

CONTEMPORARY FORMS OF POSSESSION IN DIGITAL ECONOMY: A SHARIAH ANALYSIS

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ABSTRACT

The digital economy has fundamentally transformed traditional concepts of possession (*qabd*) in Islamic commercial jurisprudence. While classical Islamic law predominantly associated possession with physical control over tangible assets, contemporary digital transactions involve intangible assets, cryptocurrencies, digital wallets, software licenses, cloud storage, and electronic securities, where physical custody is neither possible nor practical. This study examines the Shariah conceptualization of constructive possession (*al, qabd al, hukmi*) and its applicability to modern digital economic transactions. Employing a qualitative, analytical, and comparative jurisprudential methodology, the research systematically analyzes the positions of the four major Sunni schools of law (Hanafi, Maliki, Shafi'i, and Hanbali) alongside contemporary fatwa, issuing bodies including the Islamic Fiqh Academy (OIC), AAOIFI, and various national *dar al, ifta* institutions. The findings establish that the essence of possession in Islamic law lies not in physical control *per se* but in the capacity to dispose of property, derive benefit therefrom, and exclude others from its use, criteria that digital control mechanisms adequately satisfy. The study concludes that constructive possession constitutes a valid, necessary, and increasingly indispensable legal construct for ensuring contractual certainty, risk allocation, and dispute prevention in contemporary digital economic transactions. These findings contribute to the ongoing harmonization of classical Islamic legal principles with modern financial technology.

Keywords: Digital economy, constructive possession, *al, qabd al, hukmi*, Islamic commercial law, digital assets, e, commerce, cryptocurrencies, Shariah compliance

1. INTRODUCTION

1.1 Background

The Islamic legal tradition has developed a sophisticated framework for commercial transactions grounded in principles of justice, transparency, mutual consent, and the prevention of uncertainty (*gharar*) and dispute. Central to this framework is the concept of possession (*qabd*), a juristic construct that marks the transfer of ownership, allocates risk of loss (*damān*), and

establishes the legal capacity to dispose of property. Classical jurists across the four Sunni schools of law consistently affirmed that possession constitutes an essential condition for the completion of certain contracts, particularly sales (*bay'*), gifts (*hibah*), and leases (*ijārah*). Historically, possession was understood in predominantly physical terms, taking an object into one's hand, transferring it to one's premises,

or otherwise exercising tangible control. This understanding was rooted in an economy where commercial transactions involved primarily tangible commodities: foodstuffs, textiles, livestock, real estate, and precious metals. The Prophetic prohibition against selling foodstuffs before taking possession (*ḥattā yaqbiḍah*) reflects this material orientation.

1.2 Problem Statement

The emergence of the digital economy, characterized by intangible assets, electronic transactions, cross, border instantaneous transfers, and decentralized financial instruments, has rendered the classical physical conception of possession increasingly inadequate. Digital assets such as cryptocurrencies (Bitcoin, Ethereum), digital securities, software licenses, cloud, stored data, and mobile money balances exist without physical substance. Control over these assets is exercised through cryptographic keys, account credentials, legal entitlements, and technological access protocols, not through physical custody. This transformation generates a fundamental juristic question: Can constructive possession (*al-qabd al-ḥukmī*), the legal recognition of control without physical custody, satisfy the Shariah requirements for valid commercial transactions? If so, under what conditions and with what jurisprudential justifications?

1.3 Research Gap

A review of existing literature reveals several limitations. First, most classical and contemporary studies on possession focus on tangible assets or traditional financial instruments (checks, bills of exchange, bank drafts). Second, existing research on digital assets primarily addresses their permissibility (*ḥalāl* or *ḥarām*) rather than the specific question of possession. Third, the studies that do address possession in digital contexts are largely fragmented, focusing on individual asset classes without developing a coherent theoretical framework. Fourth, significant disagreement exists among contemporary scholars regarding the evidentiary sufficiency of digital control, with little systematic comparative analysis of the competing positions.

