

The Implications of Digital Estate in Shariah Compliant Fintech: A Legal Analysis

Dr. Sodiq Omoola Olalekan,

*Asst. Prof., Ahmad Ibrahim Kulliyah of Laws,
International Islamic Univ. Malaysia*

Dr. Umar Oseni,

International Islamic Liquidity Management Corp. Malaysia

Hafsat Kamal Ibrahim,

Researcher, International Islamic Univ. Malaysia

Presented at 12th ICIEF 2020: 12th International Conference on Islamic Economics & Finance

Istanbul Sabahattin Zaim University, Halkalı Campus

Istanbul, Turkey, June 14-16, 2020

Outline

- Introduction and Conceptual Framework
- Digital Assets and Digital Estate
- Characteristics of Digital Estate In Fintech
- Property and Financial Rights: A Shariah Perspective
- Causes of Digital Intestacy and Unclaimed Funds
- Treatment Of Unclaimed Funds in Selected Jurisdictions
- Conclusion and Policy Recommendation

Digital Asset/Estate - An Introduction

- Digital Assets is “any form of content and/or media that have been formatted into a binary source which includes the right to use”. (Van Niekerk (2006)
- Under common law, the word “estate” primarily refers to the net worth of a person at any point in life or death including legal rights, interest and entitlement (Stein & Fierstein, 1983)
- Digital estate refers to electronic, property with value, capable of being transferred after the passing of the proprietary owner.

Digital Asset/Estate	
• Ownership	• Electronic
• Value	• Transferable

More than traditional banking, **Fintech relies on digital assets** and could passively create more **monetary digital estate and unclaimed funds**.

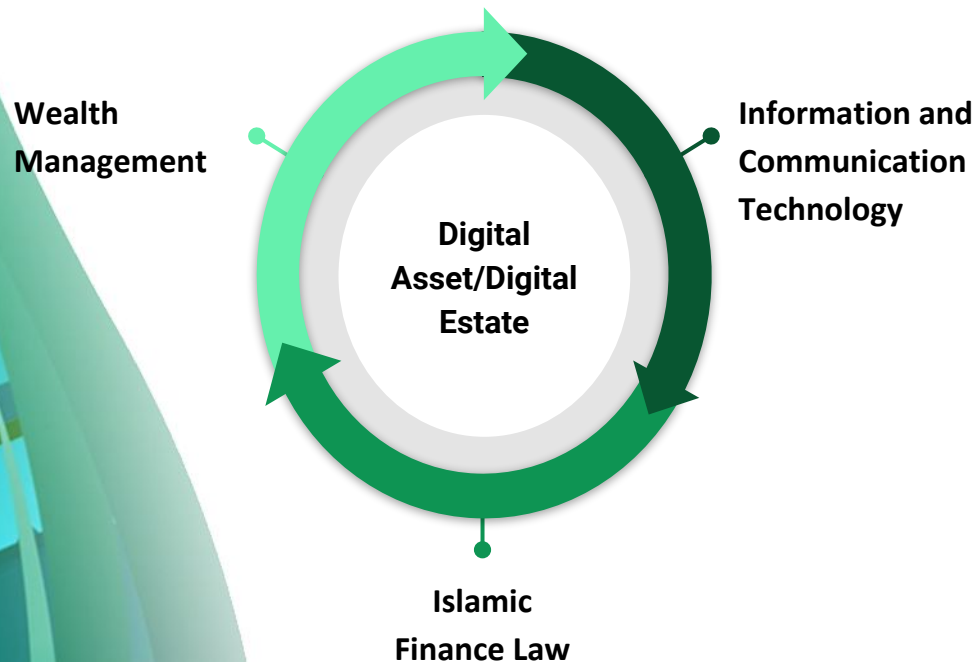
Shariah Compliant Fintech

- Shariah Compliant Fintech is a tool for **Financial inclusion** in Muslim countries.
- **Ethics and shariah guidelines** are the underlying principles of shariah compliant fintech (Laldin & Furqani, 2019; Rahim, Bakri, & Yahaya, 2019)
- Shariah compliant fintech has continued to **create financial digital assets** across platforms (Mahalingam, 2017)
- We hypothesis that existing regulations on unclaimed funds within the banking industry is **inadequate in protecting loss of wealth in Shariah compliant fintech.**
- For a truly consumer –centric and technology banking, **the afterlife of consumer's digital estate** must be guaranteed from loss and intestacy.

Methodology and Conceptual Framework

This is a **conceptual paper** which explores the implication of Digital estate and the relevance of islamic principles and unclaimed funds regulation.

Doctrinal methodology is adopted throughout the paper.



