

**DIGITAL INHERITANCE AND LEGAL VACUUMS:
IMPLICATIONS FOR LEGAL CERTAINTY IN INDONESIA**

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ABSTRACT

*The advancement of digital technology has generated new forms of wealth known as digital assets, which possess economic value and can be inherited such as cryptocurrency wallets, monetized accounts, and cloud-based data. However, the legal system in Indonesia, both in Islamic law and in national positive law, has yet to explicitly regulate the inheritance mechanisms of these digital forms of property. This paper addresses the central issue of how digital assets are positioned within inheritance law from the perspectives of Islamic jurisprudence and Indonesian positive law, and how the absence of legal regulation affects legal certainty and the protection of heirs. This research employs a qualitative methodology with a normative and conceptual approach, incorporating the study of classical Islamic legal texts, national legislation, and global digital platform policies. The findings indicate that digital assets can be classified as *māl mutaqaawwim*, lawfully inheritable wealth based on the objectives of Islamic law (*maqāṣid al-syarī'ah*), particularly within the framework of *hifẓ al-māl* (protection of property). Nonetheless, the absence of technical provisions in the Compilation of Islamic Law (KHI), the Civil Code, and the Electronic Information and Transactions Law (ITE Law) creates legal uncertainty, impeding access and execution of digital inheritance by heirs. Therefore, a responsive and adaptive legal formulation is urgently needed to ensure justice and legal certainty in the inheritance of digital assets.*

Keywords : Digital Inheritance, Islamic Law, Indonesian Positive Law, Legal Certainty.

A. INTRODUCTION

The development of digital technology has not only revolutionized the way humans interact, work, and store information, but has also given birth to new phenomena in the

realm of law, including inheritance law. One of the real impacts of this digitalization is the emergence of digital assets, all forms of intangible wealth stored in electronic systems, such as crypto wallets (*cryptocurrencies*), *e-commerce accounts*, digital wallets, social media, cloud access rights, and digital works in the form of files or digital content that have economic value.¹ From the perspective of Islamic inheritance law, all inheritance (*tirkah*) of the heirs that have economic value and legal ownership rights can be inherited to the heirs. This principle is based on general rules such as the word of Allah in QS. al-Nisā' [4]:7 which affirms that everyone, both male and female, is entitled to a share of the inheritance of his parents and relatives. However, the absence of an explicit classification of digital assets as part of *the Compilation of Islamic Law* (KHI) and in classical jurisprudence has caused debate and confusion in practice.

On the other hand, Indonesia's positive law has not explicitly recognized the existence of digital heritage as an object of inheritance law. Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE) and its amendments through Law No. 19 of 2016 do not include explicit regulations regarding the transfer or inheritance of digital assets. This shows that there is a legal *vacuum* that has an impact on legal uncertainty for heirs in claiming, accessing, or transferring digital assets belonging to heirs.² Ironically, in the midst of this rule vacuum, Indonesia's digital economy is actually showing rapid growth. The e-Conomy SEA 2022 report released by Google, Temasek, and Bain & Company shows that the value of Indonesia's digital economy in 2022 has reached 77 billion USD and is projected to reach 130 billion USD by 2025.³ With this reality, legal failure in anticipating the dynamics of digital heritage can cause legal inequities between technological developments and the clarity of the protection of people's inheritance rights.

In the context of *maqāṣid al-shari'ah*, the protection of property is one of the main purposes of Islamic law, the existence of digital inheritance should be placed within the framework of the protection of property (*ḥifẓ al-māl*).⁴ Thus, neglect of the existence of

¹ Mubin, Fatkhul, "Digital Assets as Objects of Inheritance: Challenges and Opportunities in the National Legal System," *Al-Ahkam: Journal of Shari'ah Science* Vol. 32, no. 2 (2022). P. 247–265.

² Azizah, Nurul, "Digital Inheritance Law: An Analysis of the Urgency of Regulation in Contemporary Islamic Inheritance Law," *Maqāḥib: Journal of Islamic Legal Thought* Vol. 21, no. 1 (2022). P. 95–97.

³ Baijal, Aadarsh, Florian Hoppe, Willy Chang, Stephanie Davis, and Fock Wai Hoong, "E-Conomy SEA 2022: Through the Waves, towards a Sea of Opportunity" (Singapore: Bain & Company, 2022). P. 92.

⁴ Auda, Jasser, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (The International

digital assets in the inheritance law system can be interpreted as a form of negligence towards the purpose of sharia. Therefore, the discussion of digital heritage is not only important legally, but also theologically. Ignoring the legal arrangements of digital inheritance is tantamount to ignoring the protection of one's wealth and economic rights that should be maintained even after he or she dies. Another problem that arises is in the aspect of proving and validating digital asset ownership, which in inheritance law practice is often difficult to do because there are no physical documents or formal proof of ownership that can be verified through legal institutions. So that in many cases heirs lose their rights because they do not know the existence or access to digital assets belonging to the heirs. This situation has implications for the emergence of disputes between heirs, especially when digital assets are not well documented. For example, one heir claims to have access to their parents' crypto wallet, while the other heirs is unaware of its existence or value. Thus, the study of digital heritage is very urgent in the context of Islamic inheritance law and positive Indonesian law. An integrative approach is needed that not only examines the juridical aspects, but also understands the social, technological, and ethical dimensions as the foundation for inheritance law reform that is responsive to the times.

