) safeguard the rights and interests of its clients including ensuring that its clients always have access to their digital assets and preventing unauthorised access to clients’ digital assets.”

Apparently, the guidelines do not sufficiently address the protection of end users, particularly in the context of inheritance and estate planning of crypto assets. There is no explicit provision relating to inheritance of crypto assets in the guidelines. The regulatory frameworks primarily target intermediaries, such as exchanges and wallets

providers, with less emphasis on protecting end users. This intermediary-centric approach leaves gaps in addressing issues related to individual ownership and transfer of crypto assets, particularly in inheritance scenarios.

Pertaining to the above matter, R5 commented that:

“Currently, laws relating to crypto are more focused on the guidelines issued by Bank Negara Malaysia (BNM) and the Securities Commission Malaysia (SC). However, they do not address the inheritance issues. The existing regulations are more about funding aspects. Therefore, laws regarding the inheritance of crypto assets are not yet established in Malaysia.”

Zul Kepli and Bustami (2021) also commented that the legal framework of crypto assets in Malaysia is seriously lacking in terms of protection of the inheritance of crypto assets. The researcher agreed with the above comments in which the regulatory framework of crypto assets in Malaysia has predominantly centred around the regulation of intermediaries such as exchanges and wallet providers. This can be seen through the regulatory developments of crypto assets in Malaysia where from 2014 up to recent years as mentioned above, they do not sufficiently address the protection of end users, particularly in the context of inheritance and estate planning.

In contrast, other country such as the United States have introduced detailed and structured legal frameworks to regulate the inheritance of crypto assets (Beyer & Nipp, 2019; Paulger, 2022). The United States issued the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) 2015, which provides a legal framework designed to give fiduciaries the authority to manage digital assets in the same manner as tangible assets upon death, offering clearer guidelines for estate planning. RUFADAA 2015 also provides a clear legal path for fiduciaries to access digital information while respecting privacy and contractual obligation. This Act laid down the provisions on

fiduciary authority to manage the digital assets subject to the deceased's instructions either in the will, trust, power of attorney or other documents or by the terms of service agreement of digital assets providers. The scope of access is also stated in this Act. The provisions in RUFADAA 2015 also mentioned the user's direction to establish estate planning of their digital assets and service providers compliant with the fiduciary's request for access to digital assets (Beyer & Nipp, 2019; Paulger, 2022).

Meanwhile in Malaysia, the regulation on inheritance and estate planning of crypto assets is unclear (Zul Kepli & Bustami, 2021). The researcher opined that certain existing legal principles can be applied to the inheritance of crypto assets. For instance, Section 23 of Probate and Administration Act 1959 provides that in situations where it is necessary to preserve the property of the deceased, the Court has authority to grant letters of administration to suitable individuals or to corporations.

“23. Letters of Administration to collect and preserve property

In any case in which it appears necessary for preserving the property of the deceased person, the Court may grant to any person whom the Court thinks fit, or to the Corporation, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharge of debts due to his estate, subject to the direction of the Courts; and the person so appointed shall have power to dispose of all assets of the estate of a wasting or perishable nature and invest the proceeds of sale.”

However, without a clear legal framework on inheritance and estate planning of crypto assets, the application of Section 23 of the Probate and Administration Act 1959 in the context of crypto assets presents a complex legal challenge, notwithstanding its broad provisions empowering administrators to collect and preserve a deceased's estate. While the statutory framework allows the Court to grant letters of administration for this purpose, the distinct nature of crypto assets—characterised by pseudonymity,

volatility, and dependence on private keys—complicates their administration and raises critical legal uncertainties.

Although Section 23 enables an administrator to take control of the deceased's estate, the absence of a clear legal mechanism for crypto asset inheritance significantly undermines its practical implementation. Unlike traditional assets such as real estate or bank deposits, crypto assets are stored in digital wallets that require private keys for access. Without explicit documentation or prior arrangements by the deceased, these assets may be virtually impossible to retrieve, rendering the administrator's authority ineffective. The challenge is further compounded by the pseudonymous nature of crypto holdings, which lack identifiable ownership records, making it difficult to locate the assets even when letters of administration have been granted.

Moreover, while the provision allows for the disposal of perishable assets and the investment of proceeds for estate preservation, the extreme volatility of crypto assets introduces a critical issue. Their market value fluctuates unpredictably, sometimes within hours, creating significant challenges in determining the appropriate time for liquidation and fair distribution among beneficiaries. This differs from conventional estate administration, where asset valuation remains relatively stable, allowing for more predictable decision-making.

Additionally, the enforcement of an administrator's authority under Section 23 faces obstacles due to the contractual terms imposed by digital asset exchanges. Many such platforms operate under policies that either prohibit posthumous asset transfers or require pre-established succession arrangements, such as nominee accounts. Even where letters of administration have been duly obtained, administrators may find

themselves unable to compel these exchanges to release the deceased's crypto holdings, thereby frustrating the objectives of estate administration.

Thus, while Section 23 provides a legal foundation for the collection and preservation of a deceased's estate, its application to crypto assets remains highly problematic. The digital, decentralised, and pseudonymous nature of these assets fundamentally challenges the traditional mechanisms of estate administration. In the absence of a dedicated legal framework that explicitly addresses access and valuation, reliance on Section 23 alone is insufficient to ensure the effective administration of crypto assets. Therefore, there is an urgent need for legislative reforms that integrate crypto-specific inheritance and estate planning mechanisms to provide clarity, legal certainty, and practical solutions for administrators and beneficiaries alike.

4.3.2 The legal ambiguity of crypto assets as securities in Malaysia

The Capital Market and Services Act 2007 (CMSA 2007) is the primary legislation governing securities in Malaysia. According to Section 2 of the CMSA 2007, securities are defined as debentures, stocks, or bonds issued or proposed to be issued by any government, shares in or debentures of, a body corporate or any unincorporated body; or units in a unit trust scheme or prescribed investment, and includes any right, option or interest in respect thereof. The CMSA 2007 provides a broad and inclusive definition, intended to encompass various financial instruments. However, the evolving nature of crypto assets presents unique challenges that the current legislative framework may not adequately address particularly crypto assets as property.

In respect of crypto assets, its legal classification has been addressed primarily through the Capital Markets and Services (Prescription of Securities) (Digital Currency and

Digital Token) Order 2019. Section 3 (1) of this order stated that digital currency and digital token are prescribed to be securities.

“3(1) A digital currency which –

- (a) is traded in a place or on a facility where offers to sell, purchase, or exchange of, the digital currency is regularly made or accepted.
- (b) A person expects a return in any form from the trading, conversion or redemption of the digital currency or the appreciation in the value of the digital currency.
- (c) is not issued or guaranteed by any government body or central bank as may be specified by the Commission.

is prescribed as securities for the purposes of securities laws.

(2) A digital token which represents a right or interest of a person in any arrangement made for the purpose of, or having the effect of, providing facilities for the person, where -

- (a) the person receives the digital token in exchange for consideration.
- (b) the consideration or contribution from the person, and the income or returns, are pooled.
- (c) The income or returns of the arrangement are generated from the acquisition, holding, management or disposal of any property or assets or business activities.
- (d) The person expects a return in any form from the trading, conversion or redemption of the digital token or the appreciation in the value of the digital token.
- (e) the person does not have day-to-day control over the management of the property, assets or business of the arrangement; and
- (f) The digital token is not issued or guaranteed by any government body or central banks as may be specified by the Commission and is prescribed as securities for the purpose of the securities laws.

The researcher found that from the perspective of securities law in Malaysia, digital assets such as crypto assets can be divided into two types, which are digital currency and digital token. The difference between digital currency and digital token is digital

currency when it is used for payment purposes such as Bitcoin. Meanwhile, digital token is a type of digital asset for fundraising purposes; and can be categorised into three, which are exchange token, utility token, and asset token (Bank Negara Malaysia, 2021).

However, the researcher noted that Section 5 of Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 also provides that under the securities laws in Malaysia, crypto assets are not share in or debenture or, a body corporate or an unincorporated body, or a unit trust scheme or prescribed investment scheme.

“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 recognised market is not –

- (a) A share in or debenture of, a body corporate or an unincorporated body; or
- (b) A unit in a unit trust scheme or prescribed investment scheme.”

With the above provision, R5 agreed that crypto assets are not similar to shares but can be considered as security since they are bought with money and can be liquidated for cash, which is then subject to Malaysian taxation. He stated that:

“Crypto has value and can be considered as security. Because we can buy crypto using money, it has value. However, it can be liquidated to get money, and it will be taxed when the assets are liquidated. But it is not a share because a share is a type of security. That is why Bank Negara Malaysia (BNM) regulates its guidelines. So, what I meant earlier is that the concept is similar to buying shares using money, where we own the shares along with their value. When we liquidate the share, we will get the money.”

Based on R5’s opinion, the researcher inferred that crypto assets are considered as security due to their ability to purchase using money and liquidated in case just like shares. However, this opinion is contrary to R3’s that crypto assets cannot be compared

with shares and yet crypto assets are not to be included in the definition of securities in the CMSA 2007, hence it requires further interpretation.

In this regard, the High Court Judge in the case of *Robert Ong Thien Cheng v Luno Pte Ltd & Anor* [2020] 1 LNS 2194 agreed with the interpretation of crypto assets such as Bitcoin as a form of commodity since real money is used to purchase it and, in this context, Bitcoin holds value in a manner like shares. The High Court Judge also mentioned that it falls within the scope of ‘anything’ as defined in Section 73 of the Contract Act 1950 (Ismail Nawang & Abd Ghani, 2021). In this case, the High Court Judge viewed that:

“[15] The Respondents were also correct that it cannot be disputed that it is a form of commodity as real money is used to purchase the crypto assets. In this regard, there is indeed value attached to Bitcoin in the same way as value is attached to shares.

[16] I also agree with the view that the Contract Act, 1950 having drafted some 7 decades ago ought to be construed to reflect changes in modern technology and commerce.

[17] Hence, rightfully, Bitcoins ought to fall under the ambit and application of the term anything under Section 73 of the Contract Act 1950 and therefore the Appellant is bound to return the same to the Respondent if circumstances warrant it. In this regard, the term anything is plainly wide enough to cover Bitcoins.”

The researcher found that the above provision mentioned in Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 has remained vague. The researcher agreed with R3’s opinion that the interpretation of securities as provided in Section 2 of CMSA 2007 does not include digital assets i.e. digital currency and digital token as part of the interpretation of securities and requires further interpretation. Since Order 5 of Capital Markets and Services (Prescription of

Securities) (Digital Currency and Digital Token) Order 2019 mentioned that digital currency and digital token are not share etc., the researcher inferred that the classification of digital assets is not included in this interpretation because of the nature of issuance of crypto assets. Where securities like shares, debentures, stocks, and bonds are typically issued by a corporate entity, organised body or government. Crypto assets, on the other hand, are often decentralised and not necessarily issued by specific entities. This lack of centralised issuing authority makes them fundamentally different from traditional securities. Hence, since the CMSA 2007 does not explicitly mention digital assets i.e., digital currency and digital token in its definition of securities, the researcher suggests that digital assets such as crypto assets should not be automatically classified as securities under current Malaysia law.

Furthermore, Garrido (2023) stated that crypto assets can be structured as securities does not automatically mean that all crypto assets can be classified as securities since crypto assets can encompass rights that diverge from those typically associated with securities. For instance, utility tokens can encompass a variety of rights, such as access to services or the ability to purchase goods at predetermined prices. These tokens do not appear to share characteristics with traditional securities (Garrido, 2023).

In the context of inheritance and estate planning of regulation pertaining to securities in Malaysia, the researcher observed that the interpretation of securities confined to stocks, funds or shares as provided in Section 2 of Probate and Administration Act 1959 and Trustee Act 1949 respectively omitting digital assets from this categorisation. Both provisions mentioned:

“Securities include stocks, funds and shares.”

Indeed, Section 2 of the Probate and Administration Act 1959 and Trustee Act 1949 also stated that property in these Acts includes movable assets. However, movable assets such as crypto assets are excluded from the interpretation of securities in these Acts. This suggests that there is uncertainty when it comes to classifying crypto assets as securities.

The ambiguity surrounding the classification of crypto assets as securities in Malaysia leads to significant legal implications, particularly in Islamic inheritance and estate planning. Without clear regulatory guidelines defining whether crypto assets should be treated as traditional securities or something distinct, Shariah and legal issues arise pertaining to its inheritance and estate planning.

4.4 Shariah issues in Islamic estate planning for crypto assets in Malaysia

In this study, the researcher found that a significant result on crypto assets is the determination of their status as *mal*. The recognition of crypto assets as *mal* aligns with the broader objectives of Shariah, which aim to preserve and promote the welfare of humanity by protecting faith, life, intellect, lineage and wealth (Aliyu et al., 2017). Given the crypto assets are considered as *mal* in Islam, they must be included in the estate of a deceased person and distributed according to the principles of Islamic inheritance laws (Mahomed & Ramadili, 2017). This means that crypto assets must be treated with the same level of importance and meticulous planning as traditional assets like real estate, gold, or stocks.

Adherence to Islamic laws is fundamental to the protection of lineage and wealth of the Muslim community. The inclusion of crypto assets in inheritance processes ensures that wealth accumulated through these digital assets is distributed fairly and justly, in

accordance with divine injunctions (Zuleika & Desinthya, 2013). As Allah mentioned in *Surah Al-Nisa*, verse 11 that:

“Allah instructs you concerning your children: for the female, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one’s estate. And if there is only one, for her is half. And for one’s parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if had brothers [or sisters], for his mother is a sixth, after any bequest he [may leave] made or debt. Your parents or your children – you know not which of them nearest to you in benefit. [These shares are] and obligation [imposed] by Allah. Indeed, Allah is ever knowing and wise.”

This not only upholds the rights of all heirs but also promotes social justice and harmony, preventing conflicts and ensuring the financial stability of the family unit.

The researcher learned that the integration of crypto assets in Islamic inheritance and estate planning directly impacts *maqasid Shariah*, requiring a careful analysis to ensure that the digital assets such as crypto assets align with Islamic values. As crypto assets gain recognition as *mal*, their inclusion in Islamic inheritance and estate planning processes becomes essential, raising several critical Shariah issues that must be addressed.

In this context, the investigation on the Shariah issues related to Islamic inheritance and estate planning of crypto assets in Malaysia uncovered several key concerns: the need to establish clear guidelines for the cut-off date value off crypto assets after the demise of the owner and determining the proper execution and recognition of gift (*hibah*) of crypto assets. Each of these issues significantly impacts adherence to Islamic inheritance principles.

4.4.1 Inconsistencies of gazette and non-gazette fatwa on crypto assets in Malaysia

The fatwa in Malaysia plays a pivotal role in guiding the Muslim population on religious and legal matters. In the advent of new technologies such as crypto assets, the relevance and application of fatwa have become more crucial and complex. The traditional law was not designed with modern financial instruments in mind. Hence, new interpretations and rulings are required. The researcher found that this has led to a variety of fatwas on the permissibility and handling of crypto assets in Malaysia, reflecting different interpretations and levels of acceptance. As to date, only the State fatwa Committee of Sarawak had gazetted their fatwa crypto assets. The other state fatwa committees such as from Perlis, Perak, Selangor, Kelantan, Johor, and the Federal Territory had issued their respective non-gazette fatwa and stance related to crypto assets.

The researcher noted that the stances of *Mufti* of Federal Territory related to crypto assets are evolving where the initial consideration given by *Mufti* of Federal Territory on crypto particularly on Bitcoin was caution. During the 106th meeting of the Shariah Advisory Committee of *Mufti* of Federal Territory on 30th January 2018 decided that a more detailed study on the actual practice of Bitcoin, along with the information from other countries that utilise it was necessary (*Mufti* of Federal Territory, 2018(a)). The decision indicated an initial approach of caution and the need for thorough understanding before making a definitive ruling. The similar stance was given by the state fatwa of Johor that the fatwa on Bitcoin or digital currency has not yet been issued as it is still under on-going research (Berita Harian, 2020).

In November 2018, following a detailed analysis, the stance of *Mufti* of Federal Territory leaned towards prohibition of Bitcoin due to its speculative nature, lack of

intrinsic value, and potential for illegal activities as mentioned in the *Bayan Linnas no. 153* (*Mufti* of Federal Territory, 2018 (b)). This reflected a more cautious and risk-averse position of *Mufti* of Federal Territory on crypto assets such as Bitcoin.

However, by 2021, *Mufti* of Federal Territory's (2021) stance showed flexibility, particularly regarding the use of crypto assets as dowry (*mahr*) in marriage. While advising against their use due to volatility, *Mufti* of Federal Territory (2021) allowed for crypto assets to be used as dowry if certain conditions – such as value stability and mutual agreement – were met. This marked a shift from outright prohibition to cautious consideration under specific circumstances.

In 2022, *Mufti* of Federal Territory (2022) further developed this stance by addressing the obligation of *zakat* in Shariah compliant digital assets. The fatwa issued under Section 34 of the Administration of Islamic Law (Federal Territories) Act 1993 declared that any Shariah compliant digital assets that possess value and are traded must be subjected to *zakat* trading at a rate of 2.5%. This applied to digital assets that exceeded the minimum threshold (*nisab*) and were held for a full year.

The researcher viewed that the above progression in ruling illustrates an evolving stance of *Mufti* of Federal Territory on crypto assets, from cautious prohibition to regulated permissibility. Nevertheless, the present fatwa is too general and does not specifically refer to crypto assets and it only focuses on *zakat*.

The researcher also found that the different *fatwas* issued by state fatwa committees in Malaysia regarding crypto assets illustrate the complexities involved. For instance, the *Ulama* Council of the Kelantan Islamic Religious and Malay Custom Council (MAIK) convened on 2nd May 2018 had that the use of Bitcoin for sales, purchase, leases and

other business transaction is not permissible according to Shariah (*Mufti Department of Kelantan, 2018*). The reason for this decision were mentioned as follows: -

“After thoroughly discussing this issue, the meeting has agreed to issue fatwa stating that the use of digital currency (Bitcoin) for sales, purchases, leases, and other business transaction is not permissible according to Shariah. The decision is based on the following reasons: -

- i. It does not comply with virtual control and security system.*
- ii. It contradicts the centralised financial system for countries and central banks.*
- iii. It is used to evade security agencies for illegal activities.*
- iv. It is widely used by armed and extremist group like organised crime, drugs, and money laundering to avoid capture and prosecution.*
- v. It is exposed to elements of uncertainty, gambling and fraud.*
- vi. It is purely an online electronic currency trade.*
- vii. It is decentralised digital currency with no physical presence and cannot be concretely measured.*
- viii. It contains an element of ignorance (jihalah).*
- ix. Trading using it is not permissible.*
- x. It lacks central body control behind it.*

The researcher viewed that the fatwa issued by the Kelantan state fatwa focused on prohibition of Bitcoin. This fatwa is contradicted with the fatwa issued by the state fatwa of Perlis. Where the state fatwa committee of Perlis permits Bitcoin as digital asset and the use of it as payment intermediary, money transfer, asset storage, and trading with certain parameters as decided in their meeting in November 2018 (*Mufti Department of Perlis, 2018*) which stated that:

“After hearing presentation from knowledgeable and experienced individuals on the technical aspects, our position is as follows: -

- 1. The nature and validity of Bitcoin’s asset value: it is valid and can be recognised as having asset value based on the multi-function and benefit obtained by Bitcoin owners. These benefits include:*

- (i) *Access to a complete ecosystem enabling secure and accurate ownership transfer.*
- (ii) *The ability to be stored and transferred to others easily, quickly, and cheaply.*
- (iii) *The capability to be traded on the open crop market.*
- (iv) *Acceptance by some parties as a payment intermediary.*
- (v) *The use of blockchain technology which adds transparency and security to Bitcoin and its value.*

Therefore, Bitcoin can be transferred as a digital asset with unique qualities and various benefits that are permissible (mubah), particularly for communities that understand its uses and benefits.