1.4 Research Objectives

This study aims to:

1. Articulate the essential nature and constitutive elements of possession in Islamic jurisprudence across the four major schools;
2. Identify and categorize the contemporary forms of possession emerging in digital economic transactions;
3. Determine the Shariah validity of constructive possession as applied to digital assets;
4. Develop a coherent jurisprudential framework for evaluating possession in intangible asset transactions;
5. Provide practical guidance for Shariah compliance in digital commercial transactions.

2. Literature Review

2.1 Classical Conceptions of Possession

Linguistic Definition: The Arabic term *qabd* linguistically signifies taking, grasping, or seizing an object with the hand, holding firmly, and acquiring control. Al-Jurjānī defines it as "the gathering of a thing with the hand and taking it" (*al-qabd: ḍamm al-shay' bi al-yad wa akhdhuh*).

Jurisprudential Definitions: The four schools exhibit remarkable convergence on the functional essence of possession despite terminological variations:

- **Hanafi School:** Possession (*qabd*) consists of *takhliyah* (vacating or relinquishment), the seller's removal of all obstacles to the buyer's exercise of proprietary control. Physical custody is not required for most assets, except for *ribawi* commodities (gold, silver, foodstuffs measured by weight or volume). Imām Abū Ḥanīfah's formulation emphasizes substantive capacity to dispose rather than formal physical transfer.
- **Maliki School:** Possession is established when a person acquires the capacity to derive benefit from an object and prevent others from accessing it. Imām Mālik's pragmatic approach prioritizes effective control over formal custody.
- **Shafi'i School:** Possession occurs when customary (*'urfī*) use of property becomes practically possible. The Shafi'i emphasis on customary practice anticipates contemporary arguments for digital possession.

- **Hanbali School:** Any actual or customary exercise of control, whether physical or constructive, constitutes valid possession. The Hanbali recognition of constructive possession (al, qabd al, ḥukmī) provides direct precedent for digital applications.

Synthesis: Across the four schools, the essential elements of possession are: (a) capacity to dispose of the property (al, tamakkun min al, taṣarruf), (b) ability to derive benefit (al, intifāʿ), and (c) power to exclude others (al, manʿ). Physical custody serves as evidence of these capacities but is not identical to their essence.

2.2 Constructive Possession in Classical Jurisprudence

The concept of constructive possession (al, qabd al, ḥukmī) has deep roots in Islamic legal tradition. Classical jurists recognized several forms of non-physical possession:

1. **Possession through an agent (wakīl):** The agent's taking possession is legally equivalent to the principal's direct possession (qabd al, wakīl ka, qabd al, muwakkil).

2. **Symbolic possession (al, qabd bi, al, dalālah):** Delivery of keys to a house, transfer of warehouse receipts, or demarcation of real estate boundaries constitute valid possession despite the absence of physical custody.

3. **Possession through legal registration (al, tasjīl al, ʿaqārī):** Contemporary jurists including Dr. Muṣṭafā al, Zarqāʾ and Dr. Wahbah al, Zuḥaylī have affirmed that official registration of real property transfers constitutes constructive possession, as it establishes legal entitlement and the capacity to compel physical delivery through judicial process.

The principle established by Imām al, Sarakhsī, "possession is whatever people customarily regard as possession" (al, qabd mā taʾārafa ʿalayhi al, nās annahu qabd), provides the foundational maxim for adapting possession doctrine to changing commercial practices.

2.3 Contemporary Scholarship on Digital Possession

Review of contemporary literature reveals several significant contributions:

Prof. Dr. Salman's study on "Shariah Rulings on Possession in Contemporary Commercial Transactions" analyzes emerging possession forms but predates major digital asset developments (c. 2010). Dr. Shahab Nimat Khan's research on "The Concept of Possession in Financial Transactions" examines possession in modern banking instruments but does not address decentralized digital assets. Dr. Muhammad Muʿādh's PhD dissertation on "The Shariah Concept of Possession in Modern Financial Transactions" covers checks, credit cards, and bank drafts but lacks systematic treatment of cryptocurrency, digital wallets, and cloud, based assets.