B. METHOD

This research uses a type of normative *legal research*, which is a method that relies on the study of legal norms written in laws and regulations, legal doctrines, and fiqh rules.⁵ Normative legal research was chosen because the focus of the discussion lies in the analysis of the legal void regarding digital heritage in Indonesia's positive legal system as well as an examination of the position of digital assets in Islamic inheritance law. This research does not examine social phenomena empirically, but relies on the analysis of legal texts and the opinions of legal experts.

The approaches used in this study are conceptual approaches and legislative approaches. The conceptual approach is carried out by examining the thoughts of legal experts and fiqh scholars regarding the concept of inheritance and assets in Islamic law and its implications for today's digital assets. Meanwhile, the legislative approach is carried out through a study of national legal products

Institute of Islamic Thought (IIT), 2008). P. 87-95.

⁵ Soekanto, Soerjono and Sri Mamudji, *Normative Law Research: A Brief Review* (Jakarta: Rajawali Pers, 2015). P. 13-17.

such as Law Number 1 of 1974 concerning Marriage, Compilation of Islamic Law (KHI), the Law on Information and Electronic Transactions, and the Civil Code in relation to inheritance. In obtaining relevant data, this study uses three types of legal sources. First, the primary source of law, namely legal materials that have binding force such as laws and regulations, *mu'tabar fiqh* books such as *Al-Fiqh al-Islāmī wa Adillatuhu* by Wahbah al-Zuhailī, as well as the Compilation of Islamic Law and Indonesian national law which are the basis of inheritance law. Second, secondary legal sources, namely academic literature in the form of books, scientific journal articles, and the results of previous research that discuss the concept of digital heritage and the position of digital assets in the contemporary legal system. Third, tertiary legal sources, in the form of legal dictionaries, Islamic encyclopedias, and internet statistical data from trusted institutions such as Google and Bain & Company as support for actual information.

The data collection technique in this study is carried out through the library *research method*, which is the collection of information from various documents and literature that are relevant to the object of study. This technique allows researchers to examine in depth the existing legal construction, while exploring the emptiness of norms that have not been explicitly regulated.⁶ The data that has been collected is then analyzed using the descriptive-qualitative analysis method, which is to describe the data systematically, then relate it to relevant theories and legal norms. This analysis aims to understand the extent to which Islamic law and national law are able to respond to the development of digital heritage, as well as its impact on the principle *of legal certainty* in the Indonesian legal system. With this method, it is hoped that a complete and critical picture of digital heritage problems can be obtained within the framework of contemporary inheritance law.

C. ANALYSIS/DISCUSSION

The Concept of Heritage in the Perspective of Islamic Law and Indonesian Positive Law

Inheritance is one of the aspects of law that plays a central role in ensuring the sustainability of property rights and maintaining social stability after a person's death. In the normative context, both Islamic law and positive Indonesian law have their own approaches in defining and regulating inheritance, including in terms of recognition of the subject and object of inheritance, to the distribution system and the mechanism of

⁶ Marzuki, Peter Mahmud, *Legal Research* (Jakarta: Kencana Prenada Media, 2017).

distribution of wealth. In Islamic law, inheritance is called *al-mirās*, which etymologically means "the transfer of something from one party to another" and is terminologically interpreted as the transfer of ownership rights over the estate of a deceased person to his surviving heirs according to the provisions of the Shari'a.⁷ Inheritance is part of the Islamic family law which is set out in detail in the Qur'an, especially in Surah an-Nisā' verses 11, 12, and 176, and is complemented by the hadiths of the Prophet and the ijtihad of the scholars. The main emphasis in Islamic law is justice, balance, and God-ordained definite rights (*ḥuqūq al-muqaddarah*), which strictly regulates who is entitled to receive an inheritance, how much, and under what conditions a person can be deprived of his or her inheritance.