Bitcoin currently does not meet the criteria for classification as currency and hence cannot be considered as such, nor are the sarf law guideline applicable to it.

2. *It is permissible to transact with Bitcoin as a payment intermediary, money transfer, asset storage and trading and point number 5 as mentioned below must be taken into consideration.*
3. *Since Bitcoin is recognised as valuable asset, any ownership exceeding the value of 85 grams of gold and held for over a year requires the owner to pay an almsgiving (zakat) of 2.5% of the current value of Bitcoin.*
4. *Those who wish to use Bitcoin must understand its usage intricacies to avoid uncertainty (gharar) elements during transactions. Additionally, they must be aware of the high risks associated with Bitcoin transactions.*
5. *The use of Bitcoin can become forbidden due to the external factors, such as:*
 - (i) *If the government prohibits the use of it, hence the use of it also become impermissible from Shariah perspective based on public interest and harm prevention as assessed by public authority.*
 - (ii) *Participating in Bitcoin scheme via get-rich-quick runs by intermediaries or companies promising fixed and lucrative returns is forbidden both from a Shariah and local legal standpoint. This has led to fraud when Bitcoin is purchased through accounts owned by such companies.*

The researcher viewed discrepancies between the fatwa issued by the state fatwa of Kelantan and Perlis on crypto assets, which specifically on Bitcoin. The Kelantan fatwa emphasises the potential misuse of Bitcoin and lack of regulatory oversight and

concludes that Bitcoin transactions are not permissible. The researcher viewed that the unclear regulatory framework of crypto assets in 2018 perhaps contributes to the impermissibility of Bitcoin by the state fatwa committee of Kelantan. This fatwa also reflects conservative approach focused on preventing harm and ensuring financial transactions align with traditional Islamic principles. In contrast, Perlis takes a more progressive view, recognising the value and benefits of Bitcoin while imposing conditions to manage risk and ensure compliance with Islamic law (*Mufti Department of Perlis, 2018*).

Nevertheless, the types of crypto assets are not limited to Bitcoin. It appears that the fatwas issued by state fatwa of Kelantan and Perlis focus exclusively on Bitcoin, overlooking other types of crypto assets. This narrow focus may result in a lack of comprehensive guidance on the diverse range of crypto assets available, potentially causing confusion and incomplete understanding among the public about the Shariah-compliant use of various crypto assets beyond Bitcoin (*Mufti Department of Kelantan, 2018*).

Concerning this issue, the findings reveal that the fatwa on crypto assets issued by state fatwa of Perak, Sarawak and Selangor in 2021 are more general without specifying any types of crypto assets where all fatwa deems the transactions involving crypto assets to be permissible with certain parameters (*Mufti Department of Perak, 2021 Majlis Islam Sarawak, 2021; Mufti Department of Sarawak, 2021*). The researcher also found that the parameters set by state fatwa committee of Perak, Sarawak, and Selangor are similar as following: -

- a) All business transactions must be conducted through a licensed crypto assets exchange platform and regulated by the authorities.

- b) The users must have comprehensive understanding of crypto assets of the following: -
- i) The types, main characteristics and risks associated with crypto assets.
 - ii) The methods of acquiring crypto assets and ensuring its secure storage.
 - iii) The regulations are set forth by the crypto assets exchange platform.
- And
- iv) Laws and regulation pertaining to crypto assets.
- c) Crypto assets cannot be used for transactions involving non-Shariah compliant goods, activities and services such as purchasing drugs, prostitution, funding terrorist activities, or money laundering.

The researcher asserts that the state fatwa of Perak, Sarawak and Selangor had taken the cautious approach to ensure the use of crypto assets are aligned with national and states laws by emphasising on the transaction must be done on licensed DAX platform that regulated by the SC (*Mufti Department of Perak, 2021 Majlis Islam Sarawak, 2021; Mufti Department of Sarawak, 2021*). Although the state fatwa of Perlis permits the use of crypto assets like Bitcoin, it does not specify that such transactions must be conducted through licensed DAX (*Mufti Department of Perlis, 2018*). Therefore, engaging in crypto assets transactions outside of licensed DAX platforms could potentially lead to reconsideration of the permissibility ruling and eventually cause confusion to the public.

Moreover, the researcher uncovered that only the state fatwa of Sarawak specifically defined crypto assets in general as digital assets that are intangible but are considered to have value which can be transferred, distributed and exchanged provided the transfer is peer to peer not through a third party (*Majlis Islam Sarawak, 2021*). Besides, they explicitly mentioned crypto assets as commodities as regulated by the SC indicates that

the permissibility of crypto assets in Sarawak hinges on which type of crypto assets are approved by the SC.

“...(d) to validate the Security Commission (SC) decision as commodity and subject to any conditions that have been set.

(2) in this fatwa “crypto assets’ means a digital asset that is not tangible but is considered to have value which can be transferred, distributed and exchanged provided the transfer is made peer to peer not through any third party (for example bank.)” (Majlis Islam Sarawak, 2021)

Based on the above discussion, which concerns inheritance and estate planning of crypto assets for Muslim in Malaysia, the researcher argues that the above finding indicates inconsistent and unstandardised fatwa on crypto assets can significantly impact inheritance. In Malaysia, fatwa plays a critical role in guiding the Shariah Court when adjudicating matters related to Islamic inheritance law. However, its role is not absolute, and Shariah judges retain the authority to exercise their own *ijtihad* (independent reasoning) in determining complex inheritance issues. As per List II, Schedule 9 of the Federal Constitution, the jurisdiction of the Shariah Court in estate administration is limited to issuing *faraid* certificates and making rulings on *hukm syara’* (Islamic rulings) related to a deceased’s estate (Halim, 2018; Md Said, et al., 2021). When no fatwa exists on a particular matter, the court must refer to the relevant State Fatwa Committee for guidance. However, this process presents significant challenges in the context of crypto asset inheritance, as many state fatwa committees have yet to issue clear rulings on whether crypto assets qualify as *mal* (wealth) and whether they can be inherited under Islamic law.

Although finance and banking matters, including Islamic finance, fall under federal jurisdiction (as stipulated in Item 7 of the Federal List, Schedule 9 of the Federal

Constitution), the issue of whether crypto assets are inheritable property for Muslims should be determined by the Shariah Court. The case of *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor* [2006] 4 MLJ 705 reaffirmed this principle, where Abdul Aziz Mohammad JCA ruled that succession and gifts according to Islamic law fall within the judicial jurisdiction of the Shariah Courts. The judgement emphasised that:

"The matter of succession and the matter of gifts according to Islamic law, where they involve Muslims, are matters within the judicial jurisdiction of the Shariah Courts. A dispute about gifts is not a dispute about probate and administration, just because it arises in the context of administration of an estate. In the course of administering an estate, various problems may arise, such as, in the case, on whether the property belongs to the estate, the answer to which depends, ... Each of the problems has to be solved according to the particular law that is applicable to the nature of the problem."

Based on this ruling, the researcher asserts that the question of whether crypto assets qualify as *mal* and can be inherited must be decided according to Shariah law. Since succession and inheritance are categorised as Islamic law and personal matters, which are state matters as per Item 1 of the State List, Schedule 9 of the Federal Constitution, such disputes should fall under the jurisdiction of the Shariah Court, as reaffirmed by Article 121(1A) of the Federal Constitution. This position is crucial in preventing jurisdictional overlaps between the Shariah and Civil Courts, particularly in crypto asset inheritance cases.

This research also highlights that Shariah judges are not necessarily bound to follow fatwa in inheritance matters. Several cases demonstrate that Shariah Courts possess the authority to exercise *ijtihad* in determining estate-related matters, even when a fatwa exists. In *Wan Shahruman Wan Suleiman & Anor v Siti Norhayati Mohd Daud* [2010]

1 CLJ (Sya) 85, the Shariah Court of Appeal overturned a High Court ruling that had relied on a fatwa, instead applying *ijtihad* to determine whether ex gratia payments to a deceased judge were part of the estate. Similarly, in *Che Mas Abdullah v Mat Sharie Yaakub* [2005] 2 CLJ (Sya) 1, the Shariah Court ruled that Employees Provident Fund (EPF) savings were part of the deceased's estate without referring to any fatwa. These cases confirm that Shariah judges have discretionary power to make independent rulings based on legal reasoning, facts, and evidence.

Applying this principle to crypto asset inheritance, this research identifies two possible scenarios. If no fatwa exists on whether crypto assets qualify as *mal* and are inheritable, Shariah judges may rely on *ijtihad* to determine the matter. However, for judges to competently issue rulings, they must possess a thorough understanding of crypto assets, including their technical nature, legal classification, and financial implications. This research emphasises that without adequate expertise, judges may struggle to make informed decisions, leading to delays in inheritance proceedings. Therefore, specialised training and structured educational programmes on crypto assets and Islamic jurisprudence should be introduced to equip Shariah judges with the necessary knowledge to handle digital inheritance cases effectively.

Alternatively, Shariah Courts may refer the matter to State Fatwa Committees for a ruling. However, as this research has found, most state fatwa committees have yet to issue specific fatwa on crypto asset inheritance, creating further procedural delays. The absence of an existing fatwa necessitates the issuance of a new ruling, which involves a comprehensive understanding of crypto assets among fatwa committee members, consultation with experts in digital assets, blockchain, and estate planning, and time-consuming deliberations before reaching a consensus. If the fatwa committee lacks sufficient expertise, it will be forced to rely on external experts, further delaying the

issuance of a ruling. Given the rapid evolution of crypto assets, this research stresses the urgency of equipping both Shariah Court judges and fatwa committees with sufficient knowledge to address contemporary financial and technological advancements in Islamic estate planning.

Moreover, the implication of the states fatwa committee which remain silent on the ruling of crypto assets is that will cause delays in the inheritance of these assets since Shariah Court must refer to the fatwa issued by the relevant state fatwa committee when disputes over the inheritance of crypto assets arise, despite the existence of the SAC SC ruling. This was highlighted by R1 when asked about the lack of specific *fatwa* on crypto assets inheritance issues as he viewed that:

“So, when a case arises where there is a death, and the deceased had Bitcoin amounting to 1.7 million, and the code for it exists, which is kept by a trustworthy child. Then, when they go to Court, the Court will refer back to fatwa. This process might take two or three months or even three years...”

Therefore, the inconsistency of fatwa calls for an in-depth investigation to address the inheritance of crypto assets under Islamic law, as emphasised by Zul Kepli and Bustami (2021). Without specific Shariah rulings on crypto assets inheritance, there is a risk of these assets being misplaced.

The findings of this research reveal that Malaysia’s current legal and Shariah framework is unprepared to effectively address the inheritance of crypto assets. The absence of standardised fatwa and judicial expertise on digital assets creates an environment, where Muslim heirs face delays and uncertainties in estate administration. The risk of crypto assets becoming inaccessible due to legal ambiguity, technical barriers (such as lost private keys), and prolonged court proceedings is significant.

Without proper legal recognition and structured guidelines, these assets may be misallocated or lost entirely, depriving rightful heirs of their inheritance.

The lack of a standardised framework for crypto asset inheritance under Islamic law not only delays estate administration but also creates inconsistencies in judicial decision-making. Some judges may exercise *ijtihad*, while others may defer the matter to fatwa committees, leading to uncertainty in legal proceedings. The procedural complexity further discourages digital asset holders from including crypto assets in their estate planning, as there is no clear mechanism for ensuring Shariah-compliant inheritance.

The legal and Shariah uncertainties surrounding crypto asset inheritance emphasise the urgent need for reform in Malaysia's Islamic estate planning framework. Without structured legal mechanisms and authoritative Shariah rulings, digital assets remain at risk of being excluded from the inheritance system, leaving Muslim heirs vulnerable to financial loss and prolonged disputes. Addressing these challenges requires a collaborative effort between legal experts, Shariah scholars, and financial regulators to establish a comprehensive and standardised approach for the inheritance of crypto assets in Malaysia

4.4.2 Cut-off date value of crypto assets after the demise of the owner

The distribution of estate in Islam is a significant aspect of Shariah law, deeply rooted in the teaching of Al-Quran and *Sunnah*. Al-Quran provides explicit instruction on the distribution of an estate, primarily in *Surah al-Nisa*, verse 11 and 12 that outlines the specific shares allotted to various heirs, including children, spouses, parents, and siblings as Allah said:

“Allah commands you regarding your children: the share of the male will be twice that of the female. If you leave only two or more females, their share is two thirds of the estate. But if there is only one female, her share will be one-half. Each parent is entitled to one-sixth if you leave offspring. But if you are childless and your parents are the only heirs, then your mother will receive one-third. But if you leave siblings, then your mother will receive one-sixth after the fulfilment of bequests and debts. Be fair to your parents and children, as you do not fully know how more beneficial to you is. This is an obligation from Allah. Surely Allah is all-knowing, all-wise.

You will inherit half of what your wives leave if they are childless. But if they have children. Then your share is one-fourth of the estate after the fulfilment of bequest and debts. And your wives will inherit one-fourth of what you leave if you are childless. But if you have children, then your wives will receive one-eighth of your estate after the fulfilment of bequests and debts. And if a man or woman leave leaves neither parents nor children but only a brother and sister from their mother’s side, they will each inherit one-sixth, but if they are more than one, they all will share one-third of the estate after the fulfilment of bequests and debts without harm to the heirs. This is a commandment from Allah. And Allah is All-knowing, most forbearing.” (Surah Al-Nisa: 11-12)

Fundamentally, the distribution of estate is meticulously outlined in Al-Quran and further elaborated in the *Sunnah*. Ibn Abbas (Allah please be with them) reported that Allah’s Messenger (may peace be upon him) as saying:

“Give the shares to those who are entitled to them, and what remain over goes to the nearest male heir.” (Hadith Sahih Muslim, Book 11, Number 3929)

Before the distribution process can be initiated, any cost of funeral, outstanding debt and bequests must be settled. Abu Huraira (r.a.) reported that when the body of dead person having burden of debt upon him was brought upon the Prophet (pbuh), he would ask whether he had left property enough to clear off his debt, and if the property left had sufficiently for that (purpose), he observed funeral prayer for him, otherwise he said (to his companion).

“You observe prayer for your companions, but when Allah opened the gateways of victory for him, he said: I nearer to the believers than themselves, so if anyone dies leaving a debt, its payment is my responsibility, and if anyone leaves a property, it goes to his heirs” (Hadith Sahih Muslim, Book 11, Number 3944)

With reference to crypto assets inheritance and estate planning, the researcher found that the acknowledgement of R1, R2, and R3 perceive crypto assets to have value as assets, which is pivotal in determining their inheritance eligibility. R1 asserted that:

“Not only inheritance, but intervivos gift (hibah), endowment (wakaf), and zakat can also be involved. Because crypto assets are considered wealth, it means we have responsibility towards society. This means that if it is wealth, it can be inherited.”

R2 also agreed on that stated that:

“Yes, that is correct, it can be inherited. I think this matter should be considered based on where some people believe it has value.”

R3 also mentioned:

“...once it is recognised as mal (property), it can be inherited, including those that have been mined.”

R1 further viewed that the inheritance of crypto assets should automatically occur once the demise of the owner as he said:

“In my view, this inheritance issue is straightforward. Inheritance happens automatically.”

R2 also opined that the distribution of crypto assets automatically followed the Islamic inheritance law (*faraid*) once the owner passed away. He asserted that:

“Crypto assets, like other assets, must also follow the inheritance laws or faraid.”

Nevertheless, the fluctuation in crypto assets value can significantly impact the inheritance of such assets due to the dynamic nature of their worth (Beyer & Nipp, 2019). Since crypto assets are considered as property, it leads to complexities in inheritance procedures. With this regard, the research findings reveal that the fatwas issued by each respective state fatwas committee is silent on inheritance of crypto assets.

Pertaining to this issue, R5, R6, and R8 suggested that the cut-off date for valuation of crypto assets is based on the date of death of the owner. R6 highlighted that to ensure fairness and consistency, the value of crypto assets should be determined based on the death of the owner, just like other assets such as land and shares.

R8 emphasised that the final price of crypto assets that will be handed over to the heirs should be determined as of date of death as he echoed:

“The final price. The final price of the crypto that will be handed over to the heirs is the price as of the date of death.”

Pertaining to bequests (*wasiyyah*) and intervivos gift (*hibah*) of crypto assets, R3 explained that to accurately determine the value for a *wasiyyah*, it is essential to calculate it based on the day of the death. Meanwhile, for *hibah*, the current market value should be used. R3 said that:

“If we want to determine a wasiyyah, we need to calculate it on the day of death. Take one-third of the value of the estate on the day of death. For hibah, we need to make an assessment based on the current value.”

In contrast, R7 suggested that the approach to set cut-off date value of crypto assets is at the time of trial as he said:

“As it stands now, the value of the assets is determined based on the value at the time of the trial.”

The above findings reveal different views regarding determining the cut-off date value of crypto assets for the purpose of distribution of crypto assets to the heirs. The researcher opined that an appropriate approach is needed to guarantee that the value is locked in at a specific point, preventing complications and potential disputes that could arise from the volatile nature of crypto assets. Concerning this issue, the researcher agreed that the involvement of the Court in determining the cut-off date value of crypto assets as it will provide a fair reflection of the current market conditions and the actual worth of the assets to all parties involved during legal proceedings. However, in circumstances where the proceedings are lengthy, it will cause cost incurred and delay in the distribution of crypto assets to the heirs (Abd Rahman & Hassan, 2020).

4.4.3 Vagueness in *hibah amanah* for crypto assets

The concept of *hibah amanah* or trust *hibah* in Islamic estate planning provides a framework for managing and distributing assets during the owner’s lifetime, ensuring a smooth transfer of property to the beneficiaries (Kamis & Abd Wahab, 2021). The researcher found that *hibah* was recommended as an estate planning tool for crypto assets to ensure the beneficiaries are aware of the deceased’s ownership of these assets as asserted by R6:

“Hibah and wasiyyah are very necessary in the management of digital assets, because if the assets owner does not make any wasiyyah or hibah during their lifetime, it will cause problems after their death. The heirs will not be able to identify the assets owned by the deceased.”

According to R1, using *hibah* as an estate planning tool for crypto assets poses no problems. He stated that if crypto assets are considered as assets, they can be given as *hibah*, and with *hibah* in place, no issues should arise. Regarding this matter, R1 commented that:

“It will only become an issue upon death. If there is hibah, no issue will arise.”

However, the researcher observed that the use of *hibah amanah* can be contested if there is dissatisfaction among the heirs, as highlighted by R2:

“Many are now opting to make hibah, but this can be contested by other heirs if dissatisfaction arises.”

Hibah amanah is designed to allow the donor to retain control over the property during their lifetime, with the beneficiary only gaining access to it after the donor's death. This concept combines the principle of *hibah* and trust offering structured approach for wealth management (Hassan & Zaizi, 2020), unlike traditional *hibah*, where ownership is immediately transferred to the beneficiary upon giving (Halim & Bustami, 2017).

