

Ownership transfer of digital assets in Islamic wealth management: A juristic analysis

Saheed Abdullahi Busari^{a*}, Hassan Suleiman^b, Habeebullah Zakariyah^c

^{a,b}*Department of Fiqh & Usul al-Fiqh, AHAS-KIRKHS, International Islamic University of Malaysia*

^c*Institute of Islamic Banking and Finance, International Islamic University of Malaysia*

ARTICLE INFO

Article history:

Received 12 May 2023

Accepted 25 July 2023

Published 30 September 2023

Keywords:

Digital asset,

Ownership transfer,

True sale,

Islamic wealth management,

Islamic jurisprudence

DOI:

10.24191/jeeir.v11i3.22997

ABSTRACT

The concept of wealth transfer is a fundamental element of Islamic wealth management that promotes the creation, distribution, and transfer of wealth from one generation to another to enhance continuous ownership and benefit from (1) personal assets like jewellery, furniture appliances, (2) investment like cash savings, shares, gold and pensions, and (3) digital assets like cryptocurrencies, reward cards, vouchers, and business IP. However, growth in the acquisition of digital assets in recent times has generated concerns among legal and shariah experts about the consequences of ownership transfers after the death of the bequeather. This study aims to explicate the meaning of digital assets from an Islamic jurisprudential perspective. It also explores the meaning of true sale and its implication for digital asset acquisition and the transfer of ownership from one generation to the other. The study uses a doctrinal approach to gathering and analysing issues from a shariah perspective. This study found that despite the opportunity for wealth creation through digital assets, there are issues around ownership and transfer based on the concept of true sale, rent, gift, and endowment from the owner to third parties. The ownership right and possession to transfer a digital asset from one person to another seem unclear and deceptive because when a buyer clicks the button “buy” it might mean “rent”. To address the ownership issues in digital assets, further study can explore the presence of digital asset creators and miners from Muslim countries and the legal status of the contractual agreement to ascertain the effects and reality of ownership transfer of digital assets on the growth and development of the Muslim economy across the globe.

* Corresponding author. *E-mail address:* saheed@iium.edu.my

1. Introduction

Digital assets are assets that exist in virtual reality, such as photos, videos, documents, and even digital currencies. For instance, cryptocurrencies are encrypted assets that are owned and traded today, while non-fungible assets (NFT) are distinct digital asset records for each asset that prove ownership of something in the fast-growing digital world (Dwivedi et al., 2022). To this effect, the potential of digital assets has been changing the scope and shape of Islamic wealth creation, protection, and distribution in the recent time. However, there are pertinent shariah issues relating to the effective distribution and transfer of assets to enhance the continuous effects of the fundamental objectives of the Shariah in wealth creation, protection, and distribution (Qudah et al., 2023). Wealth transfer refers to the continuous use of wealth by the next generation. An average person may own more than what is needed in life and thereby require strategies for the transfer of surplus wealth to family members through inheritance, will, or gift. Islamic wealth management has three main dimensions: wealth creation, wealth protection, and wealth transfer (Umar & Haron, 2021). The concept of wealth transfer in Islamic wealth management enhances sustainable continuous ownership, use, and protection of the wealth against *sāib* (no ownership). Although Islamic wealth management recognizes the three main sources of wealth in contemporary society as personal, investment, and digital assets. There are fewer issues in the first and second categories compared to the third: digital assets such as crypto-currencies, rewards cards, vouchers, and business (Abd Wahab et al., 2019; Yusoff et al., 2021). Despite the reservations of some scholars about the legality of the acquisition of a digital asset, contemporary jurists have opined that digital currency or assets may be shariah compliant with certain juristic conditioning. However, there is an incessant quest among investors about the legality of ownership rights to transfer digital assets to the next generation. What is ownership of the asset in shariah, and how to enhance the true sale or transfer ownership? This study explores the meaning of digital assets and categories that are compliant with shariah. The study explicates the juristic opinion and evidence on true sales in business transactions and its implication on the right to own and transfer the asset to other persons. This study uses a doctrinal approach to gathering and analysing issues from a juristic perspective.

2. Literature review

2.1 Digital assets

Digital assets are valuable properties that are stored digitally to represent ownership of documents, audio, videos, logos, websites, cryptocurrency, business IP, etc. In recent times, investment interest in digital assets has gained attraction because of their transparency, seamless approach, security, and advanced liquidity. Digital assets are easy to acquire because investors can store them on smartphones, in the cloud, and in emails. However, the concept of digital assets for individual and corporate investors is not as easy as assumed because investors need to understand the unique nitty-gritty of how to acquire, store, protect, and transfer them when necessary (Nathan et al., 2021). A digital asset is an emerging economy that is influencing individual and corporate investment in modern times. This development has promoted the discipline of digital asset management to enhance a sustainable and high-quality built environment based on a cross-disciplinary approach. Apart from the management of digital businesses, digital asset management also delves into methods of innovation and the development of products and services for the digital market (Re Cecconi et al., 2020). There are several benefits of digital management to the stakeholders in the digital economy. First, it manages the creation, storage, and exchange flow of digital assets between the investors. The DAM also creates rich metadata for greater categorization and cataloguing of digital information storage and transactions. DAM secures value assets because information on websites and archives is sometimes accessible to the public but requires decision-making tools to protect individual or corporate business models and communicate on the digital asset. Digital asset owners have the security key to control who has access to the digital values. Considering the scalability of the operation of digital asset management, small, medium, and large entrepreneurs can achieve reduced market

communication costs and enhance faster local market turnarounds for digital investment (Pentland et al., 2021; Sunyaev et al., 2021).