Within the framework of *maqāṣid al-syarī'ah*, which is the great goals to be achieved by Islamic law, the law of inheritance (*al-mīrās*) contains a functional dimension that not only regulates the distribution of property, but also maintains social order and rights between generations. Inheritance is included in one of the mechanisms of Islamic law in order to safeguard *māl* (property), which is one of the five main purposes of the shari'a (*al-kulliyyāt al-khamsah*), in addition to *ḥifẓ al-dīn* (religion), *ḥifẓ al-naḥs* (soul), *ḥifẓ al-'aql* (intellect), and *ḥifẓ al-nasl* (offspring).⁸ The purpose of protecting property in *maqāṣid* is interpreted more deeply not only as a protection of personal wealth, but also as part of the shari'a's efforts to balance the distribution of wealth in the family and society. Therefore, the system of inheritance distribution established in the Qur'an should not be changed based on individual will, as it is part of *Allah's* ḥuqūq, divine rights that are permanent and not subject to social covenants.⁹

Maqāṣid al-syarī'ah in the context of inheritance also ensures that there is no domination of property by one particular party, as well as avoiding conflicts and hostilities between heirs. The determination of a proportionate share of inheritance based on blood or marriage relations aims to maintain family relations (*ṣilat al-raḥim*) and social stability. In other words, inheritance law in Islam is not only an instrument of law, but also a means to actualize social justice and family harmony in a sustainable manner. The principle of *maqāṣid* can also be used as a basis in responding to the

⁷ Az-Zuhaili, Wahbah, *Al-Fiqhul Islami Wa Adillatuh* Vol. Juz VII, Cet. II (Beirut: Dar al-Fikr, 1985).

⁸ Auda, Jasser, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*. P. 2-5.

⁹ Az-Zuhaili, Wahbah, *Al-Fiqhul Islami Wa Adillatuh*, Juz VII.

development of new forms of wealth such as digital assets, so that they remain in the corridor of sharia but are able to respond to the dynamics of the times.

Meanwhile, in Indonesia's positive law, inheritance regulation still refers to a pluralistic system. For Muslims, the Compilation of Islamic Law (KHI) applies as an unwritten source of law that is widely used by religious courts based on Presidential Instruction No. 1 of 1991¹⁰. In Article 171 letter (a) of the KHI, inheritance is defined as the inheritance of a person who has passed away and has inheritance rights for his heirs. Outside the Muslim community, the applicable inheritance law still refers to *the Burgerlijk Wetboek* (BW) which is a Dutch colonial heritage and is part of the Indonesian civil law system until now.

Regarding the subject of inheritance, the two legal systems have similarities in terms of recognition of individuals as heirs and heirs. In Islamic law, the subjects of inheritance consist of *al-muwarriṣ* (the person who dies and leaves the property), *the al-wārith* (the living heir), and *the al-muwārath* (the property itself). Similarly, in national law, which recognizes the terms heirs and heirs, the object of inheritance includes all property, both movable and immovable, as well as rights that can be valued economically.¹¹ A striking difference can be seen in the inheritance distribution mechanism. In Islam, the division is carried out in detail based on the provisions of faraid or the science of inheritance, which has been determined quantitatively in the Qur'an. For example, a boy gets twice as much as a daughter, a husband gets half of his wife's property if he has no children, and so on. No room for a will or grant can change this provision, except that a maximum of one-third of the estate can be bequeathed to a party outside the heirs.

Meanwhile, in the Civil Code, the distribution of inheritance is more flexible and rests on the principle of kinship straight down and up and sideways, regardless of gender. In Articles 832 to 1130 of the Civil Code, it is explained that inheritance is open to all children, both boys and girls, with an equal share, unless otherwise stipulated in the will.¹² The individualistic nature of the BW inheritance system opens up more space

¹⁰ Ministry of Religion of the Republic of Indonesia, *Compilation of Islamic Law* (Jakarta: Director General of Islamic Guidance, 1991).

¹¹ Syarifuddin, Amir, *Islamic Heirloom Law* (Jakarta: Kencana, 2012). P. 22.

¹² R. Subekti and R. Tjitrosudibio, *Civil Code (BW)* (Jakarta: Pradnya Paramita, 1991). P. 204-211.

for the heir to freely regulate to whom he wants to bequeath his property through a testament or will. Looking at these comparisons, it appears that the Islamic legal system emphasizes the principle of *ta'abbudiyyah* (obedience to Divine commands) which is binding and determinative, while Indonesia's positive law, especially through *the Burgerlijk Wetboek* (BW), provides a looser space based on individual freedom. However, both face challenges in responding to new types of assets such as digital assets that are not explicitly listed in the inheritance system. It is this challenge that then becomes relevant to discuss further, considering that technological developments have changed the landscape of wealth that a person inherits.

Digital Assets as Objects of Wealth

The development of information technology has given birth to new forms of wealth that are invisible but have significant economic value. The term digital asset is no longer limited to mere technology products, but has become an integral part of one's wealth, both personally and institutionally. In today's digital era, humans not only inherit houses, land, gold, or vehicles, but also social media accounts, *e-wallet* balances, digital works, and even blockchain-based asset collections such as *Non-Fungible Tokens* (NFTs). In general, digital assets refer to an intangible form of wealth that is available in digital format and can be legally owned, transferred, or traded. The OECD defines digital assets as *intangible assets that are created, traded and stored in a digital format*.¹³ Here are some common types of digital assets that are commonly known and considered to have economic value.