The Islamic Fiqh Academy (OIC) has issued several relevant resolutions. Resolution No. 63 (1990) affirms that constructive possession is sufficient for contract validity when legal or customary control is established. Resolution No. 53 (2006) recognizes electronic payment transfers as constructive possession when funds are under the beneficiary's effective control. AAOIFI Shariah Standard No. (various) on stock trading and electronic transactions similarly recognizes digital records as evidence of possession.

Despite these contributions, a comprehensive framework specifically addressing possession in the digital economy remains undeveloped.

3. Research Methodology

3.1 Research Design

This study employs a qualitative, doctrinal, and comparative jurisprudential methodology. The research design integrates three complementary approaches:

1. **Textual Analysis (Naṣṣī):** Direct examination of Qur'anic verses, Prophetic traditions (aḥādīth), and classical jurisprudential texts (uṣūl and furūʿ) to establish foundational principles of possession.

2. **Comparative Jurisprudence (Fiqh Muqāran):** Systematic comparison of the four Sunni schools' positions on possession to identify points of convergence, divergence, and the evidentiary basis for each.

3. **Contemporary Application (Taṭbīqī):** Analysis of modern digital economic transactions through the lens of established

jurisprudential principles, with particular attention to customary practice ('urf) as a source of legal reasoning.

3.2 Data Collection

Data were collected from three categories of sources:

Primary Sources: The Qur'an (with classical exegeses including al, Qurṭubī, Ibn Kathīr), the Six Authentic Books (al, Kutub al, Sittah), and classical fiqh works including al, Sarakhsī's al, Mabsūṭ, al, Kāsānī's Badā'i' al, Ṣanā'i', Ibn 'Ābidīn's Radd al, Muḥṭār, al, Nawawī's al, Majmū', and Ibn Qudāmah's al, Mughnī.

Secondary Sources: Contemporary fatwa collections from the Islamic Fiqh Academy (OIC), AAOIFI Shariah Standards, national dar al, ifta institutions (Saudi Arabia, Egypt, Pakistan, Kuwait), and peer, reviewed journal articles on Islamic finance and digital assets.

Tertiary/Empirical Sources: Observation of digital payment systems (JazzCash, EasyPaisa, Sadapay, Nayapay), cryptocurrency platforms (Binance, OKX), e, commerce marketplaces (Daraz, Amazon), and banking transfer mechanisms.

3.3 Analytical Framework

Analysis proceeds through three stages:

Stage One: Deconstruction, Identifying the essential constitutive elements of possession in classical jurisprudence across the four schools.

Stage Two: Reconstruction, Synthesizing a unified theoretical framework that distinguishes between the formal indicators of possession (physical custody, documentation, registration) and its functional essence (control, benefit, exclusion).

Stage Three: Application, Applying the reconstructed framework to specific digital asset classes and transaction types.

4. Findings

4.1 The Essential Elements of Possession in Islamic Law

The comparative analysis reveals that despite terminological variations, the four schools converge on the following essential elements of possession:

Element	Classical Formulation	Digital Application
Capacity to Dispose (al, tamakkun min al, taṣarruf)	Buyer can sell, gift, or lease the property	User can transfer, sell, or delete digital asset
Ability to Derive Benefit (al, qudrah 'alā al, intifā')	Buyer can use the property for its intended purpose	User can access, utilize, or consume digital service
Power to Exclude Others (al, man')	Buyer can prevent third parties from using property	User can restrict access via passwords, encryption, permissions
Risk Allocation (ḍamān)	Loss liability transfers from seller to buyer upon possession	Legal/economic risk transfers upon digital transfer confirmation

Finding 1: The Hanafi formulation of possession as *takhliyah* (vacating obstacles to control) is particularly adaptable to digital contexts, as it does not require physical handling. Imām al, Kāsānī explicitly states: "Finger, based possession (al, qabḍ bi, al, barājim) is not required, for the meaning of possession is capacity, vacating, and removal of obstacles customarily and actually."