2.2 Ownership transfer agreement in shariah

Ownership transfer can be in the form of sales, gifts, endowments, or pledges of all parts of property or business from the initial owner to the other based on a contractual agreement. Ownership refers to a personal stake in something that prevents others from its possession, benefit, or disposition except due to legal impediments like underage, insanity, and others (Maegraith, 2021). Any beneficial and lawful things are permissible for personal ownership in shariah except those for public use and benefits such as endowments, public treasuries, and facilities. Shariah also recognises (milku tammu) complete ownership and (milku nāqisu) partial ownership (Ahmad al-Garnati, 2013). The concept of ownership (Tamlīk), means the transfer of ownership from one to another or possession (Hoffmann, 2021). According to Ibn Nujaym, the Hanafi school of thought (n.d.) defines tamlīk as “the original ability of taṣarruf (disposal) approved by the law, except in some cases”. In this definition, the phrase “original ability of taṣarruf approved by the law” excludes an agent (wakīl), while the phrase “except in some cases” excludes the interdicted (mahjūr ‘alayhi). The scholars of the Māliki school of law define tamlīk as “an ability given to a human being by the law to derive benefit from an asset (‘ayn) or usufruct (manfa‘ah) personally or via his agent (wakīl), or by taking compensation for an asset or usufruct” (Al-Ratil, n.d.). Complete ownership entails the total ownership of the asset and its benefits, while partial ownership guarantees either physical or usufruct ownership, and all at once (Busari & Aminu, 2021). However, the contention in shariah is that the contract must specify the nature and conditions of ownership in clear terms. Apart from the complete ownership of the asset, other incomplete ownership, such as ownership of usufruct, loan, rental, or endowment, will benefit and permit use of the asset (Al-Qarafi, 2010).

On the other hand, al-qabḍ (possession) in Islamic jurisprudence refers to control and custody, and bearing risk without hindrance (Al-Kāsānī, 1986). Moreover, AAOIFI Shariah standard no. 18, explicates that, ‘Urf (custom) is a significant dictate of al-qabḍ (possession) based on the requirements of customary practice. Usmani (2015) discussed al-qabḍ al-hukmi (constructive possession) as a scenario wherein the buyer has not taken physical custody of the subject of sale but has control of it, and all the rights and obligations of the subject of sale are passed on to him. Furthermore, the concept of takhliyah (relinquishment) used in place of qabḍ for fixed assets like real estate is defined as a form of constructive possession where the seller makes the property available for the buyer to take goods into physical custody or constructive possession without hindrance, according to Iman Abū Ḥanīfah (Ibn Abidin, 1966).

Therefore, a valid contractual agreement between the parties is an essential condition for an effective ownership transfer. As the name implies, no part of an asset or property can be leased, sold, or franchised to another party without the prior permission of the legal owner of the property or interest. The intent of ownership transfer is the migration of valuable objects from one person to another (Merrill, 2021).

Considering the implications of the ownership transfer of digital assets, many transfers of ownership have been accompanied by ownership transfer agreements. This agreement in law is called a contractual agreement of transfer of ownership. The transfer of sellers' goods and services to the buyer based on a sales agreement is a common transfer of ownership. Despite the inherent usefulness of the seller-buyer transfer of ownership in the classical era, contemporary businesses have adopted several contractual formats to establish the ownership transfer of goods, services, and digital assets from one person to another. The contractual agreement for the transfer of ownership should include the specific identification of goods and services, and the means of payment in exchange for the transfer of goods and services (Wolff, 2020).

Ownership transfer in shariah requires initial confirmation of legal ownership of the property. The purpose of the transfer of ownership is to benefit the other party that offers compensation for the goods, service, or