1. Cloud-based assets

Cloud-based assets are any form of data, information, content, or digital services that are stored, managed, or accessed through a system *Cloud Computing*. *Cloud Computing System* (cloud computing) is an information technology model that allows users to access, store, and manage data or applications over the internet, without having to store or process the data locally on a personal device.¹⁴ These assets include digital file storage, personal or professional email accounts, digital service subscription data,

¹³ Organisation for Economic Co-operation and Development (OECD), *Digital Assets and Taxation: Issues and Approaches* (OECD Publish, 2021).

¹⁴ Mell, Peter and Timothy Grance, *The NIST Definition of Cloud Computing* (National Institute of Standards and Technology (NIST), 2011). P. 2.

professional assets, professional assets, and servers stored online. With the system *Cloud*, the owner does not store the asset locally (e.g. in *Hard Drive*), but online, which can be accessed from various devices and places. But this is where the challenge lies because it is not in physical form and is often locked with a strict authentication system, this asset often escapes inheritance data collection, even by the closest heirs.

2. Digital Accounts, Content and Licenses

Digital accounts (*Digital Accounts*) includes accounts registered on various social media platforms (Tiktok, Facebook, and Instagram), personal or professional email accounts, and customer accounts. While not all accounts have direct economic value, accounts with a large number of followers (*Influencers*) or accounts containing important business data can be considered valuable assets. As for digital content (*Digital Content*) is the work or information in digital form stored on an online platform (*Online*) or electronic devices. This content can be personal (e.g. family photos stored in *Cloud*), professional (such as monetized YouTube videos), or commercial (such as *E-Course* or NFT assets in the form of digital art). For example, a YouTube content creator who has thousands of followers and generates regular income from *AdSense* and sponsors, have actually built digital assets of economic value that can be passed on or inherited, if they meet the administrative and technical requirements. Digital content that has economic value is a new form of wealth that can be part of one's estate planning.¹⁵ In contrast to self-created digital content, digital licenses (*Digital License*) is usually provided by the service provider to the user, not to be owned forever, but simply to be used according to certain terms and conditions. The nature of this digital license is not absolutely owned by the user, but rather rented or given limited use rights. Therefore, when a person dies, the license is often non-transferable, unless in the terms and conditions of service (*Terms of Service* / ToS). According to a report from the Harvard Journal of Law & Technology, most digital licenses are *Non-transferable* and terminates upon the death of the account owner, unless otherwise provided in the license agreement.¹⁶

¹⁵ Duranske, Benjamin T., *Virtual Law: Navigating the Legal Landscape of Virtual Worlds* (American Bar Association, 2008). P. 215.

¹⁶ Stokes, Simon, "Digital Content and Inheritance Law," *Harvard Journal of Law & Technology* Vol. 28, no. 2 (2015). P. 433.

3. Digital wallets and crypto

A digital wallet (*digital wallet* or *e-wallet*) is a software application or electronic system that allows users to store, send, and receive money electronically without using physical money. Digital wallets work by storing users' credit or debit card information, as well as funds in the form of electronic balances, which can be used for various transactions such as online shopping, bill payments, and the purchase of digital services. According to Bank Indonesia, digital wallets are part of the electronic payment system that has been regulated through Bank Indonesia Regulation No. 20/6/PBI/2018 concerning Electronic Money.¹⁷ Digital wallets generally do not have an exchange rate to other currencies independently, but the balance within them reflects wealth that is accountable and legally transferable, including in the case of inheritance. In Indonesia, some examples of popular digital wallets include GoPay, OVO, Dana, and LinkAja. Crypto or cryptocurrency (*cryptocurrency*) is a form of digital money that uses cryptography and *blockchain technology* to ensure security, transparency, and decentralization of transactions. *Blockchain* is a distributed ledger technology that allows for transparent, permanent, and secure recording of information through an interconnected blockchain system. Each block contains transaction information that has been verified by a network of computers (*nodes*), and cryptographically linked to the previous block, forming a chain of data that is difficult to change.¹⁸ *Blockchain* is the main infrastructure that underlies cryptocurrencies such as Bitcoin and Ethereum, NFTs (*Non-Fungible Tokens*), and various other forms of digital assets. To store and manage cryptocurrencies, users need a *crypto wallet*, which is an application or hardware that stores a user's private keys, which are needed to access and manage their crypto assets. In short, crypto wallets are digital storage places for *cryptocurrencies*. Cryptocurrencies have high exchange rates and can be traded globally. Therefore, it has become part of the wealth portfolios of many individuals and investors. In the context of inheritance, crypto assets fall under the category of *intangible assets* but can be inventoried and transferred to the heirs, as long as the heirs know or have access to the private key or authentication information. The OECD affirms that virtual currencies are included in digital assets that should be considered in tax policies and inheritance

¹⁷ Bank Indonesia, *Bank Indonesia Regulation No. 20/6/PBI/2018 on Electronic Money* (Jakarta: BI, 2018).

