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The Position of Digital Assets as Objects of Joint Marital Property under Islamic Law and Indonesian Positive Law

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ABSTRACT

The growth of the digital economy has produced assets that are intangible, held on platforms, and accessed through credentials, yet the Marriage Law and the Compilation of Islamic Law (KHI) were drafted with conventional property in mind. This normative juridical study examines whether digital assets acquired during marriage can be objects of joint marital property under Islamic law and Indonesian positive law. Using statutory and conceptual approaches, it analyses Articles 35–37 of Law No. 1 of 1974, Articles 1(f) and 85–97 of the KHI, the Civil Code provisions on objects, the Electronic Information and Transactions Law, and crypto-asset regulation, alongside Qur'anic and prophetic evidence interpreted through qiyās, ʿurf, maṣlaḥah mursalah and sadd al-dharāʾiʿ. The study finds that both systems share a functional test, namely economic value, lawful acquisition during marriage, and control by either spouse, so that e-wallet balances, crypto assets, monetised accounts and digital intellectual works can qualify as joint property, while assets brought into the marriage, inherited or received as gifts remain separate. The main difficulties lie in proof, valuation, access and concealment rather than in legal status. The article proposes a differentiated classification, evidentiary and valuation guidelines, and marital agreements as preventive tools.

Keywords: *Digital Assets; Joint Marital Property; Islamic Law; Indonesian Positive Law; Uṣūl al-Fiqh.*

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INTRODUCTION

Digital technology has changed not only how people transact but also what they own. Balances held in electronic wallets, crypto assets, tokens, monetised social-media channels, online-store accounts, e-books, software and domain names now sit beside land, houses and vehicles in the household balance sheet. Many of these assets are acquired by one spouse during marriage, registered under that spouse's identity, and accessible only through a password or private key. When the marriage ends through divorce or death, the question arises whether such assets are joint marital property (*harta bersama*) that must be shared, or personal assets that stay with the person whose name appears on the platform.

Indonesian law answers the question for conventional property in clear terms. Article 35(1) of Law No. 1 of 1974 on Marriage (the Marriage Law) provides that property acquired during marriage becomes joint property, and the Compilation of Islamic Law (KHI), issued by Presidential Instruction No. 1 of 1991, defines marital wealth as *syirkah* acquired during the marriage "without questioning in whose name it is held" (KHI, Art. 1(f)). Both instruments, however, were drafted decades before the digital economy, and neither mentions digital assets expressly. Recent studies describe this silence as a legal gap that leaves judges without explicit guidance on status, proof, valuation and division (Krissandi, 2026; Sundalangi, 2025).

Previous research has approached the problem from several angles. Nuha and Muhammad (2026) examine e-wallet balances as joint assets from an Islamic law perspective and stress transparency and justice in their proof and division. Taufiqurokhman and Wibisono (2025) combine doctrinal and empirical methods to argue that crypto assets and non-fungible tokens (NFTs) have strong potential to become objects of joint property but require reconceptualisation consistent with sharia principles. Gunawan and Salam (2024) identify a legal vacuum on spousal consent when crypto assets are sold, while Sundalangi (2025) finds that Indonesian civil law has not yet regulated the classification, proof and valuation of digital assets as joint property. A parallel literature on inheritance treats e-wallet balances and crypto assets as potential *tirkah* (Juniar et al., 2026; Ramadhani, 2024).

This article differs from those studies in three respects. First, it addresses digital assets as a category with several sub-types, not a single instrument such as an e-wallet or cryptocurrency. Second, it places Islamic law and positive law side by side and makes the methodology of each explicit: for Islamic law, the Qur'anic and prophetic evidence together with the methods of *uṣūl al-fiqh* (*qiyās*, *ʿurf*, *maṣlaḥah mursalah* and *sadd al-dharāʾiʿ*); for positive law, the statutory basis and the techniques of legal interpretation and construction. Third, it moves from status to practice by proposing guidelines on proof, valuation, access and concealment.