digital asset. However, an asset in Shariah originally belongs to Allah, the owner of the heavens and the earth, but human beings are created as a viceregency of Allah on the surface of the earth. This is evidenced by the verse of the Quran: “Behold, thy Lord said to the angels: "I will create a vicegerent on earth." They said: "Wilt Thou place therein one who will make mischief therein and shed blood? whilst we do celebrate Thy praises and glorify Thy holy (name)?" He said: "I know what ye know not” [Baqarah: 30]. The universal right of Allah to ownership of money and assets prescribe for humanity rules and regulation on the possession and disposition of the asset. Hence, work, labor, services, and gifts are legal and permissible means to create wealth. Several works are acceptable in Islam, (1) hunting as a hobby or trading, (2) reviving the dead land that has no owner, (3) Extraction of minerals ore, crude oil, coal, and iron are extraction, especially for public property, (4) Raw material manufacturing for vital human needs, (5) Trade; It is the transfer of things from hand to hand, which increases the use of the raw material or commodity, (6) Work for others as service giver and labor as mentioned in the tradition of the prophet thus: “Give the wage earner his right before his sweat dries up.” (7) The booty and spoils of war from the defense of the Islamic religion, this is evidence thus: “Know that one-fifth of the spoils that you obtain belongs to Allah, to the Messenger, to the near of kin, to the orphans, and the needy, and the wayfarer” (Quran 8: 41). (8) Ownership by Muslim authority from the bequeathers without heirs: the land that has no owner will belong to the treasury of the Muslims (the authority) from the polytheists (the aggressor) who have no heirs, so the imam is their guardian, or from the dead land that has no owner.

According to the Quran on the recipients of Sadaqah, it legitimizes ownership of charity to the needy, the poor, and its workers while other categories are mere beneficiaries as highlighted in the Quran thus: “Alms are for the poor and the needy, and those employed to administer the (funds); for those whose hearts have been (recently) reconciled (to truth); for those in bondage and debt; in the cause of Allah; and for the wayfarer: (thus is it) ordained by Allah, and Allah is full of knowledge and wisdom” (Quran 9: 60). Therefore, Islam prohibits unlawful means of income like robbery, theft, gambling, lotteries, etc, however, wealth from inheritance, gifts, endowment, and sales of goods and services are categorized as legitimate means in Islamic wealth management (Saleh, 2016).

2.3 *True sale in shariah*

True sale in Shariah is one the significant means of identifying the legitimate transfer of ownership of goods and services. True sale has certain pillars (Arkān) and conditions (Shurūt) in the principles of Islamic jurisprudence. Shart (condition) “The pre-requisite whose absence necessitates the absence of the Hukm Taklifi but its presence does not obligate the hukm”. Also, Sabab (Cause) “is an act of which a Hukm Taklifi is invoked whose presence obligates Hukm Taklifi and its absence necessitates no obligation” (Zaidan, 1976). Example: [Establish prayer at the decline of the sun [from its meridian] (Quran 17:78). The lawgiver made the decline of the sun as cause time to perform solat.

There are four main pillars of the true sale in Islamic jurisprudence, (1) offer and acceptance, (2) goods for sale (mube’e), (3) Price (thaman), and (4) Delivery or possession (qabd). Firstly, the conditions of the offer and acceptance is a proposition from one party to another whether orally, written, implied, or in sign language in the case of deficiency from a party. The parties to the sale must be mature, sane, and based on personal interest to exchange goods and compensation without duress. Also, a true sale must ensure certainty in the delivery of sold goods from the seller to the buyer and not based on contingency or chance. The exchange of goods and compensation must be immediate and not be based on unreasonable conditions that contradict the interests of the contractual parties (Hassan, 2020).

Secondly, the juristic conditions of goods for sale (mube’e) require it to be real and exist during the time of the contractual agreement and not a non-existent commodity. Goods for sale must be valuable and useful to compensate for the exchange between the seller and the buyer. It is important to note that true sale in

Islamic jurisprudence requires the capacity of the seller to transfer ownership and delivery to the other (Rana, 2020). Thirdly, the Price (thaman) of the commodity for exchange between the contractual parties should be known through recognized market means of measure and currency exchange. The parties must agree to a known and certain price of exchange for the goods and services (Hassan, 2020).

Fourthly, the seller's possession of the goods and the capability to deliver them is evidence of ownership. As the case may be, the subject of the sale must be physically or constructively possessed by the seller to guarantee the legitimate transfer of ownership of movable or immovable goods to the buyer (Usmani & Ansari, 2010). The concept of true sale is important because default events have generated Shariah compliance controversies in the Islamic finance industry querying the initial legality of true sale and transfer of ownership from one party to another. Ibn Taimiyyah (728H) emphasized in his work *majmū'ah Fatāwā* that "the consideration of custom and norms in a financial transaction is like verbal agreement". Although it might not be stated categorically, if the customs and norms consider it as sales, then it becomes sales. For instance, if a contract is considered in a custom as a rental, then it becomes a rental; if it is considered a gift; if it becomes a gift, or where is considered an endowment; then it becomes an endowment. Customs and norms in the commercial context have a significant influence on the consideration of what constitutes a true sale. Therefore, even if these norms are not written down, the general perception and understanding of what constitutes a sale, a rental, or a gift can be derived from the customs and norms of the people and society involved (Ibn Taymiyyah, 2004).