¹⁸ Nakamoto, Satoshi, *Bitcoin: A Peer-to-Peer Electronic Cash System* (2008), <https://bitcoin.org/bitcoin.pdf>.

planning.¹⁹ Blockchain-based currencies have a high market value, so they can be legally inherited just like gold or stocks. The United States has provided guidelines on how digital assets such as crypto can be included in inheritance plans through wills and digital *fiduciary access*²⁰ systems. The term *Fiduciary Access* refers to legal access granted to a trusted party (e.g. heirs or executors) to manage the heir's digital account.

4. NFTs (Non-Fungible Tokens)

In the modern digital asset landscape, one of the most revolutionary innovations is the presence of Non-Fungible Tokens (NFTs). NFTs are unique data units based on *blockchain* technology that represent exclusive ownership of a digital object. Unlike other digital assets such as cryptocurrencies which are *fungible* (exchangeable equally), NFTs are *non-fungible*, meaning that each token has unique characteristics and cannot be directly exchanged with other NFTs. This makes NFT a form of digital representation of the ownership of a work or object that cannot be equated in value with others. NFTs are widely used to represent various types of digital artwork, such as digital paintings, music, videos, and even items in online games. NFT ownership is recorded on the Ethereum *blockchain* network, which guarantees the authenticity and *immutable* traces of transactions. Therefore, NFTs not only serve as a symbol of ownership but can also have high economic value, especially when associated with rare digital artworks or in demand by the global collector market.

Void of Rules on Digital Heritage in Indonesia

The development of digital technology has given birth to a new type of wealth called digital assets, which are now not only of high economic value, but can also be part of a person's estate after death. However, unfortunately, the legal system in Indonesia is not fully prepared to face this reality. Until now, there has been no explicit and comprehensive regulation governing the inheritance mechanism for digital assets, both in the realm of general civil law and Islamic family law.

First, if we trace the existing regulations, neither the Compilation of Islamic Law

¹⁹ Organisation for Economic Co-operation and Development (OECD, *Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues* (OECD Publishing, 2020). P. 11.

²⁰ Cahn, Naomi, "Postmortem Life Online," *Harvard Journal of Law & Technology* Vol. 25, no. 1 (2011). P. 59-66.

(KHI) nor the Civil Code (KUHP_{Perdata}) contain provisions that explicitly recognize or regulate the category of inheritance in the form of digital assets. In the KHI, especially Article 171 letter c, inheritance is defined as heritage property in the form of inheritance rights. However, there are no details regarding new forms of wealth such as digital wallets, social media accounts, or blockchain-based assets such as NFTs and crypto. The Civil Code itself, which is the main reference for non-Muslim inheritance law in Indonesia, also only mentions wealth in the form of movable and immovable objects, which in conventional interpretations does not include *intangible virtual* assets.²¹

Second, there are no technical rules that explain how the procedure for claiming or accessing digital assets is managed by a third party. For example, how can an heir claim access to a personal account belonging to the heir, or open a protected digital wallet with a double authentication system and a personal recovery phrase. On the other hand, many global tech companies have their own digital legacy policies, but they are not always aligned with the national laws of the country where users reside. Google's *Inactive Account Manager* or *Memorialization* policies on Facebook are internal administrative, not based on national court orders.²²

Reporting from the Google Support website, the *Inactive Account Manager* policy is a feature provided by Google to allow users to specify a third party (usually family or trusted friends) who can access part of their Google account after the account has been inactive for a certain period of time, for example 6 to 18 months. Users can choose what data they can share, such as Gmail, Google Photos, or Google Drive, and can also request that their accounts be automatically deleted.²³ However, this policy does not grant direct legal rights to the heirs, and access granted is limited to the user's consent while still alive, not based on the legal relationship of inheritance according to the user's country. Meanwhile, Facebook (Meta) has a *Memorialization* feature, which allows deceased users' accounts to be changed to "memorial accounts". This account still appears on Facebook, but it's locked and can't be changed. Lifetime users can designate a *Legacy Contact*, which is someone who is allowed to manage the account on a limited basis, such as accepting

²¹ Soimin, Soedharyo, *Indonesian Inheritance Law* (Jakarta: Sinar Grafika, 2013). P. 22-23.

²² Dumontet, Eva Blum, *Digital Legacy: The Right to Be Remembered?* (Privacy International, 2018).

²³ Google, "About Inactive Account Managers," July 2, 2025, <https://support.google.com/accounts/answer/3036546>.

friend requests or changing profile photos. However, access to private messages or complete account deletion is only possible if the user has previously given permission.²⁴ This policy is internal and not juridically binding on the inheritance law of any country, unless it is ratified through the national legal apparatus. In Indonesia itself, there is no provision that specifically explains the procedure for accessing digital inheritance by third parties.