Pertaining to this matter, the researcher views that the application of *hibah* to crypto assets introduces complexity due to the ambiguous nature of ownership and control mechanisms of crypto assets. One of the major issues in *hibah amanah* is the requirement of hand over (*qabd*), which mandates that the property must be held or controlled by the beneficiary. Although the Maliki school of thought viewed that physical transfer is not required in *hibah* since the contract itself sufficient to prove that the occurrence of *hibah*, certain Shariah court judges still require evidence on the occurrence of the *qabd* (Abdullah, Said, Muda & Muhamad, 2021).

In this context, the Shariah court judges indeed asked the question on how to ensure crypto assets can be transferred upon the donor's death, as shared by R5 based on his experience in managing *hibah* crypto assets in Johor. He disclosed that:

“The question posed by the Court is how to ensure that the assets can be transferred when the hibah donor passes away?”

Unlike physical assets, crypto assets exist in a digital form, often stored in digital wallets secured by complex access protocol. These assets are accessed through private keys and without private keys, the assets cannot be controlled or transferred (Klasicek & Vucemilovic, 2019). Determining actual possession of crypto assets is not straightforward. The donor must transfer the private keys to the beneficiary, ensuring they have full control over the assets. The intangible nature of the crypto assets makes it difficult to ascertain whether the beneficiary genuinely has control over the assets (Singh et al., 2022; Paulger, 2022; Saleh et al., 2020).

The difficulty is proven by the fact that R5's experience in managing *qabd* of *hibah* crypto assets as he shared the measures that he has taken to ensure the occurrence of *qabd*:

“What we do is place the value of Bitcoins, all figures, passwords and any important links into a safety deposit box at a bank in Johor. All these details are mentioned in the hibah, and there is also a wasiyyah. The wasiyyah specifically states the amount of Bitcoin and the quantity of jewelry, along with pictures. After the testator's death, an administrator will visit the safe deposit box. Initially, I included the password in the hibah, but this is very risky. If we disclose it now, the administrator can access it.”

The researcher views that the measure taken to prove the occurrence of *qabd* in the context of *hibah* crypto assets. As shared by R5, he highlights the complexities and challenges in ensuring compliance with Shariah principles in *hibah amanah*. The *qabd*

requirement mandates that the beneficiary must have control over the gift. In this case of digital assets like crypto assets, proving *qabd* becomes complicated because physical possession is not applicable. The measures taken by R5 to ensure *qabd* in the above circumstance are innovative but diverge from traditional forms of possession, potentially leading to disputes among heirs and questions about the validity of *hibah* under different interpretations of Shariah law.

4.5 Legal issues in Islamic estate planning for crypto assets in Malaysia

Besides the Shariah issues, the researcher also learns that the integration of digital assets into estate planning is fraught with complexities due to the nascent regulatory framework and the unique characteristics of crypto assets. Despite the recognition of crypto assets as digital assets by the SC has contributed to their positive acceptance, the unique characteristics of crypto assets coupled with the absence of legal regulation of crypto assets inheritance, create significant legal loopholes, preventing these assets from being properly inherited and managed.

Earlier, the ambiguity surrounding the classification of crypto assets as securities in Malaysia was found in this study, which further complicates the estate planning of crypto assets in Malaysia. Without clear regulatory guidelines defining whether crypto assets should be treated as traditional securities or something distinct, significant legal implications arise, particularly in the context of Islamic estate planning.

Moreover, traditional estate planning tools are ill-equipped to handle the complexities of digital assets, often leaving substantial value unaccounted for and trapped in a digital purgatory (Bruker-Kley et al., 2013). The average individual's digital footprint, frequently valued significantly, is often overlooked in estate planning, leading to complications in estate administration and raising concerns about privacy, security and

the protection of various stakeholders' interests (Banta, 2019; Cahn, 2014; Lopez, 2016; Saleh et al., 2020). R1 highlighted a significant gap between technology and the law in the context of estate planning for crypto assets. He emphasised that while technology has advanced rapidly, the legal framework is still lagging. When he was asked regarding the law related to estate planning of crypto assets. R1 stressed that:

“It is not the law, but technology. The law is still lagging, while technology is quite advanced. The law is not very stringent regarding crypto assets in Malaysia...”

The researcher found that crypto assets largely remain outside traditional regulatory frameworks, posing substantial difficulties in estate administration and eventually resulting in the loss of digital assets upon the owner's death, as the mechanisms to manage and transfer these assets are underdeveloped (Katuk et al., 2023). Conventional succession and property law concepts such as ownership, privacy and access to digital credentials like usernames and passwords, do not align well with the decentralised and pseudonymous nature of crypto assets (Klasicek & Vucemilovic, 2019; Conway & Grattan, 2017).

As a result, the researcher discovered several specific legal issues due to the lack of clear legal frameworks for the estate planning of crypto assets in Malaysia. These issues include unclear legal jurisdictions on estate administration of crypto assets, illegal disclosure of access information for crypto assets through a will, breach of trust by the personal representative, uncertainty in distributing crypto assets by unit or their equivalent value in Malaysian Ringgit, and the obligation of DAX to transfer crypto assets to the rightful beneficiary.

4.5.1 The unclear legal jurisdiction on estate administration for crypto assets in Malaysia

The lack of a legal framework and the ambiguity surrounding legal jurisdiction in the estate administration of crypto assets present significant challenges that are not adequately addressed by existing laws such as the Probate and Administration Act 1959 and the Trustee Act 1949. While these statutes govern the appointment, duties, and liabilities of personal representatives—including their fiduciary obligations to manage and distribute the estate properly—they do not specifically address the unique characteristics of crypto assets. The absence of explicit legal provisions raises fundamental concerns regarding access, control, valuation, and enforceability in the administration of these digital assets.

One of the primary issues is the absence of statutory guidelines detailing the mechanism through which personal representatives can legally access the deceased's crypto holdings. Unlike traditional financial assets, which are held by regulated financial institutions that are obligated to comply with court orders, crypto assets are decentralised and often stored in self-custodial wallets that require private keys for access. If the deceased did not leave behind the private key, even a duly appointed administrator holding letters of administration has no legal avenue to compel access to the asset. The lack of statutory intervention leaves a significant gap in estate administration, as neither the Probate and Administration Act 1959 nor the Trustee Act 1949 provides a solution for retrieving crypto assets without the deceased's direct authorisation.

Jurisdictional uncertainty further complicates estate administration. While the Malaysian legal system generally governs the administration of a deceased person's estate, crypto assets may be held on international exchanges, such as Binance or

Coinbase, or stored in self-hosted wallets without a fixed geographical nexus. Unlike traditional bank accounts or real property, crypto assets do not have a clear situs, making it difficult to determine which jurisdiction's laws apply. In cases where crypto assets are held on exchanges such as Luno Malaysia Sdn Bhd—a registered Digital Asset Exchange (DAX) under the Securities Commission Malaysia—their terms of service govern asset transfers. However, if the crypto assets are stored on foreign exchanges that do not recognise Malaysian probate orders, beneficiaries may face insurmountable legal obstacles in claiming the deceased's holdings.

The estate administration in Malaysia already faces challenges due to unclear legal jurisdiction and the involvement of multiple administrative bodies, leading to confusion and delays (Nasrul, Salim, Said & Manap, 2017). The estate administration usually begins with an application by the beneficiaries to the relevant administrative bodies to obtain letter of representation (Nasrul et al. 2017) and the jurisdiction of various administrative bodies such as the High Court, the Small Estate Distribution Section of the Department of Director General of Lands and Mines, or Public Trust Corporation in estate administration, which is often determined by the monetary value of the estate (Halim, 2018).

The researcher argued that it is acknowledged that Section 8C of the Small Estate (Distribution) (Amendment) Act 2022 provides for the issuance of letters of administration pendente lite, which grants personal representatives temporary authority to obtain information relating to bank accounts, including crypto accounts as this provision stated that:

Letters of administration pendente lite

8c. Pending any distribution order, letters of administration may be granted to a petitioner or any beneficiary as the Estate Distribution Officer may appoint, limited so that the administrator shall not be empowered to distribute the estate, and shall be subject to such control by, and direction of, the Estate Distribution Officer as the Estate Distribution Officer deems fit, and subject to that limitation the administrator so appointed shall have all the rights and powers of a general administrator.

However, the primary concern remains that crypto assets are inherently volatile, and this volatility can significantly impact the classification of an estate. Unlike traditional assets, the fluctuating value of crypto assets can shift an estate's status from a small estate to a large estate or vice versa within a short period, leading to uncertainty regarding the appropriate administrative body responsible for estate distribution.

This study has revealed that when a deceased owner dies intestate, the fluctuation prices of crypto assets complicate the determination of a stable monetary value for the estate. This volatility, in turn, poses significant challenges for estate administrative bodies that operate based on specific monetary thresholds. For instance, in the context of small estates, where the value of assets must be clearly specified, fluctuation in crypto assets prices can create significant administrative difficulties. As R7 explained:

“If it is a small estate, there will be a few issues because the small estate will ask the heirs to provide detailed information along with the value. the amount must be specified.”

The researcher contends that the volatility of crypto assets with their capacity for dramatic value fluctuations, presents a formidable challenge in determining which administrative body has jurisdiction over an estate, especially when specific monetary thresholds are at play. This volatility can easily shift an estate's classification, leading to significant confusion and uncertainty about which administrative body should take

responsibility. Moreover, the amendment to Section 3(2) of the Small Estate (Distribution) Act 1955, which broadened the jurisdiction of the Small Estate Distribution Section to cover any type of property with a total value of not exceeding RM5 million, have only compounded this issue (Nasrul, Shah, Yusoff & Said, 2023).

As a result, there is an overlapping in jurisdiction with other administrative bodies, particularly the Public Trust Corporation (*Amanah Raya Berhad* and hereinafter referred to as ARB), whose jurisdiction is specifically limited to the administration of movable estates valued at less than RM600,000 under as specified in Section 17(1) of the Public Trust Corporations Act 1995:

Summary administration of movable property:

17. (1) Whenever any person dies, whether testate or intestate, leaving movable property in Malaysia and the corporation is satisfied after such investigation as it deems sufficient— (a) that the total value of the property without deduction for debts, but not including the value of any property which the deceased possessed or was entitled to as trustee and not beneficially, does not exceed six hundred thousand ringgit; and (b) that no person is entitled to apply to the Court for grant of probate of will or no petition for letters of administration is pending, the corporation shall, upon the application of a person making a claim on the property and if it thinks fit to do so, by writing declare that it undertakes to administer the property, and thereupon the corporation shall be empowered to administer the property as though letters of administration of the estate of the deceased person had been granted to the corporation, and the corporation's receipt shall be a sufficient discharge to any person who pays any money or delivers any property to the corporation; and notice of every such declaration shall be filed in the proper Registry of the Court.

Consequently, the expansion scope of the Small Estate (Distribution) (Amendment) 2022 has led to potential confusion and inefficiency in estate management and distribution, as the responsibility traditionally managed by ARB now intersects with

the Small Estate Distribution Section (Nasrul et al. 2023). This is because Section 8B (1) of the Small Estate (Distribution) (Amendment) Act 2022 also provides for summary distribution, which allows for an expedited process if the estate consists solely of movable property and does not exceed RM600,000 in total value.

Summary distribution

8b. (1) Where a petition for distribution is lodged or any subsequent application is filed under this Act, the petitioner or applicant may apply to the Estate Distribution Officer for a summary distribution order if the petition or application falls under the following cases: (a) in the case of the petition, it consists only of movable property and does not exceed six hundred thousand ringgit in total value; or

However, this provision does not resolve the jurisdictional issue when the estate value fluctuates due to crypto asset volatility. If the estate's value temporarily exceeds RM600,000 due to price surges but later drops below this threshold, it remains unclear whether jurisdiction should revert to ARB or remain with the Small Estate Distribution Section. This creates administrative inefficiencies, delays in estate distribution, and legal uncertainty for personal representatives and beneficiaries.

The researcher also found that the application of Order 71, rule 50 (1)(b) of Rules of Court 2012 with regard to the application of letter of administration to the estate of person who died intestate in High Court could significantly complicate and delay the process of estate administration involving crypto assets as the Order 71, Rule 50 (1)(b) of Rules of Court 2012 stipulated that:

Small estates (O.71, r.50)

50. (1) In the case of any originating summons for letters of administration to the estate of a person who died intestate –

(b) if appears to the Registrar that proceedings are already pending before a Collector then –

(i) if the Registrar is satisfied that the estate is a small estate, he shall transfer the originating summons to the Collector; but

(ii) if the Registrar is satisfied that the estate is not a small estate, he shall inform the Collector and shall not proceed to hear the originating summons until the Collector has had an opportunity of referring to him the proceedings before the Collector.

In the event the letter of administration is being applied to the High Court, the above rule requires the Registrar to evaluate whether the estate falls under the category of small estate before deciding on the appropriate course of action. For estates involving crypto assets, where values can fluctuate dramatically, determining whether the estate is classified as small or non-small estate can be challenging. This uncertainty may arise because the current valuation of crypto assets may differ from time to time, leading to disputes over which administrative body has jurisdiction. This may cause delay in transfer of proceedings where if the Registrar concludes that the estate qualifies as small estate, the originating summons from the High Court must be transferred to the Estate Distribution Officer under the provisions of the Small Estates (Distribution) Act 1955. If the estate is a non-small estate, the Registrar must notify the Estate Distribution Officer and refrain from proceeding until the Estate Distribution Officer has had a chance to review the case. The volatility of crypto assets makes it difficult to categorise the estate accurately as small or non-small estate based on a single point in time. It means that an estate's classification might be changed between the initial filing and subsequent proceeding, creating jurisdictional and potentially repeated evaluations and adjustments. The back-and-forth process can significantly prolong the distribution of estate.

A proposed solution, as highlighted by R6, is to assess the value of crypto assets based on their worth at the time of the deceased's death. R6 pointed out:

“If so, we will determine the value according to the date of death. Based on current legislation, the date of death is used. Other assets like land and shares are valued this way. Therefore, crypto should also use the same method. So, the heirs need to quickly process the inheritance because the value of crypto assets is very volatile, sometimes it goes up, and sometimes it goes down.”

However, the above suggestion is contradicted with the method of valuation as stipulated in Section 3(3) of the Small Estate (Distribution) Act 1955, which states,

“For the purposes of this section, the value of the property comprised in an estate shall be deemed to be its value at the date of the filing of a petition for probate or letter of administration or lodging of a petition for distribution under this Act in respect of the estate or, if more than one such petition has been filed or lodged in respect of the estate, at the date of the filing or lodging of the earlier petition.”

The above provision explicitly states that the value of the property in an estate should be determined based on its value at the value of the property in an estate as well as its value at time of filing a petition for probate or letter of administration, not at the date of the death.

In view of the above, while personal representatives are bound by fiduciary duties under the Trustee Act 1949 and could be held liable for breach of trust, these obligations assume that the assets in question are accessible and transferable. In practice, crypto assets may be inaccessible due to encryption or contractual restrictions imposed by exchanges, making compliance with estate distribution orders impossible. Additionally, the volatility of crypto assets complicates the issue of valuation, particularly if the estate is to be distributed partially in its original form and partially in monetary value. Without

a clear statutory mandate on how to value crypto assets at the time of distribution, administrators will face significant risks in executing their duties, potentially exposing them to legal disputes from beneficiaries.

4.5.2 The uncertainties in distribution of crypto assets by its unit or their equivalent value in Malaysian Ringgit

The fluctuation in the value of crypto assets not only impacts the determination of legal jurisdiction for estate administration in Malaysia but also raises critical issue in determining whether to distribute the estates in their original crypto units or convert them to their equivalent value in Malaysian Ringgit. Indeed, Section 68 (1)(b) of the Probate and Administration Act 1959 outlines the duties of personal representatives in managing a deceased person's estate. The provision in Section 68(1)(b) of Probate and Administration Act 1959 requires the movable property to be converted into money, allowing for a period of delay in sale if deemed appropriate as it states the following:

68. Duties of representatives

(1) On the death of a person intestate as to any property, the property shall be held by his personal representatives –

(b) as to the movable property upon trust to call in, sell and convert into money such part thereof as may not consist of money.

With power to postpone the sale and conversion for such a period as the personal representatives, without being liable to account, may think proper, and so that any reversionary interest be not sold until it falls into possession, unless the personal representative sees special reason for sale.

Nevertheless, the above provision creates a framework for handling traditional assets but does not explicitly address the unique challenges posed by the volatile nature of crypto assets. The study found that the scenario described by R8 effectively illustrates

the practical challenges posed by the fluctuating value of crypto assets in estate administration that arise from the fluctuating value of crypto assets as he said:

“So, if we look at crypto, there are companies that are willing to address the issue. If the person passed away on 1st November, it is not withdrawn yet. The thing is still ongoing, right? Like the share. So, if you do not lock it in, and not withdrawing it upon the date of death of the owner, suddenly the heirs find out six months later. If the value was RM100,000.00 at the time of death and now it is only RM10,000.00. It is really concerning. Okay, we say it is based on today’s value, I will provide it based on today. So, I do not think there is an issue. RM10,000.00. After that, it means when you receive the asset, it should be at that value. It would not make sense to give RM100,000.00 if the crypto is worth RM10,000.00 today. Does the crypto company want to absorb the RM90,000.00 loss? Hmm, no one wants to incur a loss, right? If we lose, it is fine, as depositors, but for the operator, they do not want to take that risk. So where should we lock the value? ... but in the reverse scenario, if it were RM10,000.00 at death and RM100,000.00 six months later, would we keep that RM90,000.00 difference?”

In view of the above given scenario, R8 provides a practical scenario illustrating the complication arising from crypto assets volatility. If crypto assets valued RM100,000 at the time of the owner’s death drops to RM10,000 by the time of distribution, determining the appropriate value to distribute becomes problematic. Should the heirs receive the original value or the current, reduced value? Conversely, if the crypto assets’ value increases significantly after the owner’s death, the decision becomes even more complex, potentially leading to disputes among heirs and the DAX company.

Moreover, this concern is driven by the case of *Robert Ong Thien Cheng v Luno Pte Ltd & Bitx Malaysia Sdn Bhd* [2020] 1 LNS 2194. In this case, the Appellant converted RM300,228 into 10.70163257 units of Bitcoin, increasing his total Bitcoin balance to 11.31844567. He then requested to withdraw 11.3 Bitcoins to his account. The First Respondent mistakenly transferred an additional 11.3 Bitcoins to the Appellant’s

account, which the Appellant was required to return. The Appellant's refusal to return the Bitcoins and claimed a cash equivalent of RM300,000—rejected by the First Respondent due to Bitcoin's price instability—demonstrates the impact of crypto assets volatility on legal disputes. Based on this case, the researcher views that the fluctuating price of crypto assets can lead to disputes of the case, particularly when it involves the price of crypto assets.

Regarding this issue, R13 and R14 have provided further insights into the practical consideration of distributing crypto assets to the legal heirs once the owner passes away. R13 emphasised that once the deceased's crypto assets account is closed, the value of the crypto assets will be determined based on the market rate at the time of closure as he said:

“Then you will follow as per the scenario that I mentioned just now, there will be a closure of account because of the deceased, uh, would have been reported and the account will have to be closed. Once it is closed, then at that point of closure, uh, that will be the market rate that the account will be within.”

This suggests that a fixed valuation at the time of closure might offer a solution to mitigate the effects of price fluctuations. However, R14 introduces another dimension, suggesting that the heirs should have the option to either sell off crypto assets at the prevailing market price or transfer the crypto assets to another wallet as he said:

“So, um, choose to either confirm to sell off the balance of the crypto through the market price, and then we throw that we can get to the nominated bank account or you could actually just confirm with us. You would like to just withdraw the crypto directly to another wallet that is owned by the appointed person...”