True sales in digital assets have taken on new dimensions because they are digital content transacted through electronic devices and online platforms such as crypto, video on demand, e-books, and business IP. The reality of digital assets is the potential possibility of monetizing digital assets to increase wealth in the long and short term. For example, digital asset management (DMA) permits content owners to control whoever has access to the digital content, such as internet media files. The owner of digital content can control the accessibility of others through permission keys, subscription models, and the use of guest options like pay-per-view (Huynh-The et al., 2023). Another issue with the digital asset is the fact that payments and other contractual deals are done and effected online and seldomly physically, as the name suggests. Therefore, as a digital asset is becoming bigger every day, investors in digital assets need to know what happens to their asset during their life and after death. Unlike physical assets, partners and heirs may not be able to access the digital asset when there is no special share of content keys and information during the life of the bequeath. The most common ringfencing available today is asset managers' digital archives for their clients in the event of an emergency or sudden death (Dwivedi et al., 2022).

Apart from the easy and seamless operation of digital assets, the right to transfer ownership is a serious Shariah compliance issue when the owner cannot transfer the legal ownership to others. The reality of digital platform creators is that these companies do not create the asset, in reality, to transfer ownership rights to users because, in most cases, when you click the button "buy" of a digital asset, you are clicking "rent". The real and legal transfer of ownership through sales or inheritance, gifts, and others is restricted to the personal transfer of details and password of the owner (Blackburn et al., 2020).

For instance, some digital companies prohibit the legal transfer of digital assets like music and business IP from one person to another. Therefore, in the case of death, continuous access to the asset is only possible through prior accessibility to the personal information of the asset on the smartphone of the deceased or digital archive, which poses another risk and concern to digital asset investors. Although there are different applications of the right to transfer assets between the English law of the commonwealth nation and the civil law of the United States. In the former, digital asset owners can still transfer ownership to the other legally, but the case is different in the former because the United States digital asset companies have fought and won the case to remain owners of the digital asset while investors are mere renters. By implication, there is no legal right to transfer ownership except through the sharing of personal details and passwords

with others. In the event of an emergency, a third-party partner, buyer, and heirs cannot lay any claim to the asset (Chan, 2023).

3. Methodology

This study is qualitative research that uses a doctrinal approach to the gathering and analysis of issues from a shariah perspective. The study explores library data on the concepts of digital assets, ownership transfer, and their juristic implication in the modern era. The critical analysis approach was employed to explicate the pertinent shariah issues in the ownership transfer of digital assets through sale, rental, inheritance, and gift contracts.

4. Result and findings

The significant growth in digital assets does not suggest a lack of issues and challenges it poses to investors, especially in the acquisition of cryptocurrencies like bitcoin. The conversation is often confused about cryptocurrencies in terms of being one of the types of virtual currencies or assets. However, a large number of researchers and experts classify cryptocurrencies as a type of encrypted asset. This is due to the existence of many circulated currencies that cannot be classified as purely foreign currencies. This section explores juristic issues in the transposition of digital assets from rental rights to the true sale contract. It also explicates the implications of the juristic challenge of transferring the ownership of digital assets through gifts and endowments to third parties.

4.1 *Issues of transposition of rental into true sale contract*

Digital assets are digital documents, audio content, videos, stored pictures, and other related digital data stored on digital devices such as personal computers, laptops, portable media players, tablets, data storage devices, communications devices, and all other devices. Owners of digital assets are mostly not aware of the consequences of the contractual agreement with the owners and creators of the digital assets. One of the significant Shariah issues in digital asset contents is the transposition of rental contracts into true sale contractual agreements (Busari & Abdulaziz, 2019). When a person possesses a digital asset with the intention of safekeeping wealth or creating more money, there are times when the owner might need to transfer ownership of the asset through sales to a third party. However, when the consequence of clicking button of “buy” in the digital asset is “rent”. This situation might be considered an element of ambiguity and deception in the contractual agreement between the parties. Deception (Garar) and ambiguity (Jihalah) in the contract are unknown elements and a loophole that may trigger conflict and animosity between the contractual parties because of the apparent injustice of one to the other. The higher objective of shariah in the prohibition of deception and ambiguity in contracts aims to forestall the pretext of dispute, or injustice, and unfairness between parties. “The Prophet (PBUH) forbade the sale of garar” (Sahih Muslim, 2006, no.1513).

Acts of garar in business transactions include cheating and deceiving people by divulging others' money unjustly. The prophet (PBUH) said, “Whoever cheats us is not one of us” (Sahih Muslim, 2006, no. 101). The reason for the hadith was when the prophet went to the market and saw an injustice by a seller; thus, “The Messenger of Allah happened to pass by a heap of corn. He thrust his hand into it, and his fingers felt wet. He said to the owner of that heap of corn, “What is this?”. He replied, “O Messenger of Allah! These have been drenched by rainfall.” He remarked, “Why did you not place it on top so that the people might see it? Whoever deceives is not of us.”