Third, the two main regulations that are often associated with family law and technology, namely Law Number 1 of 1974 jo. Law Number 16 of 2019 concerning Marriage and Law Number 11 of 2008 jo. Law No. 19 of 2016 concerning Information and Electronic Transactions (ITE), have also not provided an adequate legal basis to regulate the inheritance of digital assets. The Marriage Law does not expand the scope of joint property or inheritance to the digital realm. Similarly, the ITE Law only addresses the issue of transactions and electronic information in general, without reaching the aspect of the transfer of rights to digital accounts or digital property after death.²⁵ Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE Law) as amended by Law No. 19 of 2016, does not provide specific regulations regarding the mechanism of digital asset inheritance. Article 5 paragraph (1) of the ITE Law does recognize that electronic documents can be used as legal evidence, but this provision does not give a position to digital assets as an object of inheritance law that can be claimed and executed by the heirs. This reinforces the conclusion that there is a void of substantive and procedural norms in the context of digital heritage in Indonesia.

This regulatory vacuum has a direct impact on the legal certainty of digital heritage in Indonesia. Notaries do not have a strong legal basis for recording digital inheritance in inheritance deeds or wills. Religious courts have difficulty deciding inheritance disputes involving digital assets that cannot be physically proven to exist. In fact, heirs often do not know the existence of the heir's digital assets because they are not documented or have not been inherited access. So in this context, the law that is not present actually creates a *vacuum of norm* that²⁶ hinders the protection of rights and justice for interested parties,

²⁴ Facebook, "About Inheritance Contacts on Facebook," July 2, 2025, https://www.facebook.com/help/1568013990080948?cms_id=1568013990080948.

²⁵ Ramli, Ahmad M., *Cyber Law in Indonesia: Theory and Practice* (Bandung: Refika Aditama, 2020). P. 201-204.

²⁶ Rahardjo, Satjipto, *Legal Sciences* (Bandung: Citra Aditya Bakti, 2000). P. 57-58.

especially heirs. The emergence of digital assets such as cryptocurrencies, e-wallets, and non-fungible tokens (NFTs) has significantly impacted people's transactions and interactions. However, the inheritance of these digital assets has its own challenges due to the lack of clear regulations in both positive and Islamic law in Indonesia.²⁷

Analysis of Legal Certainty and Heirs Protection in the Context of Digital Heritage in Indonesia

In conventional inheritance practices, inheritance objects typically include tangible assets such as land, houses, vehicles, and cash. But today, more and more individuals have wealth in non-physical forms such as social media accounts with commercial value, crypto asset wallets, *File at Cloud Storage*, and revenue from digital channels such as YouTube or TikTok. Unfortunately, this digital wealth has not been explicitly recognized in the national inheritance legal system.

The Compilation of Islamic Law (KHI), as one of the sources of Islamic family law in Indonesia, does not include the category of digital assets as an object of inheritance. Article 171 letter c of the KHI only mentions "heritage property" in general without a definition that accommodates digital assets. Similarly, the Civil Code, which is still based on physical assets and does not provide a legal framework for digital inheritance. Furthermore, Law Number 1 of 1974 concerning Marriage does not contain a clause regarding the mechanism of digital inheritance, and the Electronic Information and Transaction Law (UU ITE) does not pay attention to inheritance rights over digital accounts or assets. This creates a regulatory vacuum (*Regulatory vacuum*) serious ones. When an owner of a digital asset dies, there are no technical or procedural rules that can be used as a legal basis by a notary, court, or heir to access and execute the asset. This legal uncertainty has many very detrimental consequences, especially for the heirs. The consequences experienced by the heirs are:

First, there is a potential loss of legal property rights due to the absence of a legal mechanism to access the deceased's digital account. Crypto assets such as Bitcoin, Ethereum, or other tokens stored on platforms or wallets can become legally unaffordable

²⁷ Luthfi, Fuad, Ahmadi Hasan, Jalaluddin, "Challenges and Regulations in Digital Asset Inheritance: A Comparative Study of Positive Law and Islamic Law," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory (IJIJEL)* Vol. 2, no. 4 (2024). P. 2220.

if they are not technically inherited.

Second, heirs are highly dependent on technology company policies that are private. For example, like Google, this company has an *Inactive Account Manager* feature that can be set during life, but it is not mandatory and is not necessarily legally recognized in Indonesia. Then Facebook, allows account deletion or the appointment of *legacy contacts*, but does not provide full access to data or assets that may be of economic value. This provision is unilateral, meaning that regulations or policies are only determined unilaterally by technology companies (e.g. Google or Facebook), without agreement or negotiation with users or heirs, let alone legal authorities in countries like Indonesia, thus putting heirs in a very weak position.