The practice mentioned by R14 has been stipulated as part of the terms and conditions by Luno Sdn Bhd as stated in their term of use, specifically on death of account holder, as follows:

“... 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 crypto assets for local currency and withdraw that local currency to a bank account nominated in writing by the executor/ fiduciary; or (ii) transfer the applicable crypto assets to another crypto assets wallet nominated in writing by the executor/ fiduciary.” (Luno, n.d).

According to these terms, if Luno receives legal documentation confirming the account holder's death. or has reason to believe that the account holder has died, they reserve the right to restrict or suspend the account for security purposes. No transactions will be allowed until instructions are received from the designated executor or fiduciary, or proof is provided that the account holder is still alive. Upon confirmation of death, the executor or fiduciary may instruct Luno to either sell the crypto assets and withdraw the funds or transfer the crypto assets to another wallet (Luno, n.d). The researcher views that this flexibility could accommodate the preferences of their heirs while also addressing the volatility issues by allowing for real-time decisions based on market conditions.

Hence, without a clear legal framework that specifically addresses the above unique challenges of crypto assets, the potential for disputes and inconsistencies in estate administration remain high particularly in determining whether to distribute the assets in their original crypto units or convert them to their equivalent value in Malaysian Ringgit.

4.5.3 The obligation of DAX providers to transfer crypto assets to the beneficiaries.

Another critical legal issue found by the researcher in this study is whether DAX providers are obligated to transfer crypto assets to the rightful beneficiary upon the death of the owner of crypto assets. The researcher noted that the obligation of DAX providers to transfer crypto assets to the rightful beneficiaries is a complex and multifaceted issue. The study revealed that this issue has become complex due to the influence of the terms of digital assets contracts and the legal framework within which these providers operate. The limitation imposed by the terms of service agreements that govern the assets contracts can significantly cause challenges in terms of transferring the digital assets to the beneficiaries. According to Bruker-Kley et al. (2013), digital assets contracts often prohibit or severely limit the transfer of assets at death. This suggests that, in many cases, without explicit provisions for inheritance, the default position may be that the digital assets are non-transferable upon the death of the account holder. This contractual limitation effectively shifts decision-making power from the individual account holder to the DAX providers or the corporation that offers these services (Klasicek & Vucemilovic, 2019).

Moreover, Klasicek and Vucemilovic (2019) note that the terms of service agreement generally dictate what action can be taken with an account and its contents. If these agreements lack provisions for inheritance, it is likely that the digital assets will not be inheritable. This creates a significant barrier to the transfer of digital assets to beneficiaries, as traditional succession practices often conflict with the limitation set forth in digital assets contracts.

Kharitonova (2021) further elaborates on this issue, explaining that the possibility of digital inheritance is often constrained by various contractual terms, including

confidentiality agreements. These terms can prevent the transfer of digital assets, particularly if the contract lacks specific clauses that address inheritance. This highlights a critical gap in the management of digital assets, where the absence of clear contractual agreement can leave beneficiaries without access to the deceased's digital assets.

Fortunately, in Malaysia, the terms of use particularly on the death of the crypto assets account holder provided by DAX providers allow the crypto assets to be transferred to the legal heirs by complying with the stipulated terms and conditions. As to date, only Luno Sdn Bhd (hereinafter referred as "Luno") and Hata Digital Sdn Bhd (hereinafter referred as "Hata") had specifically stated the death of account holder clause in their terms of use (Luno, n.d; Hata, n.d). These clauses in both Luno and Hata are fundamentally aligned in terms of protecting the assets and ensuring that they are transferred according to legal requirements. Both providers emphasise the need for proper legal documentation and reserve significant discretion in handling such sensitive matters, ensuring compliance with legal obligations while safeguarding the rights of the beneficiaries. For instance, the death of account holder clause stipulated in Hata's terms of use mentioned that:

“Death of Account Holder. Should we receive legal documentation confirming death or any other information leading us to believe that you have died, we reserve the right to restrict or suspend your Hata 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 authorise 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 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 crypto assets for local currency and withdraw that local currency to a bank account nominated in writing by the executor/fiduciary; or (ii) transfer the applicable crypto assets to another crypto assets wallet nominated in writing by the executor 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 Hata Account under applicable law. Hata 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 designated an executor/fiduciary from a court having competent jurisdiction over your state. 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 to your Hata Account.

Nonetheless, the transfer of crypto assets upon death of the owner is not only limited by contractual terms but also the legal and procedural challenges that DAX providers face. R12 emphasises the complexity of ensuring that inheritance goes to the rightful beneficiaries:

“Specifically, on inheritance, I think it is too idealistic, and our role is to ensure that the inheritance goes to the rightful person if one of our clients passes away. It is much more complicated than that. We would need unequivocal evidence that the client has passed away. Obviously, I cannot accept an email from your doctor stating that you have passed away. Obviously, we must first prove, or it has to be proven to us, that the person has indeed passed away. We rely entirely on the Malaysian legal system to provide us with, ideally, a court order with instruction.”

The above statement reveals that DAX providers are bound by the necessity to obtain official proof of death before proceeding with the transfer of assets. The reliance on external legal system, such as the Malaysian Court system, to validate the death and

provide clear instructions creates a procedural bottleneck. This reliance can delay the transfer process, particularly if there are disputes or appeals related to the inheritance.

Furthermore, R12 highlights that the DAX provider lacks an internal system to automate the transfer of assets after the death of a client. Instead, the provider relies entirely on external legal systems to provide guidance and instructions. This lack of internal mechanisms to manage the inheritance of digital assets underlines the challenges faced by DAX providers in navigating the complexities of asset transfers.

Another layer of complexity is added by the confidentiality obligations of DAX providers, as illustrated by R12's comments:

“The ‘waris’ (heir) can ask us but will not allow the ‘waris’ to do it themselves. They must follow the right legal channels. We would answer inquiries only to the extent that we are compelled to answer and will not release confidential information.

The above statement highlights the DAX provider's responsibility to protect the confidentiality of the deceased's account, which can complicate the process for beneficiaries seeking access to digital assets. While DAX providers are legally obligated to safeguard client information, this duty can hinder the timely and efficient transfer of assets to rightful heirs. This is in line with that significant finding by Klasicek and Vucemilovic (2019) and Kharitonova (2021) on the difficulties arising when accessing digital assets upon death due to unclear property rights and a lack of cooperation from service providers. This suggests that, even when heirs have a legal claim to the assets, procedural and confidentiality barriers can impede their access.

However, R14 expressed a different perspective, stating that legal representation is not required. She explained that by submitting the appropriate documentation to confirm the relationship with the deceased, the DAX provider can process the request to transfer the crypto assets to the legal beneficiary. According to her:

“Um, as far as I aware, we do not need a legal representation. For the claim, uh, as long as you have the right documentation as in, like, you can prove that you are the appointed executor, uh, heirs, or administrator with the valid documentation. So, we also fit into very serious consideration that the documents have no template with, which means that it is not a thick document. Uh, that is where I said that, you know, we may request, uh, much more valid documentation than you are. Indeed, the appointed person an etc., so for now, no, there is no need for legal representation but again, it might be a case-by-case basis that.”

R14 also provides insights into the procedural steps required for executors to manage digital assets where executors must navigate the legal system to obtain the necessary documentation before DAX providers can proceed with the transfer of assets such as grant of probate. With regards to this he explained that:

“If a customer has named a particular executor, then the executor must apply to the Court. Once the executor has the grant of probate, it is as easy as dropping in a support ticket to inquire about what should be done next. Our support system will review and confirm that there is such a customer.”

The researcher views that the above process can be time-consuming and may involve significant legal costs, especially in cases where the digital assets are modest value, as noted by R6 as he also commented on the lack of standardised procedures across different DAX providers:

“Every crypto owner needs to comply with the terms and regulations of the exchange they are using. Different exchanges have different methods, so this can be very risky and troublesome. It can also incur high costs. Therefore, if the assets owned are small, it may not be worth managing them. In the end, those assets will just be left unattended.”

The researcher opines that the above statement points to the inconsistency in practices across exchanges, which can increase the risk and cost of managing crypto assets. Without the standard procedures, beneficiaries may face significant hurdles in

accessing and managing inherited crypto assets, leading to situations where the assets are simply abandoned.

Moreover, reliance on the Court order may face delays due to appeals or legal disputes as emphasised by R12:

“We will honour what has finally been ordered by the court. Of course, the legal system allows at least two rounds of appeal. So, if that were the case – if there was a judgement by a judge and then an appeal – we would then, in our view as service providers regulated under the SC, maintain custody of the assets until the final judgements.”

The researcher views that the reliance on court documents ensures that the transfer of crypto assets aligns with legal requirements. However, it also introduces potential delays and uncertainties, particularly in cases where final court judgements, including appeals, are required. This prolonged process may leave beneficiaries without access to the assets for an extended period, creating financial hardship and administrative challenges.

It is evident that the obligation of DAX providers to transfer crypto assets to rightful beneficiaries is fraught with challenges arising from contractual limitations, legal complexities, confidentiality concerns, and the absence of standardised procedures. Unlike traditional assets, crypto assets often lack explicit inheritance terms within service agreements, leaving service providers to navigate a complex legal landscape and procedural hurdles before executing asset transfers. Furthermore, the lack of uniformity across different exchanges exacerbates the issue, as beneficiaries must adhere to varying requirements depending on the DAX provider.

A comparison can be drawn with the transmission of intangible assets, such as shares, where the legal process is more clearly defined. Under Section 109 of the Companies Act 2016, when a shareholder passes away, the personal representative acquires a legal right to the deceased's shares, which are transmitted to them by operation of law. However, this right is not absolute; for the transmission to be recognised, it must be registered, and the personal representative's authority remains subject to the company's memorandum and articles of association (Halim et al., 2015). This highlights the necessity of complying with specific laws and regulations governing different types of estates.

Similarly, in the context of crypto assets, the absence of a clear regulatory framework governing their inheritance places undue discretion in the hands of DAX providers. Without a standardised legal mandate, the inheritance process remains uncertain, leaving beneficiaries vulnerable to the provider's internal policies and the broader complexities of digital asset regulation. This highlights the urgent need for regulatory intervention to establish clear, uniform procedures governing the inheritance and transmission of crypto assets, ensuring consistency, efficiency, and legal certainty in estate administration.

4.5.4 The unauthorised access of crypto assets

The researcher also found that the issue of unauthorised access to crypto assets within estate planning is critical and complex challenge that demands careful consideration. The handling of crypto assets in estate planning is fraught with risks, particularly when it comes to ensuring that these assets are transferred securely to the rightful beneficiaries. The dilemma lies in balancing the need to provide access information to

legal heirs while preventing unauthorised access to these highly valuable and sensitive digital assets.

The finding reveals the significant challenges in managing crypto assets access within estate planning, particularly regarding the secure handling of private keys and passwords. R1 highlighted the critical importance of including access information in estate planning, noting:

“In the case of these crypto assets, if the owner does not include the code in their will, then no one will be able to access it. This is because the code is specifically created for them.”

This highlights the unique and irreversible nature of crypto assets, where the absence of necessary credentials renders them permanently inaccessible.

However, R3 raised concerns about the potential risks of directly including such sensitive information in a will, stating that:

“If they are aware, meaning the client has concerns, they will advise it in the will. But the password should be kept in a separate place because they are worried it might be compromised if included in the will, right? So, they suggest including it but inform the heirs where it is stored in case anything happens.”

This response suggests a more cautious approach, advocating for the inclusion of access information with the critical precaution of storing password separately to mitigate the risk of unauthorised access.

R5 further emphasised this risk, sharing his own experience:

“Initially, I included the password in the gift transfer (hibah), but this is very risky. If we disclose it now, the administrator would certainly be able to access it.”

This insight stresses the inherent danger of making password or private key easily accessible, as it could lead to premature or unauthorised actions by individuals who may not have the legal right to manage or control the assets.

The researcher views that these statements collectively highlight the complex dilemma faced in estate planning for digital assets: the need to ensure the heirs can access the assets while safeguarding against unauthorised access, particularly given the strict security protocol and legal constraints surrounding crypto assets management.

The process of transferring crypto assets to beneficiaries is inherently problematic. A testator must maintain control over their assets until they are passing while ensuring that the beneficiaries do not gain premature access to the bequest. Seres et al. (2020) and Janpitak et al. (2020) both emphasise the need for mechanisms that secure and transfer these digital assets without exposing them to unauthorised parties. Without such mechanisms, the risk of legal disputes and financial losses escalates, further complicated by the absence of clear legal frameworks that address the unique nature of crypto assets (Saleh et al., 2020).

Furthermore, the anonymity of crypto assets, while frequently regarded as notable advantages, presents substantial challenges in the context of inheritance procedures. The lack of identifiable ownership and the need for private keys to access these assets mean that, without the correct information, heirs are effectively locked out, rendering the assets inaccessible (Omelchuk et al., 2021). This anonymity, coupled with the immutability of blockchain transactions, creates a scenario where lost assets cannot be retrieved, resulting in a permanent loss that could have otherwise been passed on to beneficiaries. Beyer and Griffin (2011) express concerns over the potential loss of

crypto assets due to identity theft, a risk heightened by the absence of specific legal protections for crypto estate administrations.

Moreover, existing legal frameworks are not well-equipped to handle the inheritance of crypto assets. For instance, traditional requirements for the preparation, certification, and implementation of wills do not fully accommodate the complexities of digital inheritance (Saleh et al., 2020). Consequently, this gap in the legal system can result in assets being left outside the legal framework, which creates uncertainties and potential disputes over rightful ownership and transfer.

Additionally, the researcher notes that the exposure of access information during the probate process in Malaysia presents a significant risk. When applying for a grant of probate, it is mandatory to include an Affidavit on Form 159, as stipulated in Order 71, rule 7 of the Rules of Court 2012:

Marking of wills (O.71, e.7)

7 (1) Every will in respect of which an application for a grant is made shall be exhibited to the originating summons and a certified true copy of the will shall be annexed thereto.”

This rule requires the will to be exhibited with the application and a certified true copy attached. This effectively makes the will a public document (Jaconelli, 20120. This public accessibility heightens the risk of unauthorised access to sensitive information, such as private keys, potentially leading to the compromise of crypto assets.

The researcher also found that unauthorised access to private keys during the estate planning process for crypto assets poses a significant risk of identity theft, especially when such access is carried out by a personal representative. R7 draws attention to the inevitability of this issue by stating that the following statement:

“The issue is unavoidable. Therefore, if there is evidence, we can act against the administrator who has breached their trust. However, proving this is difficult because only the administrator has access to information related to Bitcoin.”

This highlights the significant challenge in holding a personal representative accountable when they misuse their privileged access to crypto assets. Unlike traditional assets, where financial institutions maintain records accessible to legal authorities, the decentralised nature of crypto assets limits oversight, making it difficult to detect and prove misconduct.

Nevertheless, the existing legal framework for estate administration, as governed by Section 62 of the Probate and Administration Act 1959, grants the court authority to require the personal representative to submit an affidavit detailing a full and accurate inventory of the deceased’s movable and immovable property. Additionally, Section 66 of the same Act establishes that a personal representative may be held personally liable for breach of trust in cases of maladministration. While these legal provisions provide a mechanism for accountability, their practical enforcement remains a challenge in the context of crypto assets due to the complexities in tracing and verifying digital holdings.

R6 further elaborates on the complexity of addressing such misconduct with the following statement:

“This matter is very complicated and requires an information technology (IT) expert to identify who committed the act. After that, we need to find evidence to prove the misconduct.”

The challenges in tracing unauthorised access to crypto assets, combined with the necessity for technical expertise, create significant legal hurdles for heirs and beneficiaries seeking recourse. The anonymity features in crypto assets makes it

difficult to establish clear evidence of misappropriation or unauthorised transfers.

Additionally, R6 points out the limitation of current legal framework by stating that:

“It uses the administrative Act, which does not have specific provisions for digital assets. The same provisions are applied to all assets. It is possible that we could harmonise existing laws by improving current legislation to ensure that digital assets are protected. Currently, digital assets are not recognised as a specific type of asset in the legal framework.”

This highlights a significant gap in estate administration laws, as traditional legal provisions are insufficient to address the complexities of crypto asset inheritance, leaving them vulnerable to risks such as fraud, identity theft, and unauthorised access. As previously discussed, Section 2 of the Probate and Administration Act 1959 and the Trustee Act 1949 define securities to include only stocks, funds, and shares, thereby excluding crypto assets from this classification. While both Acts acknowledge movable property as part of a deceased’s estate, the absence of explicit legal recognition for crypto assets creates uncertainty in their administration. Unlike conventional assets, crypto assets rely entirely on private keys and credential information, with access governed by contractual agreements between users and digital asset exchanges (DAX providers) rather than statutory provisions.

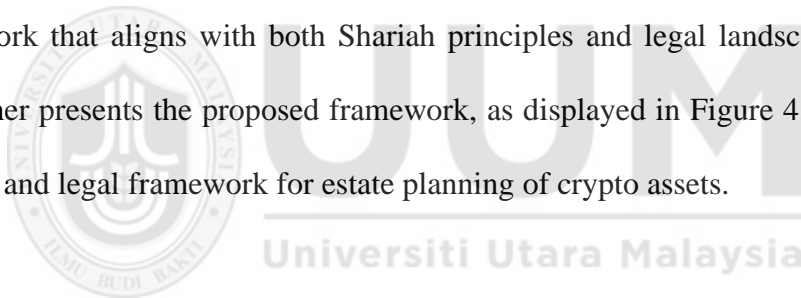
Pertaining to this issue, Shovkhalov and Idrisov (2021) stressed the importance of careful handling of crypto assets transmission to personal representatives. Given the anonymity inherent in the crypto assets system – where transactions and identities remain confidential – the risk of fraud and identity theft is increasing.

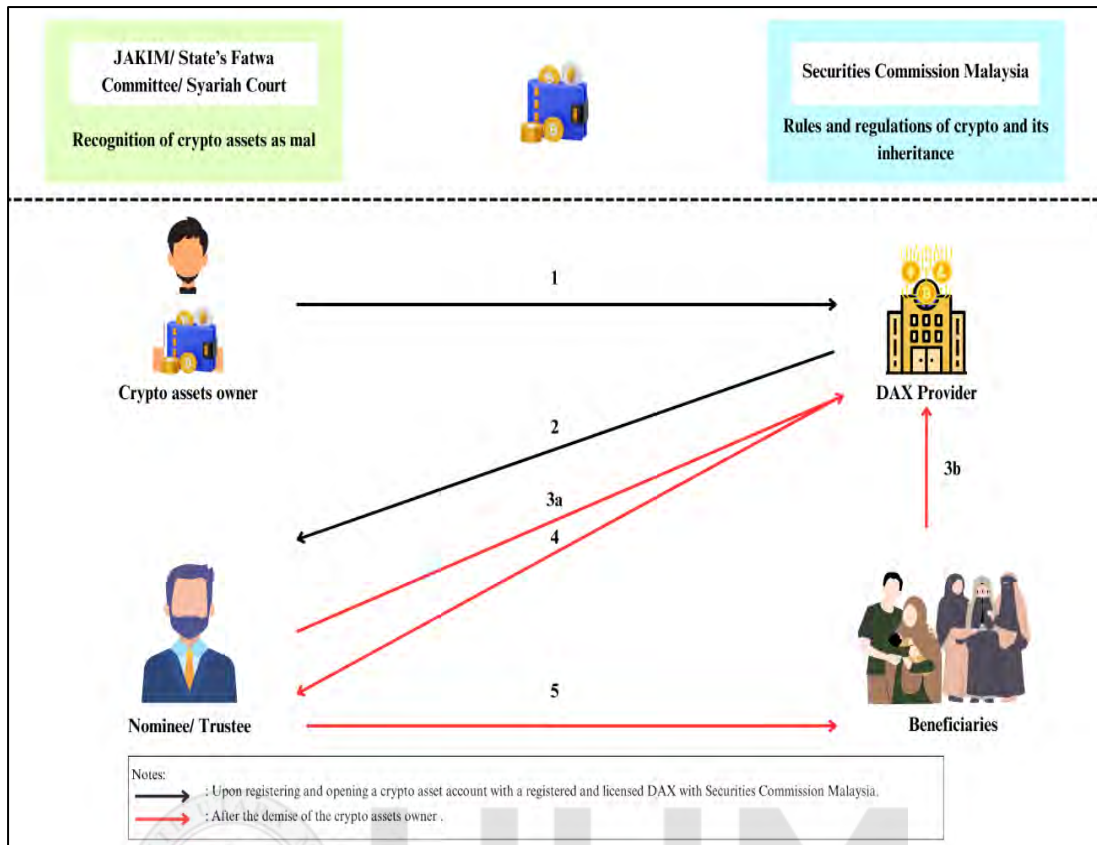
In view of the above, the researchers concluded that the current lack of specific legal frameworks for crypto assets in Malaysia indicates the need for legislative updates to address these issues effectively. The reliance on traditional laws, as highlighted by R6,

fails to address the unique nature of crypto assets, such as their dependence on private keys and the irreversible nature of blockchain transactions. This legal gap leaves crypto assets particularly vulnerable to unauthorised access, as there is no legal guidance on how these assets should be managed, transferred, or protected in the event of the owner's death.

