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Digital Assets as Joint Marital Property in the Perspectives of Islamic Law and Indonesian Positive Law

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Abstract

Technological advancements have shifted the form of marital property from physical assets to digital assets possessing economic value. Marriage laws do not specifically regulate digital assets as marital property, thereby triggering legal uncertainty when digital assets become disputed in divorce. This study aims to analyze the legal standing of digital assets as marital property from the perspectives of Islamic law and Indonesian positive law, as well as to examine the mechanisms for proving and distributing digital assets as marital property in divorce. This research employs a normative legal method, using statutory and conceptual approaches. Research findings indicate that under Indonesia positive law, digital assets are categorized as intangible movable property and recognized as marital property. Supporting regulations, such as the Electronic Information and Transactions law, further reinforce the status of digital assets as commodities with economic value. Moreover, from an Islamic law perspective, digital assets meet the criteria of al-Mal (property) and Mutaqawwim (valuable/usable), thereby qualifying them as sharia objects in marital property. In court disputes regarding marital property, judges essentially adhere to applicable legal provisions, though in certain circumstances, they may consider the principle of distributive justice. In conclusion, digital assets are legally recognized as marital property under both Positive Law and Islamic Law provided they were acquired during a valid marriage and must be distributed equitably upon dissolution of the marriage, although practical challenges remain in tracing and proving the existence of such marital assets in the form of digital assets.

Keywords: *Digital Assets, Marital Property, Islamic Law, Positive Law*

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Introduction

Marriage originates from the Arabic word *an-nikāḥ*, which denotes uniting, binding, or entering into an intimate relationship between husband and wife. According to Indonesian positive law—specifically Law Number 1 of 1974 concerning Marriage—marriage is defined as an outward and inward bond between a man and a woman as husband and wife, formed with the purpose of creating a happy and enduring family based on the Belief in the One and Only God (Firmansyah, 2026). This definition demonstrates that marriage is not merely a standard civil contract, but an institution endowed with profound spiritual, emotional, and legal purposes.

Realizing these marital objectives requires stability across various dimensions of life, particularly economic welfare. The economic well-being of a family serves as a fundamental pillar sustaining domestic harmony and continuity. In meeting the family's economic needs, spouses may acquire and manage assets throughout the marriage, either collaboratively or through their respective individual endeavors. Wealth accumulated during marriage is designated as joint marital property (*harta bersama*) under both Indonesian statutory law and Islamic law. In Islamic jurisprudence as applied in Indonesia, joint property is regulated under Article 1 letter f of the Compilation of Islamic Law (*Kompilasi Hukum Islam* / KHI), which states that marital property or *syirkah* encompasses property acquired either individually or jointly by husband and wife during the subsistence of a valid marriage. Accordingly, qualifying an asset as joint property depends not solely on who acquired it, but critically on the temporal circumstance and manner of its acquisition.

Technological development has fundamentally transformed how society creates, manages, and accumulates wealth. Present-day marital estates are no longer confined to physical assets—such as land, houses, cash, vehicles, or jewelry—but increasingly include digital assets possessing significant economic value. A prominent example is commercialized social media accounts. Although social media was originally designed to facilitate human communication (Rasmianisa et al., 2026), its function has evolved into a lucrative medium for revenue generation through product promotions, endorsements, and diverse commercial activities. Social media accounts characterized by substantial follower bases, active engagement metrics, proprietary content, and recurring monetization streams inherently possess quantifiable economic value for their account holders. A contemporary phenomenon involves public figures and social media influencers co-managing digital accounts with their spouses. Accounts created and cultivated jointly are systematically scaled to maximize revenue.

Article 91, paragraph (1) of the Compilation of Islamic Law categorizes joint property into tangible and intangible property. Tangible property includes immovable property, movable property, and marketable securities, whereas intangible property comprises rights and obligations attached to a person. This provision serves as a foundational baseline to determine the legal standing of digital assets, given that their specific classification remains uncodified under positive law. Beyond the question of legal standing, the evidentiary and division

mechanisms for digital assets in divorce proceedings remain ambiguous. Civil procedural law adheres to the principle of *actori incumbit probatio*, which imposes the burden of proof upon the party alleging a fact. Proving digital assets entails distinct complexities compared to physical assets; hence, the asserting party must substantiate their claims with clear and admissible evidence, ranging from the account registration date, administrative oversight, operational history, to the revenues generated.

Consequently, it is essential to determine whether commercially valuable digital assets, particularly social media accounts, can be legally qualified as joint marital property when disputed in matrimonial litigation. Divorce constitutes a legal event with profound and extensive consequences for all involved parties. Article 41 of the Marriage Law explicitly provides that the dissolution of marriage brings forth various legal ramifications, chief among which is the partition and distribution of property acquired during marriage.