Third, from the perspective of procedural law in Indonesia, proving the existence of digital assets is very difficult because there is no physical documentation. Digital assets are often not recorded in the deceased's estate register and can only be opened with non-inherited credentials. This makes it difficult for notaries to record inheritances, and courts do not have sufficient tools to establish ownership and distribution rights to legitimate heirs. The phenomenon of digital heritage as a form of modern reality does not always develop and is directly proportional to the development of legal regulations. Indonesia as a country of law still faces serious gaps in terms of digital inheritance regulation, which has direct implications for the protection of heirs' rights. This kind of legal uncertainty causes losses for the heirs.

From the perspective of legal certainty, the Indonesian constitution guarantees that every citizen has the right to fair legal protection and certainty as stipulated in Article 28D paragraph (1) of the 1945 Constitution. However, in digital heritage practice, this principle has not been optimally realized. Legal *certainty* in digital heritage requires three things: (1) clarity of norms, (2) consistency in implementation, and (3) effective settlement mechanisms. In a progressive legal framework, law should not be static but responsive to social change. Satjipto Rahardjo said that law must be a tool *of social engineering* that is able to respond to the contemporary reality of society.²⁸ Today's reality shows that the form of wealth has shifted, and if the law does not follow, then there is a disconnect between the norm and the social reality it serves.

²⁸ Rahardjo, Satjipto, *Legal Sciences*. P. 15-18.

In terms of Islamic law, especially in the study of *fiqh muamalah*, the term property or *māl* refers to everything that has value (*qīmah*) and benefits (*manfa'ah*) that can be owned and transferred according to sharia law. Then from the principle of *al-milkiyah* (lawful ownership) and *intiqaal al-milkiyah* (transfer of ownership), the term *māl* should be expanded through the *ijtihadi* approach. Wahbah al-Zuhayli said that as long as an object or entity has a halal benefit value, then it can be called *māl mutaqawwim* which is valid to be inherited. *Māl mutaqawwim* is a type of property that has economic value and is lawful to use according to Islamic law, both in substance and the way it is obtained. An entity can be called *māl mutaqawwim* if it meets two conditions, namely:

- 1) Beneficial according to habits (*'urf*) or human needs, and
- 2) Not prohibited in substance or its use.

Contemporary scholars such as Wahbah al-Zuhaylī, explain that the law of origin of property is *mubah* and can be owned as long as there is no *nash* forbidding it, and that the object of inheritance in Islam is not limited to physical objects, but rather encompasses any form of economic value that is legally owned and transferred to others.²⁹ Property that can be inherited is one that has value and can be used *halal*, does not contain *gharar* or *haram* in substance or method of acquisition. Mustafa al-Khin, Musthafa al-Bugha and Ali al-Syarbaji in the book *Al-Fiqh al-Manhaji 'ala Madhhab al-Imām al-Shāfi'i*, stated that legal ownership includes real (*'ainiyyah*) and intangible (*ghairu 'ainiyyah*), as long as it can be used and traded.³⁰ In this context, digital assets stored on servers or in the form of access rights to digital platforms, even though they are intangible, are still valid as objects of *muamalah* and inheritance. Therefore, digital assets such as crypto wallets, NFTs, monetization accounts, or digital licenses that can generate *halal* income, as long as they do not contain elements of *gharar* (ambiguity), *maisir* (gambling), *riba*, and other *harams* can be classified as *māl mutaqawwim* that are legitimate to be inherited.

Through the *maqāsid* approach, *contemporary fuqahā'* advocates that new forms of wealth that have beneficial value and are obtained *halally*, such as crypto balances, digital wallets, income from digital platforms, digital content licenses, or cloud storage accounts that store valuable data should be included in the scope of *māl mutaqawwim* which is

²⁹ Az-Zuhaili, Wahbah, *Al-Fiqhul Islami Wa Adillatuh*, Juz VII. P. 367.

³⁰ al-Khin, Mustafa, Musthafa al-Bugha, and Ali al-Syarbaji, *Al-Fiqh al-Manhaji 'ala Madhhab al-Imām al-Shāfi'i*, Juz II (Damascus: Dār al-Qalam, 2002).

regulated in the Islamic inheritance system. This is in line with the spirit of sharia to provide benefits and avoid losses between generations. If it is not accommodated within the framework of inheritance law, then the economic benefits of digital assets will be lost or fall into the hands of unauthorized parties, which is contrary to *the maqāṣid* itself. Thus, it would be good if the national inheritance legal system, both in the Islamic legal system and the Indonesian positive legal system, immediately formulated an explicit recognition of digital assets as an object of inheritance so that legal certainty and protection for heirs can be realized in real terms.