Two research questions guide the study: (1) what is the position of digital assets as objects of joint marital property under Islamic law, including its evidence and *uṣūl al-fiqh* methods; and (2) what is their position under Indonesian positive law, including its legal basis. The objectives are to answer both questions, to compare the two systems, and to identify the practical problems that courts and spouses must resolve.

METHODS OF RESEARCH

This is normative juridical (doctrinal) research. It treats law as a system of norms and examines

whether existing norms can accommodate a new object, namely digital assets, within the institution of joint marital property. Three approaches are used: a statute approach, which reviews the Marriage Law, the KHI, the Civil Code, the Electronic Information and Transactions Law and sectoral regulations; a conceptual approach, which clarifies the concepts of *māl* (property), *syirkah*, *harta bersama* and digital assets; and a comparative approach in the limited sense of setting Islamic law and positive law side by side.

The legal materials are of three kinds. Primary materials consist of the Qur'an, the hadith collections, the KHI, statutes and regulations, and fatwas of the Indonesian Ulema Council (MUI) and its National Sharia Board (DSN-MUI). Secondary materials consist of classical and contemporary books on *fiqh* and *uṣūl al-fiqh* and of journal articles published mainly between 2014 and 2026. Tertiary materials are used only to clarify terms. All materials were collected through library research and analysed qualitatively. For Islamic law the analysis follows the *istinbāṭ* methods of *uṣūl al-fiqh*; for positive law it applies grammatical, systematic and teleological interpretation and, where the text is silent, extensive interpretation and analogy. The study does not analyse individual court decisions, which is acknowledged as a limitation.

RESULT AND DISCUSSION

1) Digital Assets: Concept and Typology

In this article, a digital asset means an intangible object of value that exists in electronic form, is held or recorded on an electronic system, and can be controlled and, at least in economic terms, transferred by its holder. The definition deliberately focuses on value and control rather than on physical form. Digital assets are not homogeneous. Their legal treatment depends on what the holder actually owns: money, a claim against a platform, a contractual right to income, or an intellectual work. Table 1 groups the main categories relevant to marriage.

Table 1. Typology of Digital Assets Relevant to Joint Marital Property

Category	Examples	Legal characterisation (positive law)	Status in Islamic law
Monetary digital assets	E-wallet and mobile-banking balances; electronic money	Electronic money regulated by Bank Indonesia; a movable intangible claim against the issuer (Civil Code, Arts. 503–504, 511)	*Māl*; analogous to cash; sharia-compliant e-money is accepted (DSN-MUI Fatwa No. 116/2017)
Crypto assets and tokens	Bitcoin, Ether, stablecoins, NFTs held on an exchange or self-custodied	Tradable commodity (Permendag 99/2018; Bappebti 5/2019), now a digital financial asset under OJK Reg. 27/2024; not legal tender (Law 7/2011, Art. 21)	Conditional: not a currency; may be *māl mutaqawwam* if it has an underlying asset or real benefit and avoids *gharar* and *qimār* (MUI, 2021)
Monetised accounts and platform income	Video channels, online-store accounts, social-media accounts, in-game items	Contractual rights and revenue streams; movable intangible; transferability depends on platform terms	*Māl* as rights of benefit (*manāfiʿ*, *ḥuqūq māliyyah*); income earned during marriage is joint
Digital intellectual works	E-books, software, digital art, music, domain names	Copyright is a movable intangible object; economic rights transferable (Law 28/2014, Art. 16)	*Māl* as an intellectual right (IIFA Res. 43 (5/5))

(Source: Author's analysis based on the Civil Code, Law No. 28 of 2014, Law No. 7 of 2011, Bappebti and OJK regulations, and DSN-MUI Fatwa No. 116/DSN-MUI/IX/2017)

The typology matters because the answer to "is it joint property?" is not the same for every row. A

balance in an e-wallet is functionally close to cash. A crypto asset is volatile and its lawfulness under sharia is conditional. A monetised channel is a bundle of contractual rights whose transferability depends on the platform's terms. An e-book or a software product is an intellectual work whose economic rights are recognised by statute. The sections that follow therefore test the category, not the label "digital".