4.2 Contemporary Forms of Digital Possession

The study identifies six major categories of digital possession:

Category 1: Cryptographic Possession (Cryptocurrencies)

In cryptocurrency systems, control is exercised through private cryptographic keys. The holder of the private key is customarily recognized as the owner and possesses the capacity to transfer, sell, or hold the digital currency. This constitutes constructive possession (*qabd ḥukmī*), as the asset exists only as a distributed ledger entry.

Category 2: Account, Based Possession (Digital Wallets, E, Money)

Mobile money applications (EasyPaisa, JazzCash) and digital wallets provide users with balance visibility, transfer capability, expenditure control, and exclusive access through login credentials or biometric authentication. These features satisfy all three essential elements of possession.

Category 3: License, Based Possession (Software, Digital Services)

Software licenses and digital service subscriptions grant users the right to use the product, exclude others (via license terms and technical restrictions), and derive benefit. The purchase of a license constitutes possession of the usufruct (*manfa'ah*), not of the software as a physical object.

Category 4: Virtual Code Possession (Gift Cards, Vouchers)

Digital gift cards provide purchasers with unique alphanumeric codes that can be redeemed for goods or services. The code holder possesses exclusive redemption rights, immediate usability, and full control over redemption timing. Contemporary fatwa, issuing bodies recognize this as constructive possession.

Category 5: Cloud Storage Possession

Cloud storage services (Google Drive, Dropbox, iCloud) provide users with file storage, modification, sharing control, and deletion authority. Users can derive benefit, control access, and prevent unauthorized use—all elements of valid possession.

Category 6: Electronic Securities Possession (Online Stocks, ETFs)

Digital securities trading platforms record ownership through electronic book entries. The investor possesses the capacity to sell, transfer, or

hold securities and bears the risk of price fluctuation. The Central Depository Company's (CDC) electronic records serve as evidence of constructive possession.

4.3 Juristic Positions on Digital Possession

Majority Position (Constructive Possession Valid):

The Islamic Fiqh Academy (OIC), AAOIFI, and most contemporary fatwa, issuing bodies affirm that constructive possession suffices for digital transactions when:

1. The beneficiary has effective control over the asset or funds;
2. Legal entitlement is established through verifiable documentation;
3. Customary practice (*'urf*) recognizes the transfer as possession;
4. The risk of loss (*ḍamān*) has transferred to the acquirer.

Minority Position (Physical Possession Required):

Some contemporary scholars, particularly among strict Shafi'i traditionalists, maintain that ribawi transactions (currency exchange, gold/silver sales) require actual physical possession (*taqābuḍ ḥissī*) at the contract session. They argue that electronic book entries do not constitute sufficient possession for such sensitive transactions.

Resolution: The majority position is more consistent with the functional essence of possession as articulated across the four schools and with the customary practice of contemporary digital commerce. The minority position, while reflecting legitimate caution regarding riba, imposes impractical requirements that would effectively nullify most digital financial transactions.

4.4 Conditions for Valid Constructive Possession in Digital Contexts

Based on the synthesis of classical principles and contemporary fatwas, the following conditions are necessary and sufficient for valid constructive possession:

Condition	Description	Shariah Basis
Effective Control (al, sayṭarah al, fa'liyyah)	User can unilaterally dispose of the asset	Element of tamakkun
Benefit Capacity (al, qudrah 'alā al, intifā')	User can derive intended benefit from asset	Element of manfa'ah
Exclusion Capacity (al, man')	User can prevent unauthorized access	Element of man'
Risk Transfer (intiḳāl al, ḍamān)	Loss liability has transferred to acquirer	Prophetic practice
Verifiable Documentation (al, tawthīq)	Legal/customary evidence of control exists	'Urf and maṣlaḥah
Absence of Uncertainty (intifā' al, gharar)	No material ambiguity about asset or rights	Prohibition of gharar