4.6 The proposed Shariah and legal frameworks of Islamic estate planning for crypto assets in Malaysia

Following the findings discussed earlier, the researcher views that the consideration of crypto assets into estate planning within the context of Shariah and legal system in Malaysia presents significant challenges and requires an enhanced and comprehensive framework that aligns with both Shariah principles and legal landscape. Hence, the researcher presents the proposed framework, as displayed in Figure 4.1, outlining the Shariah and legal framework for estate planning of crypto assets.





The explanation:

- (1) Upon registering and opening a crypto assets account with a regulated DAX, the crypto owner shall appoint a nominee/trustee to administer the estate.
- (2) The DAX shall notify the nominated nominee*/appointed trustee* on his/her nomination/appointment by the crypto owner.
* Nominee for Muslim members is a *wasī*/administrator to apportion the owner's crypto assets upon the crypto owner's death to the rightful beneficiary in accordance with Islamic Law. Upon receiving notification from the DAX, the nominee is required to sign up and open a crypto assets account with the regulated DAX.
- (3a)/(3b) Any person, including the nominee/trustee or beneficiary, must present the crypto owner's death certificate or any legal documentation confirming the crypto owner's demise to the DAX.
- (4) Upon receiving the death certificate of the crypto owner or any legal documentation confirming the crypto owner's demise, the DAX will transfer the crypto assets to the nominee/trustee's crypto wallet.
- (5) For Muslims, the nominee/trustee is required to apportion the deceased crypto assets to the rightful beneficiary in accordance with Islamic law.

Figure 4.1

Proposed Shariah and legal frameworks of Islamic estate planning for crypto assets

Sources: Author's own (2024)

The proposed framework in Figure 4.1 is further elaborated by the researcher as follows:

Fatwa on crypto assets and its inheritance

Before Islamic estate planning of crypto assets can take place in Malaysia, it is essential to establish the status and recognition of crypto assets as property (*mal*). In Malaysia, in the case of the death of the owner, the assets should be administered pursuant to Islamic law as stipulated in Ninth Schedule, List II of Federal Constitution, which is in accordance with the fatwa issued by the state fatwa committee or the Shariah Court's decision.

As to date, only four states – Perlis, Perak, Selangor, and Sarawak – have issued fatwas recognising crypto assets as assets, provided that certain parameters are fulfilled. In the case of Perlis, the researcher recommends the existing fatwa to be revised to not only cover Bitcoin but also to include other types of crypto assets issued through registered and licensed DAX providers with the SC. This revision would ensure that the inheritance of crypto assets in Perlis is not limited to Bitcoin alone.

The researcher also had identified a gap in the existing fatwas regarding the inheritance of crypto assets as discussed earlier. To address this issue, it is recommended that the current fatwas on crypto assets be amended to explicitly include guidelines on inheritance. This is important because further deliberation is needed to understand how crypto assets can be inherited according to Islamic principles. Moreover, Shariah Court's judges tend to refer to the state's fatwa in deciding the issues crypto related as mentioned by R1:

“So, in the event there is a case of death, and he has Bitcoins and either amounting to RM 7 million and there is code. A trustworthy child guards the code. How to inherit crypto? Then he went to Shariah Court. While the Court will ask ‘what is crypto?’ and refer to fatwa. To issue the fatwa will take up to 2 or 3 years. So, must be proactive and reactive”.

With this regard, R6 suggested that the *Muzakarah* of fatwa Committee of the National Council for Islamic Religious Affairs Malaysia (MKI) should issue the Shariah opinion regarding crypto assets at national level, which is detailed as below:

“Ideally, the National fatwa Council should issue a fatwa regarding crypto because the Shariah Court relies solely on fatwas when making decisions. However, the issue is, who will take the initiative to address this? In Malaysia, it is common that action is only taken after something has already happened. This approach tends to take a long time. We should be able to anticipate what problems might arise in the future with matters like this.”

The reactive approach is problematic, as it leads to delayed responses to emerging issues. To mitigate these issues, it is vital to anticipate potential associated with crypto assets and establish clear guidelines in advance.

Indeed, the Shariah Court judge has solely discretion to decide on the case by his own *ijtihad* to interpret whether crypto assets are permissible and can be inherited by Muslims. To effectively exercise this authority, judges must acquire extensive knowledge of crypto assets through appropriate training and education. R6 emphasised that the importance of awareness and education within judiciary.

“In my view, the first priority is awareness. This means that those involved in the judiciary, including Shariah Courts, need to be equipped with the necessary knowledge, possibly through special courses. Digital assets are something we can no longer avoid because we are already in the digital age.”

In view of the above, the researcher agrees with R6 that the discussion on inheritance of crypto assets in Malaysia, should be encouraged and brought forward at national level by MKI. The state's fatwa committee will have the option to adopt the ruling issued by MKI. Besides, the Shariah Court's judge should be equipped with vast knowledge on digital assets like crypto assets because their lack of expertise may lead to delays in inheritance cases involving crypto assets, as they cannot confidently apply independent legal reasoning without adequate understanding of the subject matter.

The researcher suggests that the fatwa committee develop a dedicated framework for managing the inheritance of crypto assets in line with Shariah principles, particularly regarding the division of assets among heirs. This framework should include:

- i. Determining the *mal* (property) status of crypto assets.
- ii. Implementing valuation mechanisms to address the volatility of crypto assets when calculating the shares of heirs.
- iii. Procedures for maintaining *amanah* (trustworthiness) in handling private keys and safeguarding the interest of the deceased and heirs.

Regulation of inheritance and estate planning of crypto assets

In addition to the Shariah framework, there is a pressing need to strengthen the legal framework for the estate planning of crypto assets. The absence of clear legal regulations on the inheritance of crypto assets can significantly affect estate planning, making it difficult for rightful beneficiaries to claim these assets (Kamis & Abd Wahab, 2022). Moreover, the regulatory framework for crypto assets remains in its early stages, further complicating estate planning and potentially leading to the loss or disappearance of these assets (Kamis et al., 2023). Addressing this issue, both R4 and R6 emphasised the need for specific inheritance regulations for crypto assets. As R4 remarked:

“...you can propose or suggest to the authorities to create policy or what do we call it? A specific legal provision for crypto assets. That is just my opinion.”

Similarly, R6 highlighted that:

“...this matter definitely requires specific laws for inheritance, so that we have clear legislation related to inheritance.”

Regarding this matter, the researcher suggests that the Securities Commission of Malaysia (SC) and the Central Bank of Malaysia (BNM) collaborate in overseeing the inheritance of crypto assets. Both institutions should work together to develop cohesive regulations that ensure the secure transfer of crypto assets in estate planning, ensuring compliance with financial regulations and alignment with Islamic law. This would involve supervising digital assets custodians and providers DAX to enforce adherence regulations.

Furthermore, the researcher recommends that the SC expand the Guideline on Digital Assets (SC-GL/1-2020) to include specific obligations for digital assets custodians to protect crypto assets in the event of the owner's death. Custodians should be required to ensure the rightful beneficiaries gain access to these assets while implementing robust procedures to prevent unauthorised access. Additionally, laws should mandate custodians to facilitate the smooth transfer of crypto assets to heirs in accordance with Islamic inheritance principles.

The researcher also proposes amending the Probate and Estate Administration Act 1959 to formally recognise crypto assets as part of a deceased person's estate. This would provide legal clarity on their management, preservation, and distribution upon death. A dedicated section should require the declaration of crypto assets in probate filings, ensuring they are treated similarly to other movable assets.

Nomination policy

To streamline the process of claiming crypto assets for inheritance purposes, the researcher recommends DAX providers to implement a nomination policy. Nomination involves a process where a testator designates an individual or entity to manage specific property upon their death. The nomination policy is crucial in the distribution of a deceased person's estate (Kamaruddin, Abdullah & Muhamad, 2015). Implementing a clear and efficient nomination policy is particularly important for Muslims policyholders, as their estate distribution is governed by divine laws outlined in Al-Quran and *Sunnah*.

Following the fatwa issued by *Muzakarah* of fatwa Committee of the National Council for Islamic Religious Affairs Malaysia (MKI) in 1978 which states as follows: -

“Nomination by Muslims in any organisation or institutions where their property was kept in is invalid if the nominee is the beneficiary of the property. However, the nomination is valid if the nominee becomes the trustee to distribute the property in accordance with Shariah.”

Although the above fatwa needs to be adopted by other state's fatwa and in fact the *Mufti* of the Federal Territories in 2001 had issued fatwa regarding the nomination as following:

“The nominees appointed under Employees Provident Fund, Post Office Savings, Bank, Insurance and Co-operative Society should enforce the will or become the *wasi*. The nominee may receive money from the sources and should distribute the money to the legal heirs according to the laws of *faraidh*.”

Nevertheless, the fatwa of MKI in 1978 provides crucial guidance regarding the nomination process for Muslims in managing their assets within organisations or institutions. According to the fatwa, a nomination is deemed invalid if the nominee is

designated as the beneficiary of the property. However, the nomination is considered valid if the nominee serves as trustee responsible for distributing the property in accordance with Shariah law.

The researcher views that the fatwa underlines the importance of ensuring that nominees in a Muslim context act as trustees rather than beneficiaries, thereby aligning the process with Islamic principles. The distinction made by the fatwa safeguards the integrity of estate distribution according to the Shariah, ensuring that the nominee does not personally benefit but instead administers the assets according to the Islamic laws of inheritance.

Considering the fatwa, the suggestion to implement a nomination policy by DAX providers should emphasise the role of the nominee as a trustee. This approach would ensure that the process of managing and distributing crypto assets after the death of the owner adheres to Shariah principles. By appointing a trustee as the nominee, the policy would facilitate the rightful distribution of assets while maintaining compliance with Islamic law. This aligns with the fatwa's directive and supports the establishment of a nomination policy that upholds the ethical and religious obligations in estate planning for Muslim crypto assets owners.

Islamic entrustment (*wisayah*) as a tool of Islamic estate planning for crypto assets.

As R10 and R11 suggest, the Islamic entrustment (*wisayah*) can serve as a valuable tool for estate planning, particularly for crypto assets. R11 emphasised the importance of appointing digital manager in estate planning:

“... that is why we encourage digital manager to be appointed in the document. So that everyone knows that this person is responsible, they have to declare how much is received, and they have to declare whatever transactions are made. So that everything is clear and transparent.”

The legal principle governing estate administration establishes that the estate does not belong to the administrator, who functions solely as a trustee responsible for managing and distributing the assets in accordance with the law. Section 3 of the Trustee Act 1949 explicitly defines a personal representative as a trustee, thereby imposing fiduciary duties on administrators in the management of the estate.

In practice, administrators often open an "administrator's account" to facilitate the administration process. However, as highlighted by R11, best practices dictate that each estate should be managed through individual trust accounts to ensure transparency and proper oversight:

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"I think it is the same concept, meaning as administrators or executors. When calling assets from a financial institution, the money must be placed into a trust account, an individual trust account. Meaning, for every inheritance we administer, there is a separate trust account for it. So, we register or deposit into that account. This makes it clear that it does not belong to the administrator. Meaning, the manager I mentioned earlier, it is not their own money but someone else's, not As-Salihin's, but actually the deceased's. That is the system we are referring to. If we want to duplicate it, it is essentially the same concept."

This clarification reinforces the importance of maintaining transparency and safeguarding the integrity of the estate administration process. The use of separate trust accounts ensures a clear distinction between the estate's assets and those of the administrator, in addition to reaffirming that the assets remain the property of the deceased's estate. This structured approach provides beneficiaries with confidence that the estate is managed ethically, in compliance with fiduciary duties, and in accordance with established legal principles.

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The suggestion aligns with the concept of the Islamic entrustment (*wisayah*), which is permissible for Muslims. This is supported by the verse from *Surah Al-Nisa* in Al-Quran, where Allah says:

“Indeed, Allah commands you to return trusts to their rightful owners.” (*Surah al-Nisa:58*)

The researcher views that the above verse emphasises the importance of fulfilling responsibilities and safeguarding assets, which is fundamental in estate planning through the *wisayah*.

In establishing valid instrument of the *wisayah*, there are four pillars that need to be fulfilled, which are the testator (*musi*), the executor/ trustee (*wasi*), the bequeathed item (*musa fih*), and the declaration (*sighah*) (Badruddin, 2009). Besides, the requirement for clear documentation and transparency in managing and liquidating crypto assets reflects the Islamic principles of trust (*amanah*), where the executor must safeguard the property until it is distributed to the rightful heirs (Al-Nawawi, 2005). The researcher further suggests that to achieve the objective of *wisayah*, careful consideration must be given to selecting an appropriate *wasi*. For guardians responsible for minors or individuals with disabilities, it is preferable to appoint a trustee from an official institution capable of managing the required financial support (Abdullah, Awang, & Nor Muhamad, 2020).

Moreover, the practice of *wisayah* is actively implemented in Malaysia. For example, since 2018, Public Trust Corporation (ARB) collaborated with the Employees Provident Fund (EPF) to encourage contributors to designate ARB as the executor for managing Islamic trust assets following the contributor’s death, in compliance with inheritance laws (Berita Harian, 2018).

Regarding the nomination of *wasi* for crypto assets, a practical approach suggested by R11 is for DAX providers in Malaysia to incorporate nomination options during account registration. As R11 stated:

“At the very least, those who are already registered here should allow the nominee in the registration. There should also be a trigger mechanism. For example, if an account has been idle for more than seven years, if no funds have been claimed, the company should take the initiative to contact the next of kin to inquire about the status of the owner, whether they are still alive or not.”

The researcher agrees with the suggestion given by R11, where it is recommended that DAX providers implement a system to enhance the management and security of dormant accounts. Additionally, a trigger mechanism should be introduced in which if an account remains inactive for more than seven years without any funds being claimed, the institution should proactively reach out to the account holder’s next of kin or the nominee to verify the owner’s status.

Therefore, the researcher proposes adopting the instrument of *wisayah* in the nomination process, as previously discussed. By nominating a *wasi* to manage the deceased’s crypto assets and oversee their distribution to the rightful heirs or beneficiaries, DAX providers can facilitate the effective administration and allocation of these assets in alignment with both Shariah and legal principles. This approach also will help ensure that unclaimed assets are properly managed and can be appropriately transferred to the rightful heirs, thereby safeguarding the interest of both the account holders and the beneficiaries.

Death confirmation

To facilitate the distribution process, the researcher supports the current practice of DAX providers related to digital asset exchange like Luno and Hata, which requires

executor, administrator, or any beneficiaries to present legal documentations verifying the owner's death, such as a death certificate or court-issued death declaration.

The valuation cut-off date for crypto assets

The researcher suggests that the valuation cut-off date for crypto assets should be set as the date when legal documentation confirming the owner's death is received by the DAX provider. This approach ensures that the value of the assets is accurately captured at a specific point in time, thus minimising the impact of market fluctuations. As R13 explained:

“There will be closure of the account because the deceased would have been reported, and the account will have to be closed. Once it is closed, then at that point of closure, that will be the market rate that the account will be within.”

Based on R13's explanation, the researcher recommends the valuation of crypto assets be determined at the point of account closure following the reporting of the account holder's death. This method ensures that the assets are valued at the prevailing market rate at the time of closure, thereby providing a fair and transparent basis for distribution of the estate.

By adopting this approach, the risks associated with the market volatility can be effectively minimised, ensuring both compliance with Shariah principles and the fair distribution of assets to the rightful heirs. While there are no specific Al-Quran verses or hadiths addressing the cut-off date for asset valuation, this method aligns *Shafi'e* school of thought's approach that inheritance and its outgrowth belong to the rightful heirs according to their portion (*anna at-tarikata bi- zawa'idiha lil-warathat, kullu hasab hissatihi fi al-mirath*) (Ministry of Awqaf and Islamic Affairs, 2011). Hence, even if the value of crypto assets increases after the owner's death, the appreciated

value should still be distributed in accordance with Islamic inheritance law in order to ensure fairness and adherence to Shariah principles.

Besides, the recommendation addresses discrepancies in jurisdictional classification for estate administration by establishing specific, fixed point in time for asset valuation. This approach reduces the necessity for multiple valuations and adjustments due to market fluctuations. A fixed valuation date also facilitates clear classification of the estate as either small or non-small, based on single, consistent valuation, thereby minimising the risk of changing classifications between initial filing and subsequent proceedings. Furthermore, valuing the assets at the cut-off date ensures that all heirs receive their fair share based on stable valuation, promoting fairness and transparency.

The transfer of crypto assets to nominee

Additionally, the researcher proposes that instead of DAX providers waiting for written instructions from executor or fiduciary, as currently stipulated in the terms of use practiced by Luno and Hata, the nominee should be given a clear option. Specifically, the nominee should receive either the value of crypto assets as per the cut-off valuation date in local currency or the units of crypto assets as per the owner's account.

This approach aims to streamline the process and enhance security by providing a straightforward mechanism for assets transfer. This method helps reduce the risk of unauthorised access to crypto assets owned by the deceased. Transactions involving crypto assets, either transferring them to a nominee's crypto wallet or converting them to local currency and depositing them into the nominee's bank account, will be officially documented.

4.7 Summary of the Chapter

This chapter systematically presents the findings of the research on the Shariah and legal framework for Islamic estate planning of crypto assets in Malaysia. This chapter begins by addressing the classification of crypto assets as property (*mal*), revealing inconsistencies in fatwas across different states on the permissibility of these assets. The researcher then explores the existing legal framework, highlighting that it predominantly regulates intermediaries like DAX but lacks sufficient protections for end-users, particularly in terms of inheritance. The study also identifies the challenges of valuing volatile crypto assets posthumously and the absence of clear guidelines on their distribution according to Shariah principles. Issues such as the application of *hibah amanah* for crypto assets and the ambiguity in legal jurisdiction over estate administration further complicate the process. To address these gaps, this chapter proposes a comprehensive framework that includes clear regulatory guidelines, standardised fatwas, and enhanced protections over Muslims crypto assets owners, ensuring Shariah compliance and secure estate planning.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.1 Introduction

This chapter provides the conclusion, contributions, and recommendations for future research. It begins with a summary of the research's findings, followed by the contributions and implications for conceptual, methodological, and practical aspects. Lastly, by acknowledging the limitations of the research, this chapter outlines recommendations for future research.