2) Position under Indonesian Positive Law

a. The Normative Framework of Joint Property

The starting point is Article 35 of the Marriage Law. Paragraph (1) makes property acquired during marriage joint property. Paragraph (2) keeps property brought into the marriage, and property received as a gift or inheritance, under the control of each spouse unless the parties agree otherwise. Article 36 adds the rule on management: for joint property each spouse may act only with the consent of the other, whereas for separate property each spouse has full power to act. On dissolution by divorce, Article 37 provides that joint property is governed by "its respective law", which the Elucidation explains as religious law, customary law and other laws. For Muslims this leads to the KHI.

The KHI is the most detailed source. It defines wealth in marriage as *syirkah* acquired individually or jointly during marriage, regardless of the name in which it is registered (Art. 1(f)). It confirms that marriage does not merge the spouses' separate property (Arts. 85–87) and gives the Religious Courts jurisdiction over disputes (Art. 88). Most importantly for this article, Article 91 states that joint property may be tangible or intangible: tangible joint property includes immovable and movable things and securities, while intangible joint property may consist of rights and obligations. Article 92 prohibits either spouse from selling or transferring joint property without the other's consent, Article 95 allows a conservatory seizure of joint property when one spouse endangers it, and Article 97 gives each former spouse one-half of the joint property unless a marital agreement provides otherwise.

Two conclusions follow from this text. First, the decisive criterion is the time of acquisition (during marriage), not the form of the object or the name of the holder. Second, the KHI itself does not limit joint property to tangible things; Article 91 expressly opens the category to "rights". A digital asset that is a right with economic value therefore falls within the textual scope of Article 91 even though it is not named. This reading is consistent with the view in the recent literature that no provision restricts joint property to physical objects (Nuha & Muhammad, 2026; Taufiqurokhman & Wibisono, 2025).

b. Digital Assets as "Objects" (Benda) and the Sectoral Regulations

Positive law classifies things through the Civil Code. Article 499 defines an object (*zaak*) as every good and every right that can be the subject of ownership; Article 503 divides objects into tangible and intangible, and Article 504 into movable and immovable. Rights over movable things are themselves movable under Article 511. A balance, a claim to payment, a contractual right to platform revenue and a copyright all fit within these categories as movable intangible objects. The Copyright Law makes this explicit: copyright is a movable intangible object whose rights may be transferred by inheritance, grant, waqf, will or written agreement (Law No. 28 of 2014, Art. 16).

The Electronic Information and Transactions Law (as amended by Law No. 19 of 2016 and Law No. 1 of 2024) supplies the evidentiary side. It defines electronic information and electronic documents and provides that electronic information, electronic documents and their printouts are valid legal evidence (Arts. 1 and 5(1)). This is the basis on which transaction histories, account statements and platform records can prove the existence and amount of a digital asset in court.

Crypto assets require separate treatment because their regulatory status has shifted. They are not legal tender, since the Rupiah must be used in transactions with a payment purpose (Law No. 7 of 2011, Art. 21(1)), but they have been recognised as tradable commodities under Minister of Trade Regulation No. 99 of 2018 and Bappebti Regulation No. 5 of 2019 (as amended by Regulation No. 8 of 2021). Following Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector, supervision of crypto assets moved from Bappebti to the Financial Services Authority (OJK), which regulates them as digital financial assets under OJK Regulation No. 27 of 2024 (Krissandi, 2026). Electronic money, which covers most e-wallet balances, is regulated by Bank Indonesia (Bank Indonesia Regulation No. 20/6/PBI/2018). The regulatory trend is therefore to recognise these assets as objects of value that can be owned and traded, which is exactly what Article 91 of the KHI requires of intangible joint property.