5. Discussion

5.1 Theoretical Implications

Reconceptualizing Possession: The findings support a functional rather than formal conception of possession in Islamic law. Physical custody serves as evidence of control but is not identical to the legal construct of possession. This functional understanding allows Islamic jurisprudence to accommodate new technologies without abandoning established principles.

The Role of 'Urf (Customary Practice): The principle that "possession is whatever people customarily regard as possession" (al, qabḍ mā ta'ārafa 'alayhi al, nās annahu qabḍ) emerges as the key mechanism for legal adaptation. As digital commerce has become customary, its control mechanisms have acquired presumptive legal validity.

Risk Allocation and Possession: The transfer of risk (ḍamān) upon possession serves a critical economic function, allocating loss to the party with practical control and insurance capacity. Digital possession satisfies this function because the acquirer can insure, secure, or otherwise manage digital asset risks.

5.2 Comparison with Previous Research

This study extends previous research in several significant respects. Unlike Prof. Dr. Salman's work, which focused on traditional financial instruments, this study addresses decentralized digital assets. Unlike Dr. Muhammad Mu'ādh's dissertation, which examined possession in banking instruments, this study develops a comprehensive theoretical framework applicable across digital asset classes. Unlike fragmented studies on individual digital assets, this study synthesizes a unified approach based on the functional elements of possession.

The findings are generally consistent with the Islamic Fiqh Academy's resolutions but provide more detailed operational criteria. The study also resolves apparent tensions between classical physical possession requirements and digital applications by distinguishing between essential elements (control, benefit, exclusion) and incidental indicators (physical custody).

5.3 Practical Implications

For Shariah Compliance Officers: Digital financial institutions should verify that their control mechanisms satisfy the six conditions identified in Section 4.4. Specifically, users must have unilateral transfer capability, benefit access,

exclusion authority, and verifiable documentation of ownership.

For Islamic Fintech Developers: Digital asset platforms should implement control mechanisms that provide users with (a) exclusive access credentials, (b) transfer authorization protocols, (c) transaction history documentation, and (d) dispute resolution mechanisms. Cryptographic private key management systems satisfy possession requirements when users maintain exclusive key control.

For Regulatory Authorities: Islamic banking regulations should explicitly recognize constructive possession as satisfying Shariah requirements for digital transactions, while maintaining distinctions between ribawi and non-ribawi asset classes.

For Individual Muslims: Digital asset transactions (cryptocurrency purchases, e-commerce, mobile money transfers) are generally permissible when conducted through platforms that provide users with effective control, documentation, and risk transfer. Caution is warranted in transactions involving ribawi assets (currency exchange, gold/silver) where physical possession is traditionally required, though the majority position permits constructive possession.

5.4 Limitations and Future Research

This study has several limitations. First, the rapid evolution of financial technology means that new digital assets (e.g., AI, managed portfolios, decentralized autonomous organizations, tokenized real assets) may present possession issues not specifically addressed. Second, the study primarily examines Sunni jurisprudence; Shia and other Islamic legal traditions may have different formulations. Third, the study does not extensively address cross-border jurisdictional conflicts where different legal systems have competing possession standards.

Future research should examine: (a) possession in decentralized autonomous organizations (DAOs) where no single party exercises exclusive control, (b) possession of AI-generated assets where

ownership attribution is contested, (c) possession of fractionalized digital assets (tokenized real estate), and (d) the interaction between constructive possession and bankruptcy/insolvency proceedings.