D. CONCLUSION

The development of digital technology has expanded the scope of inheritable wealth objects, creating new challenges in the inheritance law system that applies in Indonesia. Digital assets such as digital wallets and crypto wallets, monetization accounts, and digital assets in the form of cloud-based data have been proven to have economic value and potential legitimate benefits according to sharia, so that they meet the criteria as *māl mutaqaawwim* in Islamic jurisprudence. However, unfortunately, until now, there has been no explicit and operational legal arrangement in both the Compilation of Islamic Law (KHI) and Positive Law (Civil Code and ITE Law) that recognizes and regulates the inheritance mechanism for these types of assets. This void not only makes it difficult for heirs to access their rights, but also creates legal uncertainty for institutions such as notaries, digital banking, and religious courts in resolving digital inheritance disputes. Based on the approach of *maqāṣid al-shari‘ah*, especially the principle of *ḥifẓ al-māl*, there is a strong normative basis for expanding the recognition of digital assets as inheritance, as long as the assets are halal, useful, and do not contain elements of *gharar*. Therefore, progressive, adaptive, and integrative legal reformulation is needed, both through juridical approaches and Islamic legal *ijtihād*, to ensure legal protection and justice for heirs. The explicit recognition of digital assets as an object of inheritance is an urgent step so that the national legal system does not lag behind the rapidly evolving digital reality.

BIBLIOGRAPHY

- al-Khin, Mustafa, Musthafa al-Bugha, dan Ali al-Syarbaji. *Al-Fiqh al-Manhaji ‘ala Madhhab al-Imām al-Shāfi‘i*. Juz II. Dār al-Qalam, 2002.
- Auda, Jasser. *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*. The International Institute of Islamic Thought (IIIT), 2008.
- Azizah, Nurul. “Hukum Waris Digital: Analisis Terhadap Urgensi Peraturan Dalam Hukum Waris Islam Kontemporer.” *Mazahib: Jurnal Pemikiran Hukum Islam* Vol. 21, no. 1 (2022).
- Az-Zuhaili, Wahbah. *Al-Fiqhul Islami Wa Adillatuh*. Juz VII. Cet. II. Dar al-Fikr, 1985.
- Baijal, Aadarsh, Florian Hoppe, Willy Chang, Stephanie Davis, and Fock Wai Hoong. *E-Conomy SEA 2022: Through the Waves, towards a Sea of Opportunity*. Bain & Company, 2022.
- Bank Indonesia. *Peraturan Bank Indonesia No. 20/6/PBI/2018 Tentang Uang Elektronik*. BI, 2018.
- Cahn, Naomi. “Postmortem Life Online.” *Harvard Journal of Law & Technology* Vol. 25, no. 1 (2011).
- Departemen Agama RI. *Kompilasi Hukum Islam*. Dirjen Bimas Islam, 1991.
- Dumontet, Eva Blum. *Digital Legacy: The Right to Be Remembered?* Privacy International, 2018.
- Duranske, Benjamin T. *Virtual Law: Navigating the Legal Landscape of Virtual Worlds*. American Bar Association, 2008.
- Facebook. “Tentang Kontak Pewaris Di Facebook.” July 2, 2025. https://www.facebook.com/help/1568013990080948?cms_id=1568013990080948.
- Google. “Tentang Pengelola Akun Tidak Aktif.” July 2, 2025. <https://support.google.com/accounts/answer/3036546>.
- Luthfi, Fuad, Ahmadi Hasan, Jalaluddin. “Tantangan Dan Regulasi Dalam Pewarisan Aset Digital: Studi Perbandingan Hukum Positif Dan Hukum Islam.” *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory (IJIJEL)* Vol. 2, no. 4 (2024).
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Kencana Prenada Media, 2017.

Mell, Peter and Timothy Grance. *The NIST Definition of Cloud Computing*. National Institute of Standards and Technology (NIST), 2011.

Mubin, Fatkhul. “Aset Digital Sebagai Objek Waris: Tantangan Dan Peluang Dalam Sistem Hukum Nasional.” *Al-Ahkam: Jurnal Ilmu Syari'ah* Vol. 32, no. 2 (2022).

Nakamoto, Satoshi. *Bitcoin: A Peer-to-Peer Electronic Cash System*. 2008. <https://bitcoin.org/bitcoin.pdf>.

Organisation for Economic Co-operation and Development (OECD). *Digital Assets and Taxation: Issues and Approaches*. OECD Publish, 2021.

Organisation for Economic Co-operation and Development (OECD). *Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues*. OECD Publishing, 2020.

R. Subekti dan R. Tjitrosudibio. *Kitab Undang-Undang Hukum Perdata (BW)*. Pradnya Paramita, 1991.

Rahardjo, Satjipto. *Ilmu Hukum*. Citra Aditya Bakti, 2000.

Ramli, Ahmad M. *Hukum Siber Di Indonesia: Teori Dan Praktik*. Refika Aditama, 2020.

Soekanto, Soerjono dan Sri Mamudji. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Rajawali Pers, 2015.

Soimin, Soedharyo. *Hukum Waris Indonesia*. Sinar Grafika, 2013.

Stokes, Simon. “Digital Content and Inheritance Law.” *Harvard Journal of Law & Technology* Vol. 28, no. 2 (2015).

Syarifuddin, Amir. *Hukum Waris Islam*. Kencana, 2012.