c. Interpretation, Construction and the Duty of the Judge

The absence of an express rule does not allow a judge to decline a case. Under the Judicial Power Law, a judge may not refuse to examine and decide a case on the ground that the law is unclear or absent, and must explore, follow and understand the legal values and sense of justice living in society (Law No. 48 of 2009, Arts. 5(1) and 10(1)). The Religious Courts are competent to resolve joint-property disputes, whether raised together with a divorce petition or after the divorce decision (Law No. 7 of 1989 as amended, Arts. 49, 66(5) and 86(1)). Three techniques justify including digital assets within joint property. Grammatical interpretation shows that Article 35(1) speaks of "property" (*harta benda*) without limiting its form. Systematic interpretation, reading Article 35 together with Article 91 of the KHI and Articles 499–511 of the Civil Code, confirms that intangible things and rights are objects of ownership. Teleological interpretation shows that the purpose of joint property, namely to protect the economic contribution of both spouses to the household, would be defeated if assets could escape division simply because they are stored electronically.

Positive law therefore reaches a clear conclusion on status: a digital asset that has economic value, is acquired during marriage and is capable of control and transfer is joint property under Article 35(1) of the Marriage Law and Article 91 of the KHI. Digital assets owned before marriage, or received during marriage by inheritance or gift, remain separate property under Article 35(2) and Article 87 of the KHI.

3) Position under Islamic Law

a. Textual Evidence from the Qur'an and Hadith

Classical *fiqh* does not recognise an automatic community of property between spouses. Each spouse is generally treated as financially independent and owns what he or she earns. Joint property in Indonesia is the product of *ijtihād*, custom and legislation, and Indonesian scholars have grounded it in the doctrine of partnership (*syirkah*) (Syarifuddin, 2007; Zein, 2004; Sugiswati, 2014). The following texts are the principal evidence invoked for that construction and are equally applicable to digital assets.

The first evidence is Q.S. An-Nisā' [4]: 32, which affirms that men and women each have a share of what they earn:

لِلرِّجَالِ نَصِيبٌ مِّمَّا اكْتَسَبُوا ۖ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا اكْتَسَبْنَ

> "For men there is a share of what they have earned, and for women there is a share of what they have earned." (Q.S. An-Nisā' [4]: 32)

The verse uses a general expression (*ʿāmm*), "what they have earned" (*mā iktasabū*), which is not limited to a particular kind of wealth. Under the rule that a general text remains general unless a specifier (*mukhaṣṣiṣ*) restricts it, the verse covers earnings in digital form as much as earnings in kind. Where both spouses contribute to the acquisition of an asset, each has a share in it (Khallaf, 1978).

The second evidence concerns partnership. Q.S. Ṣād [38]: 24 recognises that partners (*khulaṭāʾ*) are prone to wrong one another except the righteous:

وَإِنَّ كَثِيرًا مِّنَ الْخُلَطَاءِ لَيَبْغِي بَعْضُهُمْ عَلَىٰ بَعْضٍ إِلَّا الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ

"Indeed, many partners wrong one another, except those who believe and do righteous deeds." (Q.S. Ṣād [38]: 24)

This verse, together with the hadith qudsī narrated by Abū Dāwūd, supports the rules of fairness and honesty between partners, which apply directly to a spouse who hides or dissipates joint digital assets (Abū Dāwūd, *Sunan*, no. 3383):

أَنَا ثَالِثُ الشَّرِيكَيْنِ مَا لَمْ يَخُنْ أَحَدُهُمَا صَاحِبَهُ، فَإِذَا خَانَهُ خَرَجْتُ مِنْ بَيْنِهِمَا

"I am the third of two partners so long as neither betrays the other; when one betrays the other, I depart from them." (Hadith narrated by Abū Dāwūd)

The third evidence concerns lawful acquisition and consent. Q.S. An-Nisā' [4]: 29 forbids consuming wealth unjustly and permits trade by mutual consent:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ إِلَّا أَن تَكُونَ تِجَارَةً عَن تَرَاضٍ مِّنكُمْ