4.2 Issues of transfer of ownership through inheritance

Inheritance is one of the legitimate means of wealth generation when a bequeather passes on the property to the heirs for the continuous benefit of the asset and control of ownership. Since Islam does not permit *Sāibah* (unbridled) of property and assets, the state treasury and public authority will automatically take possession of property without owners. Moreover, one of the main reasons why people acquire assets is to have property left behind for their heirs, which is highly recommended in Islamic tradition. There was an event between the Prophet (PBUH) and Saad bin Abi Waqas, thus: The Messenger of God (may God's prayers and peace be upon him), when he was having severe pains during the farewell period, and I said: It has reached me from the pain which you have seen, and I have a lot of money, but only a single daughter will inherit me; shall I donate all of it?. He said, "No". I said, The half, O Messenger of God? He said: "No." I said: What of the third, O Messenger of God?. He said, A third. A third is a lot or a great one that you leave your heirs richer better than that you leave them as dependents on others (Al-Bukhārī, Kitāb al-Buyū' no. 1006). When the nature of the contractual agreement cannot allow the owner of the asset to transfer ownership of the property to the heirs directly because it is not a true sale, this calls for concern, especially after the death of the bequeather. The usual option is to ensure the heirs or partners have access to the passwords, links, and personal details of the digital asset and perhaps continue to impersonate the original owner of the asset. However, this may not last long, especially when there is a need for thumbprints, facial codes, and others that are peculiar to individuals.

4.3 Issues of transfer of ownership through gifts

A gift is a means of showing love and concern for others. A gift is one of the legitimate means of transferring of ownership between the giver and the recipients. The Quran prescribed the act of gifting as a means of sharing socio-economic needs and satisfaction between people and families in society. "Give women their bridal-due in good cheer (considering it a duty); but if they willingly remit any part of it, consume it with good pleasure" (Quran 4:4). The prophet (PBUH) encourages us to exchange gifts and love among one another. Also, (do not despise a neighbour for giving a gift, even if it is a horse hoof) (Al-Bukhārī, Kitāb al-Hibah, no. 2566).

The concept of a gift has several conditions related to each of its pillars (the contract, the giver, and the gift itself). Firstly, the conditions of the contractual terms between offer and acceptance must be without interruption because a gift is a contract of ownership, and the gift is not restricted to a specific time, such as a gift for a month; therefore, it must be a permanent transfer of ownership (Rahman, 2020). Secondly, it is conditional that the donor meets the eligibility to donate by being a sane adult of sound mind, because a child and an insane person do not have the legal capacity to transfer ownership of a gift item to another person. Similarly, the donor must be the legal owner of the gift with the full legal capacity to possess and act at will and not under duress (Azhar et al., 2019). Thirdly, the gift for donation must be present at the time of the gift because a non-existent item is not permissible in the *Shariah* contract to avoid uncertainty and deception between contractual parties. For instance, a gift assumed from the coming year of growing plants and yielding crops or the expectation of sheep to give birth as a gift cannot be the basis of the gift because it is not present at the time of the contract. Finally, gift items must be *Mal mutaqawan* (legitimate money) that are permissible to own, contract, or transfer in *Shariah*. What is not money in *Shariah* is not permissible as a gift, such as dead meat, blood, and wine. The prohibited substances are not permissible as gifts because they are not permissible for possession or contractual dealings with other parties. What is not confirmed as owned or in the possession of the owner is not permissible as a gift (Downey, 2020). The money should be owned by the donor, so the gift of someone else's money shall not be executed without the permission of the owner of the money. Considering these conditions of gift in Islamic jurisprudence, there remain some juristic challenges in the digital asset transfer of ownership through gift because the donor does not have the full legal capacity to transfer ownership in some cases. Also, there are elements of uncertainty and deception in the ownership of the asset, and there remain arguments about the legality of

digital assets as money (*mal muqawan*) in Islamic jurisprudence (Haikal & Sitiris, 2022; Trakic & Haydar Ali Tajuddin, 2021).

4.4 Issues in transfer of ownership through endowment

Waqf (Islamic endowment) is one of the main Islamic social financings that have impacted the socio-economic and environmental development of Muslim heritage and culture over centuries. Literature confirms that most of the companions of the Prophet (PBUH) had waqf either as family, social empowerment, or religious public services (Fa-Yusuf et al., 2021). The first waqf dates back to the Mosque of Qubah, which the Prophet (PBUH) built. After that, the Noble Prophet's Mosque in Madinah is considered a religious waqf. Although waqf is categorised as voluntary social responsibility in Islam, it is one of the highly recommended acts to promote socio-economic development and empowerment in society. The waqf is evident to be one of the sustainable acts in this world that are religiously encouraged, thus, (If a person dies, his deeds are cut off from him except for three: except for ongoing charity, beneficial knowledge, or a pious child that prays for him) (Sahih Muslim, Kitab al-Buyū', no. 1631).