6. Conclusion

6.1 Summary of Contributions

This study makes three primary contributions to Islamic commercial jurisprudence:

First: Theoretical Refinement. The study demonstrates that possession in Islamic law is fundamentally a functional construct, the capacity to dispose, derive benefit, and exclude others, rather than a formal requirement of physical custody. This functional understanding resolves the apparent tension between classical jurisprudence and digital economic transactions.

Second: Operational Criteria. The study identifies six necessary and sufficient conditions for valid constructive possession in digital contexts: effective control, benefit capacity, exclusion capacity, risk transfer, verifiable documentation, and absence of uncertainty. These criteria provide practical guidance for Shariah compliance assessment.

Third: Jurisprudential Synthesis. The study synthesizes classical principles from the four Sunni schools, contemporary fatwas, and empirical observations of digital commerce into a coherent framework applicable across digital asset classes.

6.2 Key Findings

1. The essential elements of possession, capacity to dispose, ability to derive benefit, power to exclude others, are adequately satisfied by digital control mechanisms (passwords, private keys, account credentials, legal entitlements).
2. Constructive possession (al-qabd al-ḥukmī) is firmly established in classical jurisprudence through agency, symbolic delivery, registration, and customary practice.
3. Digital assets (cryptocurrencies, e-money balances, software licenses, cloud-stored data, digital gift cards, electronic securities) can be

validly possessed through constructive possession when the six specified conditions are met.

4. The principle that "possession is whatever people customarily regard as possession" (al, qabḍ mā ta'ārafa 'alayhi al, nās annahu qabḍ) provides the legal mechanism for adapting classical doctrine to digital commerce.

5. The majority of contemporary fatwa, issuing bodies (Islamic Fiqh Academy OIC, AAOIFI, national dar al, ifta institutions) recognize constructive possession as sufficient for digital transactions, with the minority requiring physical possession for ribawi transactions.

6. Islamic jurisprudence possesses sufficient inherent flexibility, through concepts such as 'urf (customary practice), maṣlaḥah (public interest), and qiyās (analogical reasoning), to accommodate technological change without compromising core principles.

6.3 Recommendations

For Islamic Financial Institutions:

- Develop Shariah, compliant digital asset products that provide users with verifiable control and documentation
- Implement clear possession transfer protocols in electronic contracts
- Distinguish between ribawi and non, ribawi digital assets for possession requirements

For Regulatory Bodies:

- Recognize constructive possession as satisfying Shariah requirements for digital transactions
- Develop standardized documentation requirements for digital asset possession
- Coordinate cross, border recognition of constructive possession standards

For Future Research:

- Investigate possession in decentralized autonomous organizations (DAOs)
- Examine AI, generated assets and ownership attribution
- Study constructive possession in Islamic insolvency proceedings

6.4 Concluding Remarks

The digital economy is not a transient phenomenon but the permanent infrastructure of

contemporary commerce. Islamic jurisprudence, with its rich tradition of adapting legal principles to changing circumstances through 'urf, maṣlaḥah, and ijtihād, is well, positioned to provide coherent guidance for Muslims navigating this new economic reality. The concept of constructive possession, rooted in classical jurisprudence yet capacious enough to encompass digital control, offers a theoretically sound and practically workable solution to the challenge of possession in intangible asset transactions.

The alternative, insisting on physical possession in digital contexts, would effectively exclude Muslims from substantial portions of contemporary commerce, contradicting the Shariah's fundamental orientation toward facilitation (taysīr) and the removal of hardship (raf' al, ḥaraj). The findings of this study affirm that Islamic law provides a viable, ethically grounded framework for digital economic participation, and that constructive possession serves as the essential juristic bridge between classical principles and contemporary practice.

Novelty/Contribution Statement: This study is the first to systematically develop a functional framework for constructive possession (al, qabḍ al, ḥukmī) applicable across all major digital asset classes, synthesizing classical jurisprudential principles from the four Sunni schools with contemporary fatwa, issuing body resolutions, and providing operational criteria for Shariah compliance assessment in digital economic transactions.

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