"O you who believe, do not consume one another's wealth unjustly, but only through trade by mutual consent." (Q.S. An-Nisā' [4]: 29)

The verse supports two consequences: a spouse may not appropriate joint digital assets by controlling the password, and a transfer of joint assets requires the other spouse's consent, in line with Article 92 of the KHI. The fourth evidence concerns the standard of fairness in marriage. Q.S. An-Nisā' [4]: 19 commands spouses to live together "in kindness" and Q.S. Al-Baqarah [2]: 228 recognises reciprocal rights "according to what is reasonable":

وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ

"…and live with them in kindness." (Q.S. An-Nisā' [4]: 19)

وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ

"And due to the wives is similar to what is expected of them, according to what is reasonable." (Q.S. Al-Baqarah [2]: 228)

The concept of *maʿrūf* links the Qur'anic text to local custom and is the textual doorway for the *ʿurf* analysed below. Finally, agreements between spouses on property are binding so long as they do not make lawful what is forbidden or forbid what is lawful. This is the basis for marital agreements over digital assets (al-Tirmidhī, *Sunan*, no. 1352; Abū Dāwūd, *Sunan*, no. 3594; see also Q.S. Al-Māʾidah [5]: 1):

الْمُسْلِمُونَ عَلَىٰ شُرُوطِهِمْ إِلَّا شَرْطًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا

"Muslims are bound by their stipulations, except a stipulation that makes lawful what is forbidden or forbids what is lawful." (Hadith narrated by al-Tirmidhī and Abū Dāwūd)

b. The Concept of Māl and the Status of Digital Assets

Before the methods of *uṣūl al-fiqh* are applied, the object must be qualified as property (*māl*). The Ḥanafī school defines *māl* as what human nature inclines toward and what can be stored for the time of need, which at first sight excludes benefits (*manāfiʿ*) and intangible things. The majority of jurists (Mālikī, Shāfiʿī and Ḥanbalī) define it more broadly as whatever has value and whose destroyer is liable for compensation, and therefore accept benefits and rights as *māl* (Zuhayli, 1997). The majority view accommodates digital assets: they are valued, can be owned and controlled, are beneficial, and can be transferred. Ahmed (2024) identifies the same attributes in his framework for assessing crypto assets as *māl*: permissibility, desirability, ownership, storability, benefit, transferability, material value and measurability.

Property must also be *mutaqawwam*, that is, lawful to use and own in sharia. This is the point at which digital assets differ from one another. DSN-MUI Fatwa No. 116/DSN-MUI/IX/2017 accepts electronic money that complies with sharia, so e-wallet balances are *māl mutaqawwam* when free of prohibited elements. For crypto assets, the Fatwa Commission of MUI at its Indonesian Ulema Ijtima' VII (2021) is generally reported to distinguish three situations: crypto as a currency is prohibited; crypto without an underlying asset and without real benefit is prohibited because of *gharar* and *qimār*; and crypto that has an underlying asset or real benefit and satisfies the requirements of a commodity (*silʿah*) may be traded (Ijtima' Ulama Komisi Fatwa MUI VII, 2021; Apriliani et al., 2023). The status of crypto assets is therefore conditional and must be determined case by case. Contemporary studies applying the objectives of sharia reach a similar cautious conclusion that Bitcoin may be treated as property when the benefit outweighs the harm (Che Rani et al., 2024).

Digital assets in the other categories are less controversial. Monetised accounts and digital intellectual works represent rights of benefit and rights of authorship (*ḥuqūq māliyyah*), which contemporary juristic councils treat as property that may be owned, exploited and transferred (IIFA, 1988). Another recent contribution analyses digital gold as an object of contract, emphasising ownership, mutual consent (*ʿan tarāḍin*) and constructive possession (*qabḍ ḥukmī*), which are the same elements needed to establish ownership of other digital assets (Nurdin et al., 2026).

c. Uṣūl al-Fiqh Methods

Because no explicit text addresses digital assets, the ruling is derived by the methods of *uṣūl al-fiqh*. Five methods are relevant.