Contemporary scholars have categorised waqf items into three categories: the waqf from estates such as houses and landed properties; movable waqf such as equipment except for perishable foods; and cash waqf from legitimate money (*mal muqawam*) (Abd Rahman & Awang, 2018; Rashid, 2018). Therefore, a stable item that can benefit the Muslim community and the public can be considered a waqf item, but it must meet the conditions. First, the waqf item must be for charity, channelled towards specific socio-economic empowerment. Also, the waqf item must be known because an unknown item will trigger uncertainty and deceptions, which are forbidden in Islamic transactions. Although continuity is a condition in waqf items, temporary waqf has been permitted to expand the purpose and benefit of waqf in contemporary society based on certain conditions (Al-Tuwaijiri, 2009). For this argument, the waqf item must be in the possession of the endower such that the donor has the legal capacity to transfer the asset or the usufruct for the benefit of the beneficiaries. These issues might be challenging with digital assets, especially since there are arguments about the legality of digital assets as permissible waqf items and the legal right of the donor to transfer the ownership of the digital asset to the waqf institution.

5. Conclusion and recommendations

Ownership transfer of digital assets is one of the challenges confronting investors in digital assets in recent times. Also, understanding how the rapid technological development of hardware and software issues is growing in digital assets is posing serious maintenance problems and preservation for investors. The technicality of digital assets might render users, weak owners, with unclear ownership control over their intellectual property rights and personal information. This research explores ownership rights and the ability to transfer digital assets, through sales, gifts, and endowments from the owner to the beneficiary from an Islamic jurisprudential perspective.

This study found that digital assets as one of the fastest-growing investments in the modern era, are very attractive and effective for the development of the Muslim economy, especially in wealth creation. Early adopters of crypto assets and currencies are now swimming in money because of the rate of growth in the return on investment. However, the right to ownership and possession to effect a transfer of the digital asset from one person to another seems unclear and deceptive because when a buyer clicks the button "buy" it might mean "rent". Moreover, there are still juristic issues around the status of the digital asset, whether it's a legitimate asset or not, especially when the status of ownership is not clear to some of the contractual parties, making it difficult to fulfil the essence of wealth transfer as one of the higher objectives of wealth management, either through sale, gift, or endowment, for the socio-economic empowerment of others. This study, therefore, suggests the need to further explore the level of understanding of digital asset creators, miners, and investors from Muslim countries about the legal and shariah implications of digital asset

contractual agreements to ascertain their effects on the growth and development of the Muslim economy across the globe.

Acknowledgements

The authors would like to acknowledge the support of International Islamic University Malaysia, Abdulhameed Abu Sulayman-Kulliyah of Islamic Revealed Knowledge & Human Sciences, Gombak, for providing the academic facilities for conducting this research.

Conflict of interest statement

The authors agree that this research was conducted in the absence of any financial benefits and declare the absence of conflicting interests with any institution.

References

- Abd Wahab, N., Hashim, S., & Abd Ghani, N. A. (2019). What Influence Muslims to Make Wills?: Insights into its Determinants. *The Journal of Muamalat and Islamic Finance Research*, 16(1), 37–52. <https://doi.org/10.33102/jmifr.v16i1.207>.
- Abd Rahman, A. A., & Awang, A. B. (2018). Exploring the dynamics of cash Waqf: A critical analysis of its implementation in Malaysia. *Intellectual Discourse*, 1109-1128.
- Ahmad al-Garnati, M. (2013). *Al-Qawanin Al-Fiqhiyyah* (Majid al-hamawi, Ed.; Vol. 1).
- Al-Kāsānī, Abu bakri bin Masud, (2003). *Badaiu sanaiu fi Tartib Sharaihu*, ed. Ali Muhammad Mawad & Adi Ahmad bin Maujud, Bayrut: Dar al-Kutub al-Ilmiyyah, Vol. 6, p.124.
- Al-Tuwaijjiri, M. B. I. (2009). *Mausu'ah al-Fiqh al-Islami*. Riyadh, Saudi Arabia: Bait al-Afkar al-Dauliyyah.
- Al-Qarafi, I. S.A.A. (2010). *Al-Furuq aw bi Anwar al-Buruq fi Anwar al-Furuq* (Vol. 3). Wizarah al-awqaf As-Suudiyyah
- Azhar, A., & Nor, M. Z. M. (2019). Hibah in the administration of Islamic property: ijthadi elements and reality in Malaysia. *UUM Journal of Legal Studies*, 10(2), 103-119. <https://e-journal.uum.edu.my/index.php/uumjls/article/view/uumjls.10.2.2019.6400>
- Blackburn, S., LaBerge, L., O'Toole, C., & Snhneider, J. (2020). *Digital strategy in a time of crisis. Now is the time for bold learning at scale*. The Next Normal, The recovery will be digital Digitizing at speed and scale. McKinsey Global Publishing. (pp 11-19).
- Busari, S. A., & Abdulaziz, A. (2019). Dana Gas Sukuk default : a juristic analysis of court judgement. *International Journal of Islamic and Middle Eastern Finance and Management*, 12(4), 569–585. <https://doi.org/10.1108/IMEFM-01-2019-0033>.
- Busari, S. A., & Aminu, S. O. (2021). Application of blockchain information technology in Şukūk trade. *Journal of Islamic Accounting and Business Research*, 13(1), 1-15. <https://doi.org/10.1108/JIABR-10-2019-0197>.