5.2 Summary of the research's findings

This research explores the Shariah and legal framework for Islamic estate planning of crypto assets in Malaysia, addressing various issues through the lens of both Shariah law and Malaysian regulatory frameworks. The researcher was motivated by the evolving landscape of crypto assets and the need for clarity on inheritance and estate planning within the Islamic context. Through a qualitative socio-legal approach, the researcher employed library-based research and semi-structured interviews to achieve five key research objectives. These were designed to analyse the acceptance of crypto assets from a Shariah perspective, assess the adequacy of Malaysia's legal framework, investigate Shariah and legal issues, and recommend an enhanced Shariah-compliant and legal framework for estate planning of crypto assets in Malaysia. The findings are supported by relevant literature, offering critical insights into intersection of digital assets and Islamic estate planning in Malaysia. Below is the summary of research findings in this research.

5.2.1 Acceptance of crypto assets from a Shariah perspective

In response to the first research objective (RO1), which aimed to analyse the acceptance of crypto assets from a Shariah perspective, the researcher found that crypto assets are confirmed being classified as *mal* under Shariah law, fulfilling the criteria of assets that has value, beneficial, can be owned and possessed, storable and transferable. This classification aligns with the general Islamic jurisprudential view that any assets, tangible or intangible, that provides a lawful benefit can be owned is considered as *mal mutaqawwim* (valuable property) (Al-Zuhaili, 1996; Engku Ali, 2003).

Crypto assets, although intangible and decentralised, meet the Shariah criteria of assets because they possess intrinsic value and can be exchanged and traded. This acceptance is supported by the legal maxims of *al-asl ibahah* (the original rule is permissibility) in financial transactions, denoting crypto assets are permissible unless explicitly prohibited (Usmani, 2015). Shariah scholars like Mohd Daud Bakar (2019) and others advocate that as long as the usage of crypto assets complies with ethical guidelines and provides economic benefits, they can be considered legitimate forms of wealth.

However, the acceptance of crypto assets is not without challenges, particularly due to divergent fatwas reflecting a broader global debate among Islamic scholars. Some scholars, such as those from Egypt's *Dar al-ifta* and Turkey, argue that the speculative nature, high volatility, and potential for illegal use (such as money laundering) make crypto assets impermissible under Shariah (Billah, 2019; Che Rani & Salleh, 2019). Others like Bakar (2019), maintain that crypto assets, being widely accepted and used for law purposes, meet the criteria of property and should be permissible.

Another important consideration is the role of custom (*'urf*) in Shariah acceptance of crypto assets as *mal*. As Bakar (2019) points out, *'urf* allows for the recognition of

crypto assets as *mal* if they are accepted and widely used by community or society. Given the rising adoption of crypto assets globally, their recognition as valuable property is increasingly justified, especially within the context of modern Islamic finance. This perspective is crucial in shaping the on-going Shariah discourse on crypto assets, where custom play's role in adapting traditional jurisprudence to new financial innovations.

The researcher concludes that, while the findings support the classification of crypto assets as *mal* under Shariah, the inconsistencies in fatwas across different states in Malaysia present an obstacle to uniform acceptance. To achieve broader consensus, there is a need for harmonised Shariah opinions and rulings that reflect both the underlying principles of Islamic law and the evolving nature of digital assets. The literature strongly supports the permissibility of crypto assets when used in accordance with Shariah principles, but greater alignment between scholars and state authorities is necessary to ensure clarity and confidence among Muslim investors and asset holders. Hence, the research objective (RO1) is achieved.

5.2.2 Adequacy of the existing legal framework in regulating Islamic estate planning for crypto assets in Malaysia

Regarding the second research objective (RO2), the researcher examined the adequacy of Malaysia's current legal framework in regulating Islamic estate planning for crypto assets. The findings reveal that the current legal framework in Malaysia is insufficient to adequately regulate Islamic estate planning for crypto assets. Although some progress has been made in regulating crypto assets through the Capital Market and Services Act 2007 and guidelines issued by the SC, these regulations focus primarily

on licensing, trading, and issuance rather than complexities involved in estate planning and inheritance.

The existing legal framework is fragmented, with BNM and SC each playing distinct roles in regulating crypto assets, but there is no comprehensive policy addressing the inheritance of these assets. The researcher found that there are no specific legal provisions for managing the inheritance of crypto assets, which presents significant challenges for estate administrators and beneficiaries. Crypto assets, by their nature, are decentralised and stored in digital wallets that require private key access. The absence of legal guidelines concerning fiduciary access – the process by which a personal representative can gain control over the deceased’s crypto assets – leaves estate planners and beneficiaries vulnerable to the loss of assets if private keys are not securely stored and accessible. Beyer and Nipp (2019) highlight the risk, noting that if private keys are lost or forgotten, the crypto assets could become permanently inaccessible, rendering them part of the increasing number of frozen estates in Malaysia.

Moreover, the Probate and Administration Act 1959, which governs the administration of estates in Malaysia, does not account for the unique characteristics of crypto assets. Unlike physical assets, crypto assets are intangible, anonymous, and often exist outside of traditional financial systems. This makes it difficult to apply conventional estate administration laws to them.

The findings also emphasise the lack of coordination between regulatory bodies, such as the SC and BNM, in developing a coherent legal framework for crypto assets in the context of estate planning. Although these bodies regulate different aspects of crypto assets usage – such as trading and anti-money laundering measures – there is no clear protocol for estate administrators to follow when dealing with the inheritance of digital

assets. This fragmentation creates confusion and increases the likelihood of disputes among beneficiaries, particularly when there is no clarity on the legal status of crypto assets in an estate.

These findings are in line with Zul Kepli and Bustami's (2021) arguments that the lack of a unified legal framework to crypto assets in estate planning is a global issue, not limited to Malaysia. However, given the rising ownership of crypto assets in Malaysia, this gap needs urgent attention. Legal scholars such as Conway and Grattan (2017) and Salet et al. (2020) also point out that many jurisdictions are struggling to adapt their legal system to the digital age, particularly when it comes to estate planning for crypto assets.

The researcher concludes that the legal framework governing Islamic estate planning for crypto assets in Malaysia remains unclear and underdeveloped. Hence, the research objective (RO2) is achieved.

5.2.3 Shariah issues related to Islamic estate planning for crypto assets in Malaysia

Aligned with the third research objective (RO3), the researcher investigated the Shariah issues surrounding the inheritance of crypto assets. The findings highlight several Shariah – related issues that complicate the estate planning of crypto assets in Malaysia. While the classification of crypto assets as *mal* under Shariah law was established, the practical implementation of this classification within the framework of Islamic estate planning remains problematic. These issues stem from the lack of clear and standardised Shariah rulings, uncertainties in the application of inheritance laws, and the unique characteristics of crypto assets that pose challenges for Islamic jurisprudence.

One of the primary issues identified is the inconsistency of fatwas regarding the permissibility and inheritance of crypto assets. Different state fatwa committees in Malaysia have issued divergent rulings on the treatment of crypto assets. For instance, the state fatwa Committee of Perlis, Perak, Selangor and Sarawak have provided rulings on the use of Bitcoin and other crypto assets, but the scope and application of these fatwas vary. Some states recognise crypto assets as permissible under certain conditions, while others have not yet issued clear guidance. This lack of uniformity creates confusion for Muslim crypto assets owners and their beneficiaries, as they are unsure how to plan for their inheritance of these assets in a way that complies with Shariah.

The issue of asset valuation at the time of death also poses a significant challenge from a Shariah perspective. Crypto assets are highly volatile, and their value can fluctuate dramatically over short periods. This raises questions of how to determine the appropriate value of the assets for distribution according to *faraid*: Should the value be fixed at the time of death, or should the distribution reflect the market value at the time the assets are transferred to beneficiaries? This lack of clarity could lead to disputes among heirs, particularly if there is a significant change in the value of crypto assets during the estate administration process. Mahomed and Ramadili (2017) and Zul Kepli and Bustami (2021) have emphasised the importance of developing clear guidelines for valuing volatile assets like crypto, especially within an Islamic legal framework.

Another critical issue is the uncertainty surrounding the use of Islamic estate planning instruments, such as *hibah amanah* and *wasiyyah*, for crypto assets. The findings suggest that while these instruments are commonly used in Islamic estate planning, there is no clear guidance on how they should be applied to crypto assets. This

ambiguity is particularly evident when dealing with the transfer of digital assets, which require private keys for access. In traditional estate planning, tangible assets like property or money can easily be distributed through *hibah* or *wasiyyah*, but crypto assets, due to their digital and decentralised nature, complicate this process. Saleh et al. (2020) and Beyer and Nipp (2019) argue that without proper protocols for securely managing private keys, the use of traditional estate planning for crypto assets remains risky and unclear.

The research also highlights the absence of comprehensive fatwas that specifically address the inheritance of crypto assets. While some fatwas recognise crypto assets as *mal*, they do not provide specific instructions on how these assets should be inherited, particularly in the event of the owner's death.

In conclusion, the findings indicate that significant Shariah-related challenges persist in the estate planning of crypto assets in Malaysia. The lack of uniform fatwas, uncertainty in the valuation of crypto assets, and the ambiguity in the application of Islamic estate planning instruments complicate the process of ensuring Shariah compliance in the inheritance of digital assets. Hence, the third research objective (RO3) is achieved.

5.2.4 Legal issues related to Islamic estate planning for crypto assets in Malaysia

The fourth research objective (RO4) investigated the legal issues in Islamic estate planning for crypto assets in Malaysia. The findings reveal several critical legal issues that hinder the effective management of crypto assets in Islamic estate planning in Malaysia. The legal framework currently in place does not adequately address the unique characteristics of crypto assets, leading to significant challenges in inheritance and estate administration. These legal gaps are primarily centred around jurisdictional

ambiguity, fiduciary access, unauthorised access, assets valuation, and the role of DAX providers.

It is a clear sign of the gaps that persist in the legal framework, particularly concerning crypto assets' inheritance. First, the unclear legal jurisdiction surrounding the administration of crypto assets creates confusion for estate management bodies, complicating the process of executors and beneficiaries. As identified by Zul Kepli and Bustami (2021), the regulatory landscape in Malaysia lacks comprehensive guidelines, leading to challenges in determining which legal frameworks govern crypto assets inheritance.

This issue is compounded by the fact that crypto assets are still regarded as ambiguous, with conflicting definitions and classification across various regulatory bodies, including the SC and BNM. This has led to delays in the estate distribution process, especially in cases where the value of these assets fluctuates significantly due to market volatility, as illustrated in the case of *Rober Ong Thien Cheng v Luno Pte Ltd & Bitx Malaysia Sdn Bhd* [2020] 1 LNS 2194.

Moreover, uncertainties regarding the distribution of crypto assets – whether to transfer them by unit or their equivalent in Malaysian ringgit – are substantial challenges. As highlighted by Cuervo and et al. (2019), the volatility of assets like Bitcoin and Ethereum necessitates clear laws regarding their conversion and allocation in inheritance. Without proper legal provisions, disputes are likely to arise among heirs, potentially leading to prolonged legal proceedings over the distribution format.

Further compounding issues is the obligation of DAX providers to transfer crypto assets to the beneficiaries. Many DAX providers' terms of service often prohibit the transfer of crypto assets upon the death of the owner, which can obstruct the rightful

inheritance process. Bruker-Kley et al. (2013) and Klasicek and Vucemilovic (2019) point out that such restriction poses ethical and legal dilemmas, as the ownership of the assets remain inaccessible even with a court mandate.

Finally, unauthorised access to crypto assets is another crucial legal issue. The anonymity and security of blockchain technology, while advantageous for protecting asset owner's privacy, can also enable cybercrime and identity theft. Beyer (2019) argues that estate planners must address the management of private keys carefully, as failure to do so may result in the permanent loss of crypto assets, especially in cases of theft or fraud.

Thus, these legal issues necessitate an urgent overhaul of Malaysia's legal framework to provide clarity and guidance on crypto assets inheritance and the fourth research objective (RO4) is achieved.

5.2.5 Shariah and legal framework of Islamic estate planning for crypto assets in Malaysia

In addressing the final research objective (RO5), the researcher proposes an enhanced Shariah and legal framework for Islamic estate planning of crypto assets. This enhanced proposal addresses critical gaps identified in both Shariah and regulatory systems in estate planning of crypto assets. The research reveals that while crypto assets are increasingly accepted as *mal* under Shariah, several inconsistencies in fatwas and ambiguities in the legal framework hinder their seamless integration into Islamic estate planning.

The framework emphasises the necessity of a nationally standardised fatwa on crypto assets to address the inconsistencies in rulings across different states. Currently, various state-level fatwas offer divergent views on the permissibility of crypto assets, leading

to a confusion by the Muslims crypto assets owners. A unified fatwa would ensure that all crypto assets are recognised as *mal* across Malaysia, and their inheritance is governed uniformly. This harmonisation would provide clarity to both the owners and their beneficiaries, ensuring compliance with *faraid*. The proposal thus fulfils the need for consistent Shariah guidance, as envisioned by the research objective.

The current legal framework in Malaysia lacks specific provisions for managing and distributing crypto assets after death. The proposed framework suggests expanding the existing Guidelines on Digital Assets issued by the SC to include the inheritance procedures. This would ensure that DAX providers are equipped with protocols to facilitate the transfer of crypto assets to beneficiaries. The regulatory reform would also empower estate planners to provide informed guidance, enhancing the protection of beneficiaries' rights.

A significant innovation in the framework is the proposed nomination policy, which allows crypto assets owners to nominate a *wasi* (trustee) who will manage the assets upon their death. This step is critical because, unlike traditional assets, crypto assets require specific credentials, such as private keys, to access. By nominating a trusted individual, the owner ensures that the assets can be retrieved and distributed according to Shariah law, preventing unauthorised access or the loss of assets. This proposal directly addresses the gap in fiduciary access to digital assets, which is currently absent from the legal framework.

The framework introduces Islamic entrustment (*wisayah*) as a tool for Islamic estate planning of crypto assets. Under this system, owners can formally appoint an entrusted person or institution (like Amanah Raya Berhad) to manage the estate after their death. This tool ensures the protection and distribution of the crypto assets in line with Islamic

principles. It is a legally binding contract that would ensure Shariah-compliant management of the estate, thereby fulfilling the objective of aligning estate planning with religious obligations.

One of the unique challenges posed by crypto assets is their volatility. To address this, the framework proposes a cut-off date value for the assets at the time of the legal documentation confirming the owner's death is received by the DAX provider. This would standardise the valuation of crypto assets, ensuring that their distribution is fair and consistent with Islamic inheritance laws. By fixing the value of crypto assets at the date of receiving the said legal documentation, the framework mitigates the risk of disputes arising from fluctuating assets prices, as observed in cases like *Robert Ong Thien Cheng v Luno Pte Ltd & Bitx Malaysia Sdn Bhd* [2020] 1 LNS 2194.

In conclusion, the proposed Shariah and legal framework of Islamic estate planning for crypto assets is comprehensive, addressing the critical gaps in both Shariah and legal management of crypto assets in Malaysia. It aligns with RO5, offering a robust solution to the limitations of the current framework, ensuring both adherence to Islamic principles and regulatory compliance.

5.3 Contributions of the study

This research makes a substantial contribution to the existing body of knowledge by addressing critical gaps in Islamic estate planning for crypto assets. By focusing on the unique challenges posed by digital assets such as crypto assets, the research enhances understanding in an area that is often overlooked in traditional discussion of Islamic finance and estate planning. The integration with contemporary financial practices is crucial in a rapidly evolving digital economy. This research not only reinforces the

necessity of such integration but also highlights the potential for crypto assets to be aligned with Islamic values, thus broadening the scope of Islamic finance.

Hence, this section outlines the key contributions of the research across four major areas: theoretical, methodological, practical and interdisciplinary. These contributions not only fill critical gaps in existing literature as they also provide a comprehensive and integrated approach to manage the inheritance and estate planning of crypto assets within the Shariah and legal framework.

5.3.1 Theoretical contributions

This research makes a notable contribution to the field by addressing a critical gap in Islamic estate planning, particularly concerning crypto assets. Traditionally, estate planning in Islamic finance focused on physical and financial assets, while digital assets such as crypto assets have not been fully integrated into this framework. However, with the rise of crypto assets, there is a growing need to integrate them into Islamic estate planning frameworks.

This study bridges that gap by exploring how crypto assets can be classified as *mal*, under Shariah law. Furthermore, it demonstrates how these digital assets, despite their intangible nature, can align with the principles of Islamic jurisprudence. Consequently, this study enhances the theoretical discourse in Islamic finance by showing that Shariah law can indeed adapt to the challenges posed by the digital economy, thus expanding the relevance and applicability of Islamic legal principles in modern financial practices.

Moreover, the research introduces a novel conceptual framework that demonstrates how Shariah principles can be applied to the management and inheritance of crypto assets. Given the unique characteristics of digital assets, this framework is instrumental

in clarifying how they can be reconciled with Islamic law. It develops a conceptual model that integrates the key principles of Islamic law with contemporary practices in digital assets management. By doing so, the research bridges the gap between traditional Islamic inheritance laws and modern financial technologies, offering practical pathways for Muslims to engage with digital assets without compromising their religious belief.

Besides, the framework also demonstrates how crypto assets, despite their volatility and decentralised nature, can be managed in accordance with Islamic principles of fairness, transparency, and ethical wealth distribution. By showing that crypto assets can be treated as inheritable property, the study highlights new possibilities for the inclusion of digital assets within traditional Islamic estate planning. Therefore, this contribution significantly enriches the theoretical understanding of how Islamic legal frameworks can be extended to cover emerging financial instruments.

5.3.2 Methodological contributions

The methodological contribution of this research is equally significant, as it employs a qualitative socio-legal research approach to explore the complexities surrounding crypto assets in Islamic estate planning. Specifically, the research relies on semi-structured interviews with key stakeholders such as Shariah experts, judges, lawyers, estate planners, and providers. This approach enriches the collected data, providing a holistic view of the challenges and potential solutions in Islamic estate planning for crypto assets.

The research also sets a precedent for future studies by demonstrating the effectiveness of qualitative methods in capturing the importance of Shariah compliance in emerging financial technologies. It also advocates for the use of general inductive, content, and

thematic analysis in interpreting complex socio-legal phenomena, contributing to the methodological discourse in Islamic finance research.

Consequently, this study not only contributes valuable insights into the subject matter but also demonstrates the effectiveness of qualitative research in exploring socio-legal phenomena. This methodological rigor sets a new standard for future research in similar contexts, especially where emerging technologies intersect with Shariah and legal frameworks.

In addition, the research demonstrates the importance of triangulating Shariah, legal and financial perspectives when dealing with novel and complex issues such as crypto assets. By integrating these different viewpoints, the research enhances the reliability and validity of its findings. Furthermore, this triangulation approaches the multifaceted nature of crypto assets, covering Shariah, legal and technical dimensions. Thus, this methodology provides a robust model for future studies dealing with the convergence of Islamic finance, law, and technology.