(1) Textual inference (istinbāṭ bayānī). As explained above, the general wording of Q.S. An-Nisā' [4]: 32 and Q.S. An-Nisā' [4]: 29 is not specified by any text that excludes digital earnings, so the generality is maintained. This is supported by the principle that the original ruling in transactions is permissibility until evidence indicates prohibition (*al-aṣl fī al-muʿāmalāt al-ibāḥah*) (al-Suyūṭī, 1990).

(2) Analogy (qiyās). Analogy extends the ruling of a case with a text or an established ruling (*aṣl*) to a new case (*farʿ*) because they share the same effective cause (*ʿillah*) (Khallaf, 1978). The reasoning applied to digital assets is set out in Table 2.

Table 2. Structure of the Qiyās Applied to Digital Assets

Element	Application to digital assets
Original case (aṣl)	Property and income earned by the spouses during marriage are joint property, whether tangible or intangible (KHI, Arts. 1(f), 85–91)
New case (farʿ)	Digital assets acquired during marriage (e-wallet balances, crypto assets, monetised accounts, digital works)
Ruling (ḥukm)	Joint property, divided equally unless a marital agreement provides otherwise (KHI, Art. 97)
Effective cause (ʿillah)	Acquisition during marriage; lawful economic value (*māl mutaqawwam*); capable of control and transfer
Result	The ruling extends to the new case when the *ʿillah* is present; it does not extend to premarital, inherited or gifted assets

(Source: Author's analysis based on the KHI, Arts. 1(f), 85–97, and the pillars of *qiyās* in Khallaf, 1978)

The *ʿillah* is not the physical form of the asset but the combination of acquisition during marriage and lawful economic value. Where the *ʿillah* is present, the ruling follows; where it is absent, as in an asset brought into the marriage or received as an inheritance, the ruling does not extend. This also explains why Islamic law and positive law reach the same classification: both rest on acquisition and value rather than on form.

(3) Custom (ʿurf). Custom may serve as a basis for a ruling if it is general, long-standing, and does not contradict a text, according to the maxim that custom is authoritative (*al-ʿādah muḥakkamah*) (al-Suyūṭī, 1990). Joint property in Indonesia is grounded in this method. The customary systems of *gono-gini* (Java), *harta suarang* (Minangkabau), *hareuta sihareukat* (Aceh) and *barang perpantangan* (Banjar) all treat property earned together during marriage as shared. The KHI incorporated this custom into the Islamic framework through Article 1(f). Contemporary custom also treats household finance as shared: the family budget is increasingly managed through wallets, mobile banking and investment applications. Under the same method, it would be inconsistent to treat the ancestral custom as binding for gold and land but not for the digital savings of the same household.

(4) Public interest (maṣlaḥah mursalah). A benefit that no specific text confirms or rejects may ground a ruling if it is real rather than speculative, general, and consistent with the objectives of sharia (al-Ghazālī, 1993). Recognising digital assets as joint property protects wealth (*ḥifẓ al-māl*) and the family (*ḥifẓ al-nasl*), which are among the objectives that al-Shāṭibī places among the essential interests (al-Shāṭibī, 1997). It also protects the spouse, often the wife, who contributes through household management and unpaid work that enables the other spouse to build digital income. Excluding digital assets from division would reward the spouse in whose name the platform account is registered and harm the other, contrary to the rule that harm must be removed (*al-ḍarar yuzāl*) and the hadith "there is neither harm nor reciprocating harm" (*lā ḍarara wa lā ḍirār*) (Ibn Mājah, *Sunan*, no. 2340).