Characteristic of Digital Estate and Digital Asset

Digital Asset

- **Death of the owner**
- **Lack of awareness of the accounts by legal heirs.**
- **Leaving an account with low balance instead of closing**
- **Change of contact address/ contact details.**
- **Lack of financial literacy on the part of the owner**

Digital Estate

Personalisation, Privacy and confidential

Intangible and Electronic evidence

Remote Cloud Storage encryption

Lack of Third party access

Property and Financial Rights in Islam

- Islamic legal tradition refers to **property right as “mulk” or “ayn”** (Inalcik, 1955; Ziadeh, 1993).
- Similar words such as **ma’l (amwal plural)** can be translated as **wealth** which could be tangible and intangible, movable or immovable property (Islam, 1999; Malkawi, 2013; Turner, 2006)
- According to Malkawi 2012 property is “anything that has a saleable value, the destruction of which would require compensation, even if a small amount, ..” (Malkawi, 2012).
- Islamic law of succession and inheritance (*faraid*) guarantees the **rights of every individual after their demise** (Jamar, 1992) and prevents intestacy. (Muhammad, 2012; Razimi & Shahril, 2016).

Causes of Digital intestacy and Unclaimed Funds

- Death of the account holder
- Lack of awareness of the accounts by legal heirs or successors.
- Leaving an account with low balance instead of closing.
- Change of contact address/ contact number and email.
- Lack of financial literacy on the part of the owner.
- Loss of access and third party restriction
- Change of terms of service agreement by fintech platforms

(Azmi & Mohammad, 2011)

Property and Financial Rights in Islam

- Relevant concepts for management of Unclaimed funds and digital estate in the banking sector. *Luqta and Bait ul mal*
- *Luqta* is arabic word used in Islamic jurisprudence for a thing (usually non-living) or treasure which is found fallen in the way without actively searching by the *laqeet* (finder) (Ali, 2010) It protect the wealth which is lost or missing from unlawful usurpation by the finder or a person who has custody of such thing.

The Prophet was asked about money found on the street. He (PBUH) ordered that the laqet make **announcement for a year (3 years in another report)** with definite description and characteristics of the money. Thereafter, if no one comes forward to reclaim, then the *laqeet* (finder) **can utilize the money.**

(Book 42, Hadith 608 Bukhari, 1956).

Property and Financial Rights in Islam

- In the case of a **missing person or person whose whereabouts and legal heirs are unknown** the concept of *Bait ul mal* becomes applicable.
- Fintech platform and financial institutions owners are not permitted under the shariah to usurp the property or unclaimed money. **Court may pronounce that such funds be kept in the *Bait ul Mal***
- As a result of the elusive nature of Bait ul mal seems under the current monetary system, we will look at regulation for unclaimed funds in selected muslim countries.
- - Saudi Monetary Authority (SAMA) - Unclaimed Funds Regulation
 - Unclaimed Monies Act 1965 (Malaysia)

Digital Intestacy and Unclaimed fund Regulation in selected Jurisdiction

- In addition to unclaimed monies in the banking sector, **Saudi Arabia and Malaysia are jurisdictions of choice for Shariah compliant fintech platforms.**
- Malaysia is a foremost Islamic finance jurisdiction and has an overwhelming amount of unclaimed funds in its banking system (Halim, Noor, & Arshad, 2018, p. 4).
- RM10.8 billion or USD2.3billion - Total amount as of November 2019
Source: Registrar of Unclaimed Monies/ Office of Accountant General of the Federation, Malaysia
- An unknown fraction of the unclaimed funds are linked to digital and fintech accounts which is growing at a fast pace.

Digital Intestacy and Unclaimed fund Regulation in selected Jurisdiction

- In Malaysia, Section 8 of the Unclaimed Moneys Act 1965 identifies **savings account, current account and fixed deposit (with renewal instructions)** as one of the 3 categories of unclaimed funds in Malaysia where such monies has **not been claimed or operated** in whatever manner by the owner for a period of **not less than seven years**.
- As there are no special regime for Shariah fintech accounts, this provision is applicable and extends to:
 - amounts **legally payable** to the owner but unpaid for a period not less than one year and
 - **trade account** which has remained dormant for a period not less than two years.
- Any claim over the funds may be submitted to the Registrar who may authorised **refund of such monies to the claimants**.

Digital Intestacy and Unclaimed fund Regulation in selected Jurisdiction

- According to Al Musnad (2016), Unclaimed funds regulation in Saudi Monetary systems is **weak, lacks transparency and legal uncertainty.**
- The Volume and amount of unclaimed funds in the system is **unknown as Banks are not transparent.**
- Eight prominent banks in the kingdom were found to have **no clear policy on dormant accounts and unclaimed money** on its website (AlMasnad, 2016).
- Anyone who can provide adequate information can be **granted access to unclaimed funds.**
- Anyone includes hackers, identity thieves and cybercriminals.

Conclusion and Policy Recommendation

Conclusions

Enhanced KYC

Electronic Know Your Customer is an advanced way to prepare for management of digital estate including details of legal heirs and successors

Digital Estate Policy

Fintech platforms to provide digital estate policy including appointment of legacy contacts and details of legal heirs.

Waqf Treatment for Digital Estate

Creation of cash waqf for money which has remained unclaimed for a specified period. However, this must be subject to the wasiyya of the deceased estate and legal heirs.

Regulatory Sandbox approach

SANDboxes should consider including of digital estate policy for emerging fintech platforms during the testing stage.

Telcos and ISPs data

Matching and tracking of internet usage and personal data in the custody of telcos could be helpful in tracing digital assets.