5.3.3 Practical contributions

Practically, the research offers concrete and actionable recommendations that can guide policymakers, legal practitioners, and regulators in developing a comprehensive legal framework for the estate planning of crypto assets. Given that the regulation of crypto assets is still in its early stages, this research fills an important gap by proposing an enhanced Shariah and legal framework that aligns with both religious obligations and the regulatory requirements in Malaysia. These recommendations are crucial for ensuring the proper management and inheritance of crypto assets, thus preventing potential disputes or losses upon the death of the owner.

Furthermore, the study provides lawyers, estate planners, and DAX providers with practical insights into managing and transferring crypto assets in compliance with Shariah principles. By addressing the unique challenges posed by the digital nature of crypto assets – the jurisdiction over crypto assets in estate administration, the cut-off value of assets after the owner’s death, and the role of DAX providers in the transfer of assets to the beneficiaries – this research equips practitioners with the tools to offer better advisory services to their Muslim clients. Furthermore, it offers DAX providers a clear understanding of how to ensure that their services are Shariah-compliant, thus gaining the trust and confidence of Muslim users.

Importantly, the research also tackles the practical risks associated with the inheritance of crypto assets, such as price volatility, unauthorised access, and the technical difficulties involved in transferring these assets after the owner’s death. By offering strategies to mitigate these risks – such as protocols for secure private key management and clear legal mechanisms for asset distribution – the study ensures that crypto assets owners and their heirs are adequately protected. This contribution is particularly timely, given the increasing use of digital assets and the growing need for effective estate planning in this field.

5.3.4 Interdisciplinary contributions

This research makes a substantial interdisciplinary contribution by bringing together insights from Islamic finance, law, and digital technology. The growing popularity of crypto assets necessitates a collaborative approach to address their management within the framework of Islamic estate planning. By integrating financial principles, legal regulations, and technical considerations, the research demonstrates how these diverse fields can work together to create a cohesive and comprehensive framework for crypto

assets inheritance. This interdisciplinary approach is essential for understanding the complexities of digital assets, and it offers a model for future research that deals with the intersection of Shariah, law, and technology.

Moreover, the research encourages collaboration and dialogue between key stakeholders – such as Shariah experts, judges, lawyers, estate planners and DAX providers – on how to manage the inheritance of crypto assets. By fostering these interdisciplinary discussions, the research ensures that all relevant perspectives are considered in developing solutions to the challenges posed by crypto assets. This holistic approach not only enhances the practical applicability of the research's findings but also promotes the greater understanding and cooperation among different sectors involved in crypto assets and Islamic estate planning.

5.3.5 Contributions to the Islamic estate planning literature

Traditionally, Islamic estate planning focused on tangible assets like land, property and financial investment. Rarely do digital assets such as crypto assets being integrated into the estate planning framework. This research contributes to Islamic estate planning literature by exploring how these digital assets, which are intangible and decentralised, can be incorporated into Islamic estate frameworks in Shariah-compliant manner. The novelty lies in demonstrating that crypto assets can be recognised as *mal* under Shariah law, offering a new dimension to the concept of wealth in Islamic finance.

Besides, the research extends the classical Islamic definition of *mal* to include crypto assets, showing despite their intangible and digital nature, they possess the essential characteristics of wealth recognised by Shariah. This redefinition contributes to the literature in Islamic estate planning involving crypto assets.

Furthermore, this research contributes to the legal literature by identifying and addressing the gaps in the current legal framework governing the inheritance of crypto assets under both Shariah and Malaysian law since the legal landscape surrounding crypto assets is still developing in Malaysia, where Islamic law plays a key role in estate planning. The research has revealed the truth that existing laws are insufficient to deal with the complexities of digital assets ownership and transfer after the death of the owner.

In summary, this research enriches the existing body of knowledge by addressing key gaps in Islamic estate planning for crypto assets, proposing innovative conceptual framework, offering practical legal solutions, and advancing the methodological approaches used in the field. Its interdisciplinary nature further broadens the scope of Islamic finance, making it more adaptable to modern financial realities while remaining firmly rooted in Shariah principles.

5.4 Limitation of the research

This research has successfully achieved its research objectives. Nevertheless, this research has certain limitations that must be acknowledged. There are several limitations that are being identified that will provide an opportunity for future researchers to expand upon the findings and address gaps that were beyond the scope of this research as outlined below:

- i. Scope of Shariah opinions

While the research extensively discusses the permissibility of crypto assets from a Shariah perspective, the focus is largely confined to the context of Malaysia. The analysis is based on fatwas issued by the State fatwa Committees and the SAC SC of

Malaysia. However, Shariah views on crypto assets differ across the Muslim world. Fatwas from other Islamic jurisdictions, such as those in the Middle East or North Africa, were not comprehensively considered. Consequently, the findings may not be fully applicable to Muslims communities outside of Malaysia. Future research should explore a broader array of Shariah perspectives, particularly from regions with more developed frameworks for digital assets.

ii. Narrow focus on registered DAX providers

This research exclusively focuses on crypto assets traded on registered and licensed DAX in Malaysia, namely platforms such as Luno Malaysia Sdn Bhd, MX Global, and others. Private or peer-to-peer (P2P) crypto assets transactions, which represent a significant portion of global crypto trading, were excluded. As a result, these research findings may not fully capture the complexity of estate planning for privately held crypto assets. Future research could explore how unregulated or private crypto assets impact estate planning, and the potential regulatory measures required for these types of assets.

iii. Legal framework in nascent stage

The legal framework for crypto assets in Malaysia is still in its infancy stages, and this research was developed within the context of existing laws as of 2024. However, as regulatory landscapes evolve, new laws and guidelines are likely to be introduced. The findings may become outdated as Malaysia' legal environment for digital assets matures. Future researchers should revisit the topic as new regulations emerge, analysing how legal reforms affect the administration and inheritance of crypto assets by interviewing Estate Distribution Section under the Department of Director General of Lands and Mines and *Amanah Raya Berhad*.

iv. Technological risks and cybersecurity considerations

While the research acknowledges the risk of unauthorised access to crypto assets, it does not delve deeply into the technical aspects of cybersecurity in the management of crypto assets for estate planning. As crypto assets are highly vulnerable to hacking, fraud and cyberattacks, future research should incorporate a more detailed analysis of the technological safeguards that can be implemented to protect these assets posthumously.

5.5 Recommendations for future research

In view of the above limitations, the researcher suggested several recommendations for future research such as the following: - first, as mentioned above, the future research should expand the scope by conducting comparative analysis of Shariah rulings on crypto assets from different Islamic jurisdictions across the world. This would provide a more comprehensive understanding of how various Islamic countries approach the topic of crypto assets, particularly in terms of inheritance and estate planning. Such research would benefit Islamic scholars and regulators by offering a wider array of perspectives and potential solutions.

Second, to address the limitation of focusing solely on licensed DAX providers, future research should explore the estate planning challenges posed by privately held and unregulated crypto assets. Research should investigate how these assets are inherited, the potential legal implications, and the regulatory gaps that need to be filled to provide legal certainty for heirs dealing with unregulated crypto holdings.

Third, as Malaysia's legal and regulatory framework for crypto assets evolves, a longitudinal study would be beneficial. Future research should track the impact of new legal reforms on estate planning for crypto assets by analysing whether new regulations successfully address the current gaps and challenges identified in this research. This type of research would provide valuable insights into the effectiveness of policy changes over time.

Finally, with the rise of cybercrime and the vulnerability of digital assets to hacking as mentioned above, future research should explore the methodological measures necessary to protect crypto assets in estate planning. Future researchers could investigate the best practices for managing private keys, the role of digital custodians, and the potential for new technologies like smart contracts to ensure secure transfer of crypto assets to beneficiaries.

In summary, while this research provides a foundation framework for Islamic estate planning of crypto assets in Malaysia, it leaves room for further exploration and refinement.

5.6 Conclusion

As Malaysia continues to develop towards a digital economy, the findings of this research provide a comprehensive exploration of the Shariah and legal frameworks necessary for the Islamic estate planning of crypto assets in Malaysia. By addressing the complex intersection between Shariah principles, legal regulations, and the unique characteristics of digital assets, the study sheds light on the classification of crypto assets as *mal* under Islamic law. However, the inconsistencies in fatwas across states and the lack of unified legal framework pose challenges to the seamless inheritance and administration of such assets. The proposed enhancements, including a harmonised

fatwa, robust regulatory guidelines, and innovative estate planning instruments like Islamic entrustments, provide actionable pathways to resolve these gaps. These recommendations not only align with Shariah principles but also account the practical realities of Malaysia's evolving digital economy. This is to ensure clarity and confidence for Muslim crypto assets owners and beneficiaries.

Ultimately, this modest study successfully achieved its research objectives and thus answered its research questions. It also provides a solid foundation for the intersection of Shariah-compliant estate planning and digital innovation. This research significantly contributes to bridging the gap between traditional Islamic inheritance laws and modern financial innovation. By integrating qualitative socio-legal research methods and triangulating perspectives from stakeholders, this study has developed a cohesive solution for crypto assets estate planning from Shariah and legal perspective. This research also has set a precedent for adapting Islamic legal principles to modern financial realities, ensuring their relevance and applicability in a rapidly digitalising world.

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APPENDICES

Appendix A

Pilot Test of Interview Guide

AZIZI BIN CHE SEMAN
Jabatan Syariah dan Ekonomi
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50603 Kuala Lumpur

Ruj Tuan :
Ruj Kami :
Tarikh : 10/08/2022

Nur Syaedah binti Kamis
Pelajar PhD Kewangan dan Perbankan Islam
Pusat Pengajian Pemiagaan Islam
Kolej Pemiagaan
Universiti Utara Malaysia
06100 Sintok,
Kedah Darul Aman.

Puan,

**PENGESAHAN KANDUNGAN MAKLUMAT (CONTENT VALIDITY) BAGI TUJUAN
PENYELIDIKAN PhD NUR SYAEDAH BINTI KAMIS (905909), PUSAT PENGAJIAN
PERNIAGAAN ISLAM, KOLEJ PERNIAGAAN UNIVERSITI UTARA MALAYSIA**

Dengan segala hormatnya perkara di atas adalah dirujuk.

2. Adalah dimaklumkan bahawa saya telah dipohon untuk mengesahkan kandungan maklumat (*content validity*) bagi tujuan penyelidikan PhD, Nur Syaedah binti Kamis (905909), Pelajar Pasca Siswazah Pusat Pengajian Islam, Kolej Pemiagaan, Universiti Utara Malaysia.

3. Sehubungan dengan itu, selepas meneliti dokumen yang telah diserahkan kepada saya, saya telah meneliti soalan-soalan temubual dan susunan temubual yang telah disusun bersesuaian dengan penyelidikan beliau. Beliau juga telah membuat penambahbaikan yang sepatutnya sepertimana yang telah dicadangkan.

Oleh yang demikian, saya sahkan kandungan maklumat soalan temubual yang telah disediakan oleh beliau.

Yang benar,


AZIZI BIN CHE SEMAN
azizi@um.edu.my

TAJUK PENYELIDIKAN:

SHARIAH AND LEGAL FRAMEWORK OF ISLAMIC ESTATE PLANNING FOR CRYPTO ASSETS IN MALAYSIA

Assalamualaikum w.b.t. /Salam sejahtera

Formatted: Finnish

Terima kasih kepada tuan/puan kerana menyertai sesi temubual ini. Sesi temubual ini dilakukan untuk penyelidikan bertajuk "Shariah and Legal Framework of Islamic Estate Planning for Crypto Assets in Malaysia". Penyelidikan ini adalah penyelidikan Pascasiswazah Doktor Falsafah (PhD).

Tujuan temubual ini adalah untuk mendapatkan maklumat dan pandangan tuan/puan mengenai pengurusan perancangan dan pembahagian harta pusaka Islam harta pusaka melibatkan mata wang kripto. Pihak saya memberi jaminan bahawa semua maklumat yang tuan/puan kongsi akan digunakan semata-mata untuk tujuan akademik. Maklumat ini akan dirahsiakan dan tidak disebar kepada masyarakat mahupun individu jika tidak bertujuan. Sila hubungi pihak saya jika tuan/puan memerlukan penjelasan yang lanjut.

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Penyelidik:

Nur Syaedah binti Kamis (Pelajar Pascasiswazah Doktor Falsafah (PhD))

Penyelia:

Professor Madya Dr. Norazlina Abd Wahab (Penyelia)

Professor Madya Dr. Mohammad Azam Hussain (Penyelia bersama)

Pusat Pengajian Perniagaan Islam
 Universiti Utara Malaysia
 06010 Sintok
 Kedah Darul Aman

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Untuk kegunaan pejabat

<i>Tarikh dan masa:</i>		<i>Tempat:</i>	
<i>Institusi:</i>		<i>Nama informan:</i>	
<i>Nama penemubual:</i>			

SOALAN TEMU BUAL PAKAR SHARIAH

Tuan/Puan dimohon menjelaskan perkara-perkara berikut:-

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1. LATAR BELAKANG

- a. Latar belakang responden (jawatan, pendidikan, pengalaman dan lain-lain yang berkaitan)
- b. Latar belakang jabatan (tahun penubuhan, struktur organisasi, bilangan pekerja, visi, misi, piagam pelanggan dan lain-lain yang berkaitan)

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2. PERSPEKTIF SHARIAH BERKAITAN MATA WANG KRIPTO

- a. Pandangan shariah berkenaan mata wang kripto sebagai aset atau *mal*.
 - i. Pandangan shariah berkenaan mata wang kripto sebagai *mal*.
 - ii. Prinsip/Kaedah Fiqh/ Usul Fiqh yang sesuai diguna pakai untuk menilai mata wang kripto dari sudut Shariah.
 - iii. Bagaimana pengiktirafan mata wang kripto oleh badan autoriti negara memberi kesan kepada penilaian Syarak terhadap mata wang kripto.

Commented [ACS1]: Prinsip/kaedah Fiqh/Usul Fiqh

Commented [ACS2]: Saya tak pasti sama ada soalan ini relevan dalam konteks Syarak atau tidak. Ia lebih bersifat regulatori. Jika nak diletakkan di sini, mungkin ayat perlu diolah semula. Contoh: Bagaimana pengiktirafan mata wang kripto oleh badan autoriti negara memberi kesan kepada penilaian Syarak terhadap mata wang kripto?

3. PERSPEKTIF SHARIAH BERKAITAN PERANCANGAN DAN PEMBAGIAN HARTA PUSAKA MATA WANG KRIPTO

- a. Pandangan shariah berkenaan pewarisan mata wang kripto.
 - i. Pandangan shariah berkenaan dengan pewarisan mata wang kripto
 - ii. Pemilik meninggal dunia tanpa meninggalkan wasiat dan hibah
 - iii. Pemilik meninggal dunia tanpa meninggalkan waris.
 - iv. Wasiat dan hibah mata wang kripto.
 - v. Halangan dalam pembahagian harta pusaka mata wang kripto
 - v-vi. Peranan Baitulmal (atau Majlis Agama Islam Negeri) dalam konteks harta pusaka mata wang kripto.

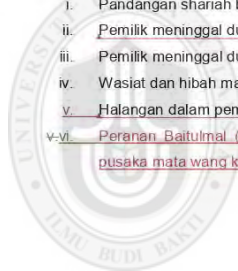
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Commented [ACS3]: Mungkin boleh tambah soalan berkenaan peranan Baitulmal (atau Majlis Agama Islam Negeri) dalam konteks harta pusaka mata wang kripto

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Universiti Utara Malaysia



Nur Syaedah nurasyedah@gmail.com

PER: PERMOHONAN PENGESAHAN ISI KANDUNGAN (CONTENT VALIDITY) TEMUBUAL BAGI TUJUAN PENYELIDIKAN PHD NUR SYAEDAH BIHTI KAMIS (905909), PUSAT PENGAJIAN PERNIAGAAN ISLAM, UNIVERSITI UTARA MALAYSIA

Dr. Ahmad Hidayah Bt Halim cakmah@uum.edu.my
To: Nur Syaedah nurasyedah@gmail.com
Cc: "Dr. Noorizma binti Aoi, Wafiq" noorizma@uum.edu.my, hmazam@uum.edu.my

May, Aug 15, 2022 at 10:35 PM

Assalamualaikum wbt.

Saya mengesahkan bahawa isi kandungan set soalan temubual yang telah disediakan sesuai dengan objektif kajian dan soalan-soalan kajian bagi tujuan penyelidikan PhD seperti yang ditunjukkan kepada saya.

Terima kasih.

Yang benar,
Ahmad Prof. Dr. Ahmad Hidayah Halim
Head of Responsible Research and Innovation
Ahmad Ibrahim Faculty of Law
International Islamic University Malaysia
No: 0193474197

Diselamatkan



UUM
Universiti Utara Malaysia



Kolej Universiti Islam Perlis,
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Perlis, Malaysia
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KOLEJ UNIVERSITI ISLAM PERLIS (KUIPs)

SYUMUL TAQWA DINAMIK

Tarikh : 15 Ogos 2022

Nur Syaedah binti Kamis
Pelajar PhD Kewangan dan Perbankan Islam
Pusat Pengajian Pemiagaan Islam
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Universiti Utara Malaysia
06100 Sintok,
Kedah Darul Aman.

Puan,

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PENYELIDIKAN PhD NUR SYAEDAH BINTI KAMIS (905909), PUSAT PENGAJIAN
PERNIAGAAN ISLAM, KOLEJ PERNIAGAAN UNIVERSITI UTARA MALAYSIA**

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2. Adalah dimaklumkan bahawa saya telah dipohon untuk mengesahkan kandungan maklumat (*content validity*) bagi tujuan penyelidikan PhD, Nur Syaedah binti Kamis (905909), Pelajar Pasca Siswazah Pusat Pengajian Islam, Kolej Pemiagaan, Universiti Utara Malaysia.

3. Sehubungan dengan itu, selepas meneliti dokumen yang telah diserahkan kepada saya, saya telah meneliti soalan-soalan temubual dan susunan temubual yang telah disusun bersesuaian dengan penyelidikan beliau. Oleh yang demikian, saya sahkan kandungan maklumat soalan temubual yang telah disediakan oleh beliau.

Yang benar,

NUR SYAMILAH BINTI MD NOOR
Pensyarah
Fakulti Muamalat & Kewangan Islam
Kolej Universiti Islam Perlis (KUIPs)
nsyamilah@kuips.edu.my

DI SINI PENCINTA SUNNAH DILAHIRKAN

www.kuips.edu.my

TAJUK PENYELIDIKAN:

SHARIAH AND LEGAL FRAMEWORK OF ISLAMIC ESTATE PLANNING FOR CRYPTO ASSETS IN MALAYSIA

Assalamualaikum w.b.t. /Salam sejahtera

Terima kasih kepada tuan/puan kerana menyertai sesi temubual ini. Sesi temubual ini dilakukan untuk penyelidikan bertajuk "*Shariah and Legal Framework of Islamic Estate Planning for Crypto Assets in Malaysia*". Penyelidikan ini adalah penyelidikan Pascasiswazah Doktor Falsafah (PhD).

Tujuan temubual ini adalah untuk mendapatkan maklumat dan pandangan tuan/puan mengenai pengurusan perancangan dan pembahagian harta pusaka Islam harta pusaka melibatkan mata wang kripto. Pihak saya memberi jaminan bahawa semua maklumat yang tuan/puan kongsi akan digunakan semata-mata untuk tujuan akademik. Maklumat ini akan dirahsiakan dan tidak disebar kepada masyarakat mahupun individu jika tidak bertujuan. Sila hubungi pihak saya jika tuan/puan memerlukan penjelasan yang lanjut.