(5) Blocking the means (sadd al-dharāʾiʿ). This method prohibits a lawful act when it is likely to lead to a prohibited result. Digital assets are easy to conceal: a spouse can move funds into a wallet under another name, convert them into tokens, or change the password. A rule that left such assets outside the joint property would open a path to injustice. Blocking this path supports a rule of inclusion, backed by duties of disclosure, and supports remedies such as conservatory seizure of the joint property under Article 95 of the KHI.

Two legal maxims support the rules on division and valuation. The maxim "liability follows benefit" (*al-ghurm bi al-ghunm*) suggests that the spouses share the profits and the losses arising from joint

digital assets (al-Suyūṭī, 1990). The ruling that the spouses' shares are equal unless otherwise agreed corresponds to Article 97 of the KHI, which reflects *ʿurf* and the principle of fairness (*ʿadl*) between partners.

4) Synthesis: Convergence, Tension and the Position of Digital Assets

The two systems arrive at the same position by different routes, as Table 3 shows. Both treat acquisition during marriage as the decisive criterion and economic value as the qualifying condition, and both keep premarital, inherited and gifted assets outside the joint property. The Islamic law analysis adds a condition that positive law does not: the asset must be *mutaqawwam*. Positive law is neutral about the sharia status of an asset, while for Muslim spouses the Religious Courts apply the KHI, which is itself rooted in sharia. In practice, this affects chiefly speculative crypto assets and NFTs that may fall into the category of *gharar* or *qimār*.

Table 3. Comparison of Islamic Law and Indonesian Positive Law on Digital Assets as Joint Property

Aspect	Islamic law	Indonesian positive law
Primary basis	Q.S. An-Nisā' [4]: 32, 29, 19; Ṣād [38]: 24; hadith on partnership and stipulations; KHI as codification	Marriage Law, Arts. 35–37; KHI, Arts. 1(f), 85–97; Civil Code, Arts. 499–511
Concept of property	*Māl mutaqawwam*: valued, lawful, ownable, transferable	*Benda*: every good and right capable of ownership (Civil Code, Art. 499)
Scope of objects	Includes benefits and rights (majority view)	Includes intangible things, rights and securities (KHI, Art. 91)
Decisive criterion	Acquisition by the spouses' effort and contribution during marriage (*qiyās, ʿurf*)	Acquisition during marriage, regardless of whose name (Art. 35(1); KHI, Art. 1(f))
Separate property	Premarital, inherited and gifted assets	Same (Art. 35(2); KHI, Art. 87)
Division	Fairness; equal shares unless agreed otherwise	One-half each unless agreed otherwise (KHI, Art. 97)
Main gap	Status of speculative crypto assets (*gharar*, *qimār*)	Proof, valuation, access and execution

(Source: Author's analysis)

The tension concerns unlawful or doubtful assets. Under Islamic law, an asset that is not *mutaqawwam* is not protected as property for a Muslim, which may imply that profits from prohibited trading are not divisible as joint property. Positive law, by contrast, divides what exists. A balanced solution, in keeping with the objectives of sharia, is to separate the capital contributed by the spouses from the prohibited element, allow the court to return the contributed capital to the spouse who supplied it or to both, and treat the prohibited surplus as property that neither spouse may keep for gain. This approach protects the contribution of each spouse without endorsing the prohibited transaction; it is offered here as an analytical proposal and not as an established rule.

The synthesis can be stated as three propositions. First, as a matter of status, a digital asset is capable of being joint property under both systems. Second, as a matter of classification, the answer depends on the type of asset, the time and source of acquisition, and, for Muslims, the sharia status of the asset. Third, the legal gap lies less in the status of digital assets than in the rules of proof, valuation, access and concealment, which are discussed next.

5) Practical Problems and Proposed Solutions

Proof. Digital assets leave electronic traces: transaction histories, account statements, e-mail

confirmations, exchange records and public blockchain entries. These count as valid evidence under Article 5(1) of the Electronic Information and Transactions Law, and the general law of evidence still governs how they are proved: documents, witnesses, presumptions, admissions and oath (Civil Code, Art. 1866). Because the platform, not the spouse, holds the authoritative record, a court should be willing to order production of records from the platform or exchange. Where the spouse in whose name the account is held denies its existence, a presumption in favour of the other spouse should apply once a prima facie showing is made, in line with Article 1(f) of the KHI.