- Chan, T. (2023). The nature of property in cryptoassets. *Legal Studies*, 1–19. <https://doi.org/10.1017/lst.2022.53>.
- Downey, L. (2020). Gharar: Meaning, Definition, Islamic Perspective, and Examples, available at: <https://www.investopedia.com/terms/g/gharar.asp>, accessed: 01/09/2023.
- Dwivedi, Y. K., Hughes, L., Baabdullah, A. M., Ribeiro-Navarrete, S., Giannakis, M., Al-Debei, M. M., ... & Wamba, S. F. (2022). Metaverse beyond the hype: Multidisciplinary perspectives on emerging challenges, opportunities, and agenda for research, practice and policy. *International Journal of Information Management*, 66, 102542. <https://doi.org/10.1016/j.ijinfomgt.2022.102542>.
- Fa-Yusuf, H. S., Busari, S. A., & Shuaibu, B. L. (2021). Waqf Effectiveness in Nigeria: Problems and Solutions. *Journal of Islamic Finance*, 10(2), 79-89.
- Hassan, A. (2020). *The Challenges and Prospects of Islamic Finance in Australia: A Case Study of Murabaha Contract*. (Doctoral dissertation, Victoria University).
- Huynh-The, T., Gadekallu, T. R., Wang, W., Yenduri, G., Ranaweera, P., Pham, Q. V., da Costa, D. B., & Liyanage, M. (2023). Blockchain for the metaverse: A Review. *Future Generation Computer Systems*, 143, 401–419. <https://doi.org/10.1016/j.future.2023.02.008>.
- Haikal, A. H., & Sitoris, M. (2022). Amalan Pemberian Mas Kahwin dan Wang Hantaran dalam Kalangan Masyarakat Melayu: Perspektif Fiqh dan Undang-Undang Keluarga Islam di Malaysia. *Kanun: Jurnal Undang-undang Malaysia*, 34(1), 141-166. [https://doi.org/10.37052/kanun.34\(1\)no7](https://doi.org/10.37052/kanun.34(1)no7).
- Ibn Abidin, Muhammad Amin, (1966). Ashiyah Raddu al-Muhtar ala Ad-Dur al-Muhtar, ed. 6, Vol 4, Qahirah: Sharkatu Maktabah al-Babiy al-hilbiy, pp.516.
- Ibn Taymiyyah, Ahmad bin Abdulhalim bin Abdus-Salam bin Abdullah, (2004). Majmuu Fatawa, Saudiyyah: Wizarah al-Suhun al-Islamiyyah wa Dawah wa al-Irshad, Vol. 9.
- Hoffmann, J. F., (2021). Contract Law Theory and The Concept of ‘Ownership’, DE Druyter, Eur. Rev. Contract Law 2021; 17(2): 142–156.
- Maegraith, J. (2021). Gender imbalance in the use, ownership, and transmission of property in early modern southern Tyrolean urban and rural contexts. In *Negotiations of Gender and Property through Legal Regimes (14th-19th Century)* (pp. 193-222). Brill Nijhoff. https://doi.org/10.1163/9789004456204_009
- Merrill, T. W. (2020). The economics of leasing. *Journal of Legal Analysis*, 12, 221-272. <https://doi.org/10.1093/JLA/LAAA003>.
- Al-Bukhārī, A. A. Saḥīḥu Al-Bukharī. Vol.1, Dimishqi: Dār ibn Al-Kathīr, ed. 1st (2002).
- Muslim, M. H., Saḥīḥ Muslim, ed. Nazar bin Muhammad, Vol. 2, Ar-Riyadh: Dar Ṭībah. 2006.
- Nathan, A., Galbraith, G. L., & Grimberg, J. (2021). Crypto: A new asset class. Goldman Sachs. Available at <https://www.goldmansachs.com/insights/pages/crypto-a-new-assetclass.html>
- Pentland, A., Lipton, A., & Hardjono, T. (2021). *Building the New Economy: Data as Capital*. Massachusetts institute of Technology Press. <https://doi.org/10.7551/mitpress/13991.001.0001>