Penyelidik:

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Penyelia:

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Untuk kegunaan pejabat			
Tarikh dan masa:		Tempat:	
Institusi:		Nama informan:	
Nama penemubual:			

SOALAN TEMU BUAL PENGENDALI PERTUKARAN ASET DIGITAL (DAX)

Tuan/Puan dimohon menjelaskan perkara-perkara berikut:-

1. LATAR BELAKANG

- a. Latar belakang responden (jawatan, pendidikan, pengalaman dan lain-lain yang berkaitan)
- b. Latar belakang jabatan (tahun penubuhan, struktur organisasi, bilangan pekerja, visi, misi, piagam pelanggan dan lain-lain yang berkaitan)

2. PERANAN DAX DALAM MENGENDALIKAN MATA WANG KRIPTO

- a. Peranan dan tanggungjawab DAX dalam mengendalikan mata wang kripto di Malaysia.
- b. Sambutan rakyat Malaysia terhadap matawang Kripto sejak ia mula diiktiraf di Malaysia.
- c. Jangkaan trend pemilikan matawang kripto untuk tempoh lima (5) tahun akan datang.
- d. Peranan dan tanggungjawab DAX dalam melindungi mata wang kripto pelanggan.
- e. Isu atau cabaran pengurusan pemilikan matawang kripto di Malaysia.

3. PENGURUSAN PERANCANGAN DAN PEWARISAN MATA WANG KRIPTO

- a. Proses perancangan dan pewarisan mata wang kripto pelanggan.
- b. Rujukan undang-undang atau garis panduan dalam mengendalikan pemindahan mata wang kripto si mati kepada warisnya.
- c. Pengalaman dalam mengendalikan perancangan dan pewarisan mata wang kripto pelanggan.

4. KESEDARAN DALAM PERANCANGAN DAN PEWARISAN MATA WANG KRIPTO.

- a. Kesedaran pelanggan dalam perancangan dan pewarisan mata wang kripto.

5. PANDANGAN TERHADAP PERANCANGAN DAN PEWARISAN MATA WANG KRIPTO

- a. Keperluan terhadap perancangan dan pewarisan mata wang kripto.
- b. Keperluan undang-undang khusus untuk pewarisan mata wang kripto.
- c. Pengurusan perancangan dan pewarisan mata wang kripto pelanggan yang sistematik untuk mengelakkan berlaku mata wang tidak dituntut.

Semua soalan bersesuaian dengan objektif kajian penyelidikan.



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TAJUK PENYELIDIKAN:

SHARIAH AND LEGAL FRAMEWORK OF ISLAMIC ESTATE PLANNING FOR CRYPTO ASSETS IN MALAYSIA

Assalamualaikum w.b.t. /Salam sejahtera

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Nur Syaedah binti Kamis (Pelajar Pascasiswazah Doktor Falsafah (PhD))

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Kedah Darul Aman

<i>Untuk kegunaan pejabat</i>			
<i>Tarikh dan masa:</i>		<i>Tempat:</i>	
<i>Institusi:</i>		<i>Nama informan:</i>	
<i>Nama penemubual:</i>			

SOALAN TEMU PERANCANG HARTA PUSAKA

Tuan/Puan dimohon menjelaskan perkara-perkara berikut:-

1. LATAR BELAKANG

- a. Latar belakang responden (jawatan, pendidikan, pengalaman dan lain-lain yang berkaitan)
- b. Latar belakang jabatan (tahun penubuhan, struktur organisasi, bilangan pekerja, visi, misi, piagam pelanggan dan lain-lain yang berkaitan)
- c. Penglibatan dalam pengurusan mata wang kripto.

2. PENGURUSAN PERANCANGAN MATAWANG KRIPTO

- a. Proses pengurusan perancangan mata wang kripto berbanding asset-asset lain.
- b. Cabaran dalam pengurusan perancangan mata wang kripto.
- c. Instrumen yang sesuai untuk perancangan pewarisan mata wang kripto.
- d. ~~Kos perancangan pewarisan mata wang kripto.~~ soalan d dan e kurang bersesuaian
- e. ~~Pengalaman pengurusan perancangan matawang kripto.~~

3. PENGURUSAN PEWARISAN MATA WANG KRIPTO

- a. Proses pengurusan pewarisan mata wang kripto berbanding asset-asset lain.
- b. Cabaran dalam pengurusan pewarisan mata wang kripto.
- c. ~~Kos pengurusan pewarisan mata wang kripto.~~ soalan c kurang bersesuaian
- d. Pengalaman pengurusan pewarisan matawang kripto.

4. PANDANGAN BERKENAAN PERANCANGAN DAN PEWARISAN PUSAKA MATA WANG KRIPTO

- a. Pandangan berkenaan keperluan perancangan dan pewarisan pusaka mata wang kripto.
- b. Pandangan keperluan perundangan berkaitan perancangan dan pewarisan matawang kripto.
- c. Cadangan perancangan dan pewarisan matawang kripto yang sistematik dan selamat.


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Appendix B

Interview Guide



**TAJUK PENYELIDIKAN:
SHARIAH AND LEGAL FRAMEWORK OF ISLAMIC ESTATE PLANNING FOR CRYPTO
ASSETS IN MALAYSIA**

Assalamualaikum w.b.t. /Salam sejahtera

Terima kasih kepada tuan/puan kerana menyertai sesi temubual ini. Sesi temubual ini dilakukan untuk penyelidikan bertajuk “*Shariah and Legal Framework of Islamic Estate Planning for Crypto Assets in Malaysia.*” Penyelidikan ini adalah penyelidikan Pascasiswazah Doktor Falsafah (PhD).

Tujuan temubual ini adalah untuk mendapatkan maklumat dan pandangan tuan/puan mengenai pengurusan perancangan dan pembahagian harta pusaka Islam harta pusaka melibatkan mata wang kripto. Pihak saya memberi jaminan bahawa semua maklumat yang tuan/puan kongsi akan digunakan semata-mata untuk tujuan akademik. Maklumat ini akan dirahsiakan dan tidak disebar kepada masyarakat mahupun individu jika tidak bertujuan. Sila hubungi pihak saya jika tuan/puan memerlukan penjelasan yang lanjut.

Penyelidik:

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Penyelia:

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<i>Institusi:</i>		<i>Nama informan:</i>	
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SOALAN TEMU BUAL PAKAR SHARIAH

Tuan/Puan dimohon menjelaskan perkara-perkara berikut:-

1. LATAR BELAKANG

- a. Latar belakang responden (jawatan, pendidikan, pengalaman dan lain-lain yang berkaitan)
- b. Latar belakang jabatan (tahun penubuhan, struktur organisasi, bilangan pekerja, visi, misi, piagam pelanggan dan lain-lain yang berkaitan)

2. PERSPEKTIF SHARIAH BERKAITAN MATA WANG KRIPTO

- a. Pandangan shariah berkenaan mata wang kripto sebagai aset atau *mal*.
 - i. Pandangan shariah berkenaan mata wang kripto sebagai *mal*.
 - ii. Prinsip/Kaedah Fiqh/ *Usul Fiqh* yang sesuai diguna pakai untuk menilai mata wang kripto dari sudut Shariah.
 - iii. Bagaimana pengiktirafan mata wang kripto oleh badan autoriti negara memberi kesan kepada penilaian Syarak terhadap mata wang kripto.

3. PERSPEKTIF SHARIAH BERKAITAN PERANCANGAN DAN PEMBAHAGIAN HARTA PUSAKA MATA WANG KRIPTO

- a. Pandangan shariah berkenaan pewarisan mata wang kripto.
 - i. Pandangan shariah berkenaan dengan pewarisan mata wang kripto
 - ii. Pemilik meninggal dunia tanpa meninggalkan wasiat dan hibah
 - iii. Pemilik meninggal dunia tanpa meninggalkan waris.
 - iv. Wasiat dan hibah mata wang kripto.
 - v. Halangan dalam pembahagian harta pusaka mata wang kripto
 - vi. Peranan Baitulmal (atau Majlis Agama Islam Negeri) dalam konteks harta pusaka mata wang kripto.



**RESEARCH TITLE:
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Researcher:

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Supervisors:

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<i>Interviewer's name:</i>			

SHARIAH EXPERT INTERVIEW QUESTIONS

1. BACKGROUND

- a. Background of the respondent (position, education, experience, and other relevant details).
- b. Background of the department (year of establishment, organizational structure, number of employees, vision, mission, client charter, and other relevant details).

2. SHARIAH PERSPECTIVE ON CRYPTO ASSETS

- a) Shariah view on crypto assets as an asset or property.
 - i. Shariah view on crypto assets as property.
 - ii. Principles/*Fiqh* methodology/*Usul Fiqh* principles that can be applied to assess crypto assets from a Shariah perspective.
 - iii. How the recognition of crypto assets by national regulatory authorities affects the Shariah evaluation of crypto assets.

3. SHARIAH PERSPECTIVE ON ESTATE PLANNING AND DISTRIBUTION OF CRYPT ASSETS

- a) Shariah view on the inheritance of crypto assets.
 - i. Shariah view on the inheritance of crypto assets.
 - ii. Cases where the owner dies without leaving a will or gift.
 - iii. Cases where the owner dies without any heirs.
 - iv. Wills and gifts involving crypto assets.
 - v. Challenges in the distribution of crypto assets inheritance.
 - vi. Role of *Baitulmal* (or the State Islamic Religious Council) in the context of crypto assets inheritance.

**TAJUK PENYELIDIKAN:
 SHARIAH AND LEGAL FRAMEWORK OF ISLAMIC ESTATE PLANNING FOR CRYPTO
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SOALAN TEMU BUAL PEGUAM/ HAKIM

Tuan/Puan dimohon menjelaskan perkara-perkara berikut:-

1. LATAR BELAKANG

- a. Latar belakang responden (jawatan, pendidikan, pengalaman dan lain-lain yang berkaitan)
- b. Latar belakang jabatan (tahun penubuhan, struktur organisasi, bilangan pekerja, visi, misi, piagam pelanggan dan lain-lain yang berkaitan)
- c. Pengalaman dalam mengendalikan kes berkaitan mata wang kripto.

2. UNDANG-UNDANG BERKENAAN MATA WANG KRIPTO

- a. Undang-undang sedia ada yang berkaitan dengan mata wang kripto di Malaysia
 - Pandangan undang-undang berkenaan mata wang kripto?
 - Definisi mata wang kripto dalam kategori aset?
- b. Undang-undang Islam sedia ada berkaitan mata wang kripto di Malaysia.
- c. Undang-undang sedia ada berkaitan pentadbiran dan pembahagian pewarisan mata wang kripto.
- d. Prosedur undang-undang sedia ada berkaitan dengan pentadbiran dan pembahagian pewarisan mata wang kripto.
- e. Perlindungan undang-undang kepada waris si mati sekiranya berlaku salah laku pentadbir pusaka berkaitan mata wang kripto.

3. PENGURUSAN PERANCANGAN DAN PEMBAHAGIAN PEWARISAN MATA WANG KRIPTO

- a. Pengurusan perancangan pewarisan Islam mata wang kripto berbanding asset-asset lain.
- b. Wasiat dan hibah mata wang kripto.
- c. Pengurusan pembahagian pewarisan Islam mata wang kripto
- d. Cabaran dalam pengurusan perancangan dan pembahagian pewarisan Islam mata wang kripto.

4. PANDANGAN

- a. Cabaran berkaitan pengendalian perancangan dan pembahagian pewarisan Islam mata wang kripto dan jangkaan yang berlaku pada masa akan datang.
- b. Pandangan berkenaan keperluan undang-undang khusus untuk perancangan dan pembahagian pewarisan Islam mata wang kripto.

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LAWYER/JUDGE INTERVIEW QUESTIONS

1. BACKGROUND

- a. Respondent's background (position, education, experience, and other relevant details).
- b. Department background (year of establishment, organizational structure, number of employees, vision, mission, client charter, and other relevant details).
- c. Experience in handling cases related to crypto assets.

2. LAWS RELATING TO CRYPTO ASSETS

- a. Existing laws related to crypto assets in Malaysia.
 - Legal perspectives on crypto assets.
 - Definition of crypto assets under the asset category.
- b. Existing Islamic laws related to crypto assets in Malaysia.
- c. Existing laws on the administration and distribution of crypto assets inheritance.
- d. Legal procedures related to the administration and distribution of crypto assets inheritance.
- e. Legal protection for heirs in the event of misconduct by estate administrators related to crypto assets.

3. MANAGEMENT OF ISLAMIC INHERITANCE PLANNING AND DISTRIBUTION OF CRYPTO ASSETS

- a. Management of Islamic inheritance planning for crypto assets compared to other assets.
- b. Wills and gifts involving crypto assets.
- c. Management of Islamic inheritance distribution for crypto assets.
- d. Challenges in managing the planning and distribution of Islamic inheritance for crypto assets.

4. OPINIONS

- a. Challenges in managing the planning and distribution of Islamic inheritance for crypto assets and expectations for the future.
- b. Views on the need for specific laws for Islamic inheritance planning and distribution of crypto assets.

**TAJUK PENYELIDIKAN:
 SHARIAH AND LEGAL FRAMEWORK OF ISLAMIC ESTATE PLANNING FOR CRYPTO
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SOALAN TEMU BUAL PERANCANG HARTA PUSAKA

Tuan/Puan dimohon menjelaskan perkara-perkara berikut:-

1. LATAR BELAKANG

- a. Latar belakang responden (jawatan, pendidikan, pengalaman dan lain-lain yang berkaitan)
- b. Latar belakang jabatan (tahun penubuhan, struktur organisasi, bilangan pekerja, visi, misi, piagam pelanggan dan lain-lain yang berkaitan)
- c. Penglibatan dalam pengurusan mata wang kripto.

2. PENGURUSAN PERANCANGAN MATAWANG KRIPTO

- a. Proses pengurusan perancangan mata wang kripto berbanding asset-asset lain.
- b. Cabaran dalam pengurusan perancangan mata wang kripto.
- c. Instrumen yang sesuai untuk perancangan pewarisan mata wang kripto.

3. PENGURUSAN PEWARISAN MATA WANG KRIPTO

- a. Proses pengurusan pewarisan mata wang kripto berbanding asset-asset lain.
- b. Cabaran dalam pengurusan pewarisan mata wang kripto.
- c. Pengalaman pengurusan pewarisan matawang kripto.

4. PANDANGAN BERKENAAN PERANCANGAN DAN PEWARISAN PUSAKA MATA WANG KRIPTO

- a. Pandangan berkenaan keperluan perancangan dan pewarisan pusaka mata wang kripto.
- b. Pandangan keperluan perundangan berkaitan perancangan dan pewarisan matawang kripto.
- c. Cadangan perancangan dan pewarisan matawang kripto yang sistematik dan selamat.

RESEARCH TITLE:
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INTERVIEW QUESTIONS FOR ESTATE PLANNERS

1. BACKGROUND

- a. Respondent's background (position, education, experience, and other relevant details).
- b. Department background (year of establishment, organizational structure, number of employees, vision, mission, client charter, and other relevant details).
- c. Involvement in the management of crypto assets.

2. MANAGEMENT OF CRYPTO ASSETS PLANNING

- a. The process of managing crypto assets planning compared to other assets.
- b. Challenges in managing crypto assets planning.
- c. Suitable instruments for crypto assets planning.

3. MANAGEMENT OF CRYPTO ASSETS INHERITANCE

- a) The process of managing crypto assets inheritance compared to other assets.
- b) Challenges in managing crypto assets inheritance.
- c) Experience in managing crypto assets inheritance.

4. OPINIONS ON CRYPTO ASSETS ESTATE PLANNING AND INHERITANCE

- a. Views on the necessity of crypto assets estate planning and inheritance.
- b. Opinions on the need for specific legal provisions relating to crypto assets estate planning and inheritance.
- c. Recommendations for systematic and secure crypto assets estate planning and inheritance.

TAJUK PENYELIDIKAN:
SHARIAH AND LEGAL FRAMEWORK OF ISLAMIC ESTATE PLANNING FOR CRYPTO ASSETS IN MALAYSIA

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SOALAN TEMU BUAL PENGENDALI PERTUKARAN ASET DIGITAL (DAX)

Tuan/Puan dimohon menjelaskan perkara-perkara berikut:-

1. LATAR BELAKANG

- c. Latar belakang responden (jawatan, pendidikan, pengalaman dan lain-lain yang berkaitan)
- d. Latar belakang jabatan (tahun penubuhan, struktur organisasi, bilangan pekerja, visi, misi, piagam pelanggan dan lain-lain yang berkaitan)

2. PERANAN DAX DALAM MENGENDALIKAN MATA WANG KRIPTO

- a. Peranan dan tanggungjawab DAX dalam mengendalikan mata wang kripto di Malaysia.
- b. Sambutan rakyat Malaysia terhadap matawang Kripto sejak ia mula diiktiraf di Malaysia.
- c. Jangkaan trend pemilikan matawang kripto untuk tempoh lima (5) tahun akan datang.
- d. Peranan dan tanggungjawab DAX dalam melindungi mata wang kripto pelanggan.
- e. Isu atau cabaran pengurusan pemilikan matawang kripto di Malaysia.

3. PENGURUSAN PERANCANGAN DAN PEWARISAN MATA WANG KRIPTO

- a. Proses perancangan dan pewarisan mata wang kripto pelanggan.
- b. Rujukan undang-undang atau garis panduan dalam mengendalikan pemindahan mata wang kripto si mati kepada warisnya.
- c. Pengalaman dalam mengendalikan perancangan dan pewarisan mata wang kripto pelanggan.

4. KESEDARAN DALAM PERANCANGAN DAN PEWARISAN MATA WANG KRIPTO.

- a. Kesedaran pelanggan dalam perancangan dan pewarisan mata wang kripto.

5. PANDANGAN TERHADAP PERANCANGAN DAN PEWARISAN MATA WANG KRIPTO

- a. Keperluan terhadap perancangan dan pewarisan mata wang kripto.
- b. Keperluan undang-undang khusus untuk pewarisan mata wang kripto.
- c. Pengurusan perancangan dan pewarisan mata wang kripto pelanggan yang sistematik untuk mengelakkan berlaku mata wang tidak dituntut.

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INTERVIEW QUESTIONS FOR DIGITAL ASSET EXCHANGE (DAX) OPERATORS

1. BACKGROUND

- d. Respondent's background (position, education, experience, and other relevant details).
- e. Department background (year of establishment, organizational structure, number of employees, vision, mission, client charter, and other relevant details).
- f.

2. THE ROLE OF DAX IN MANAGING CRYPTO ASSETS

- a) The role and responsibilities of DAX in managing crypto assets in Malaysia,
- b) Public acceptance of crypto assets in Malaysia since its recognition.
- c) Predicted trends in crypto assets ownership over the next five (5) years.
- d) The role and responsibilities of DAX in protecting customers' crypto assets.
- e) Issues and challenges in managing crypto assets ownership in Malaysia.

3. MANAGEMENT OF CRYPTO ASSETS PLANNING AND INHERITANCE

- a) The process of planning and inheritance of customer's crypto assets.
- b) The legal references or guidelines for managing the transfer of deceased customers' crypto assets to their heirs.
- c) Experience in managing crypto assets planning and inheritance for customers.

4. AWARENESS OF CRYPTO ASSETS PLANNING AND INHERITANCE

- a) Customers' awareness of crypto assets estate planning and inheritance.

5. OPINION ON CRYPT ASSETS PLANNING AND INHERITANCE

- a) The necessity of crypto assets planning and inheritance.
- b) The need for specific laws for crypto assets inheritance.
- c) Systematic management of customers' crypto assets planning and inheritance to avoid unclaimed crypto assets.