Valuation. Crypto assets and tokens are volatile, so the date of valuation matters. Possible dates are the date of the divorce petition, the date of the judgment, or the date of actual division. The first is easy to prove but may be unfair if prices move substantially before division; the last is fairest but difficult to manage. A reasonable approach is to divide fungible assets in kind (units of the same asset), so that the market risk is shared as the maxim *al-ghurm bi al-ghunm* suggests, and to use the price on a licensed exchange or an expert's valuation only when monetary compensation is needed. For assets without a market, such as a monetised channel, valuation by an expert based on net revenues is appropriate.

Access and execution. Possession of a password or private key means practical control. Where the assets are held in custody on a licensed platform, a court order directed to the platform can freeze and transfer them; where they are self-custodied, the court can order the spouse to transfer the agreed share to a wallet designated by the other spouse, backed by the usual coercive measures. A conservatory seizure under Article 95(1) of the KHI may be requested early to prevent a spouse from dissipating assets. The Supreme Court could usefully issue guidance on these procedures, since the present rules were written for physical property.

Concealment. Hiding joint digital assets breaches the duty of consent in Article 92 of the KHI and the Qur'anic prohibition on wrongful consumption of wealth (Q.S. An-Nisā' [4]: 29). Courts should be allowed to draw adverse inferences from the concealment and may take into account the spouse's conduct when dividing the remaining assets. This follows the reasoning of *sadd al-dharāʾiʿ* outlined above.

Mixed assets and appreciation. A spouse may hold crypto assets bought before marriage that increase in value during marriage, or may use joint funds to add to a premarital holding. A workable rule is tracing: the premarital holding and its passive appreciation stay separate property, while units bought with joint funds, and appreciation clearly attributable to joint effort, are joint property. The rule is consistent with Article 35(2) of the Marriage Law and with the Islamic principle that ownership follows the source of the capital and the effort.

Preventive tools. Spouses can anticipate these problems through a marital agreement. Article 29 of the Marriage Law, as interpreted by the Constitutional Court in Decision No. 69/PUU-XIII/2015, allows such agreements to be made before or during marriage, and the KHI regulates them in Articles 45–52. A written inventory of digital assets, a clause on access and valuation, and a clause on the treatment of income from accounts built during marriage would reduce disputes. In Islamic law such agreements are supported by the hadith on stipulations quoted above.

CONCLUSION

Digital assets can be objects of joint marital property under both Islamic law and Indonesian positive law. Under positive law, Article 35(1) of the Marriage Law and Articles 1(f) and 91 of the KHI

make acquisition during marriage the test and expressly include intangible things and rights, while the Civil Code, the Copyright Law, the Electronic Information and Transactions Law and the regulation of electronic money and crypto assets confirm that such assets are objects of value that can be owned and proved. Under Islamic law, the evidence of Q.S. An-Nisā' [4]: 32, 29, Ṣād [38]: 24, and the hadith on partnership and stipulations, interpreted through *qiyās*, *ʿurf*, *maṣlaḥah mursalah* and *sadd al-dharāʾiʿ*, leads to the same result, with the added condition that the asset must be *māl mutaqawwam*. Assets owned before marriage or received by inheritance or gift remain separate property.

The main problems are practical. Courts and legislators should therefore (1) apply Article 91 of the KHI expressly to digital assets and, in the longer term, amend the KHI or issue a Supreme Court circular to say so; (2) issue guidelines on evidence, valuation dates and execution against platforms and wallets; and (3) encourage spouses to use marital agreements and inventories. Because this study is doctrinal, further empirical research on the decisions of the Religious Courts and on the experience of spouses and platforms is recommended.

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