- Qudah, H., Malahim, S., Airout, R., Alomari, M., Hamour, A. A., & Alqudah, M. (2023). Islamic Finance in the Era of Financial Technology: A Bibliometric Review of Future Trends. *International Journal of Financial Studies*, 11(2), 76. <https://doi.org/10.3390/ijfs11020076>.
- Rahman, M. M., (2020). Everything About The Shariah Law, available at: https://www.academia.edu/60559324/Political_and_Legal_System_of_Islam, accessed on: 18/10/2023.
- Rana, A. A. (2020). Essentials of a Valid Contract: A Comparative Study of Sighah in Islamic Law and the Agreement in the Contract Act, 1872. Available at SSRN 3722822.
- Rashid, S. K., (2018). Potential of Waqf in Contemporary World, JKAU: Islamic Econ., Vol. 31 No. 2, pp: 53-69, DOI:10.4197/Islec.31-2.4.
- Re Cecconi, F., Dejaco, M. C., Moretti, N., Mannino, A., & Blanco Cadena, J. D. (2020). Digital asset management. *Digital transformation of the design, construction and management processes of the built environment*, 243-253. https://doi.org/10.1007/978-3-030-33570-0_22.
- Saleh, M. M. (2016). *Challenges in Takaful Application Within Conventional Insurance Framework in Nigeria-The Imperative for Legislative Harmonization of Regulatory Instruments*. (Doctoral dissertation, University of Malaya (Malaysia)).
- Sunyaev, A., Kannengießer, N., Beck, R., Treiblmaier, H., Lacity, M., Kranz, J., & Luckow, A. (2021). Token economy. *Business & Information Systems Engineering*, 63(4), 457-478. <https://doi.org/10.1007/s12599-021-00684-1>.
- Trakic, A., & Haydar Ali Tajuddin, H. (2021). Challenges in the Implementation of Islamic Law in Malaysia. *Islamic Law in Malaysia: The Challenges of Implementation*, 1-7. <https://doi.org/10.1007/978-981-33-6187-4>.
- Umar, U. H., & Haron, M. H. (2021). The Islamic need for investing inherited wealth and accounting treatments. *The Journal of Muamalat and Islamic Finance Research*, 1-13. <https://doi.org/10.33102/jmifr.v18i1.323>.
- Usmani, M. I. A., (2015). *Islamic Finance: Revised & Updated Edition of Meezan bank's guide to Islamic banking*, ed. Kishar Ashfaq Qasmi, Karachi: Maktaba Mariful Quran, pp.96-97.
- Usmani, M. I. A., & Ansari, J. A. (2010). Meezan bank's guide to Islamic banking. *Research Journal Of The Institute Of Business Administration Karachi-Pakistan*, 5(1), 171.
- Wolff, L. C. (2020). The relationship between contract law and property law. *Common Law World Review*, 49(1), 31–55. <https://doi.org/10.1177/1473779520903729>.
- Yusoff, Z. M., Adawiah Engku Ali, E. R., & Zakariyah, H. (2021). Islamic Financial Planning: Towards Sustaining the Financial Wellbeing of Muslim Families in Malaysia Post Covid-19. *Turkish Journal of Islamic Economics*, 8, 355–376.
- Zaidan, A. K. (1976). Al-Wajeez fi Usul al-Fiqh (Vol. 1). Muasasah al-Qurtubah.**

About the Authors

Saheed Abdullahi Busari holds the position of Assistant Professor of Islamic jurisprudence and legal theory at the Department of Fiqh & Usul al-Fiqh, AHAS-KIRKHS, International Islamic University of Malaysia (<https://orcid.org/0000-0003-1933-3772>). His primary research focuses on the intersection of Islamic Jurisprudence principles and socioeconomic dynamics. He has experience teaching a range of courses, including Islamic Jurisprudence, Islamic legal theory, Halal & Haram in Shariah, Islamic social finance, Leadership & Management, Islamic Inheritance and endowment, sustainability, and parenting. His comprehensive teaching and research approach emphasize how Islamic jurisprudence and legal theory contribute to the fields of socio-economic and natural sciences. As the corresponding author, he can reach at saheed@iium.edu.my.

Hassan Suleiman, an Assistant Professor at the Department of Fiqh & Usul al-Fiqh, AHAS-KIRKHS, International Islamic University Malaysia (<https://orcid.org/0000-0002-5691-2872>). He specialises in Shariah law, Principles of Islamic Jurisprudence (Usul al-fiqh) and possesses a strong Quranic foundation. His career involves teaching and research in Islamic law and jurisprudence, Islamic Legal Maxims and their application, particularly through divine revelation sources. His can be reached through his email at abuxzubair@iium.edu.my.

Habeebullah Zakariyah, is an Associate Professor of Islamic Finance from International Islamic University Malaysia (<https://orcid.org/0000-0001-8720-0440>). He is currently the deputy dean of IIBF and specialises in Islamic Jurisprudence, Maqasid Shariah, Islamic Commercial Law, Transactions in Islamic Banking and Finance, Islamic Social Finance, and contemporary issues in Zakat, waqf, and Sadaqah, Takaful, Re-Takaful, and Construction contracts. His can be reached through his email at habzak@iium.edu.my.

Authors' contributions

Saheed Abdullahi Busari carried out the research, wrote and revised the manuscript for publication. Both Hassan Suleiman and Habeebullah Zakariyah reviewed the work and validated the analysis.



© 2023 by the authors. Submitted for possible open access publication under the terms and conditions of the Creative Commons Attribution (CC BY) license (<http://creativecommons.org/licenses/by/4.0/>).