To establish originality and identify research gaps regarding the status of digital assets as marital property, it is essential to map out relevant prior studies. While the discourse on digital assets within the realm of matrimonial law has attracted the attention of several researchers, existing studies generally focus on inheritance or intellectual property in a broad sense. One such study was conducted by Fuad Luthfi, Ahmadi Hasan, and Jalaluddin (2024) in an article titled "Challenges and Regulations in Digital Asset Inheritance: A Comparative Study of Positive Law and Islamic Law." Their research highlights how the emergence of digital assets—such as cryptocurrencies, e-wallets, and Non-Fungible Tokens (NFTs)—has created new legal challenges for inheritance distribution, primarily due to the absence of explicit regulations in both Indonesian positive law and Islamic law. Although that study offers a comprehensive examination of digital assets, its primary focus remains on inheritance and the need to harmonize inheritance laws.

A second relevant study is a thesis by Yudi Al Munandar (2025) titled "The Status of YouTube Content Monetization as an Object of Joint Marital Property from the Perspective of Marriage Law." This research specifically examines income derived from YouTube content monetization as a subject of joint property disputes following divorce within the framework of national marriage law. However, the scope of analysis in the thesis does not yet deeply explore a comprehensive comparison with the perspective of Islamic Law—particularly regarding the classification of property and the principle of *syirkah* (partnership) as applied to creative digital assets.

Furthermore, a study conducted by Bismar Siregar (2025) in the journal *Judge*, titled "The Division of Intellectual Property Royalties as Joint Marital Property Post-Divorce: Perspectives from Positive Law and Islamic Law"—examines how intellectual property rights (IPR) and royalty earnings can be classified as joint marital property upon divorce. Although this research bridges positive law and Islamic law regarding intangible assets, its scope focuses primarily on conventional forms of royalties (such as copyrights for artistic or musical works) and has not yet

specifically addressed the dynamic dimensions of modern digital assets based on interactive digital platforms, such as social media accounts and the monetization of digital creative content.

Based on this mapping, a clear research gap emerges regarding the lack of comprehensive studies integrating Indonesian positive law and Islamic law in the examination of digital assets—such as social media accounts and content monetization—as objects of marital property. Existing literature tends to be fragmented, focusing primarily on inheritance or conventional royalties; meanwhile, there is a lack of in-depth analysis regarding evidentiary standards and the concept of intangible assets—within the framework of the Compilation of Islamic Law—as applied to digital assets, which are inherently volatile and tied to personal accounts. Consequently, this research aims to address this normative gap, thereby providing legal certainty and fairness regarding post-divorce marital property disputes.

Methods

This study employs a normative legal research method focusing on the norms, principles, and legal doctrines of both Islamic jurisprudence and Indonesian positive law concerning the status of digital assets as joint marital property. The research utilizes statutory and conceptual approaches. The statutory approach is conducted by reviewing and analyzing relevant legislative acts and regulatory instruments (Bachtiar, 2018). The conceptual approach examines core legal concepts, including sources of law, legal institutions, and the fundamental functions of law. Legal materials were collected through library research by compiling, analyzing, and synthesizing pertinent academic literature, statutory texts, and legal commentaries.

Results and Discussion

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

Digital transformation has dramatically altered the social, economic, and legal landscape. This technological evolution has driven a fundamental transition from tangible physical property to intangible digital assets with substantial economic value (Taufiqurokhman, 2025). The emergence of influencers, content creators, and cryptocurrency market participants has established a new economic ecosystem entirely reliant on digital accounts and assets. Digital account ownership can now be legally classified as property, as individuals increasingly rely on digital channels to generate revenue and economic benefits. While monetary income represents material gain, popularity and persuasive influence represent non-material capital leveraged by digital creators to generate tangible earnings (Zelminizar, 2019).

Influencers maintain vast social media followings that directly impact consumer behavior. This capacity to influence is widely utilized by commercial enterprises for advertising and marketing purposes. Consequently, high-traffic social media accounts carry significant material value, enabling their proprietors to monetize digital reach (Riani et al., 2025). Social media

accounts, which initially served purely communicative functions, have thus evolved into productive digital capital possessing measurable valuation through monetization programs, intellectual property royalties, and commercial endorsement contracts (Setiawan et al., 2026).

In Islamic family law, this phenomenon necessitates a contemporary conceptual framework to classify and distribute digital marital assets. The conceptualization of digital assets as joint property is rooted in the doctrine of *musyārakah* (partnership/joint ownership) within *fiqh al-muʻāmalāt*, wherein all wealth acquired during the marriage is presumed to belong jointly to both spouses, with the exception of separate pre-marital property (*harta bawaan*) and personal gifts or inheritances (Wijaya, 2025). Under Islamic jurisprudence, property must satisfy the criteria of *al-māl* and *mutaqawwim*—namely, an asset possessing utility and economic value recognized as permissible (*ḥalāl*) under Sharia law. Financial digital assets such as cryptocurrencies have been formally recognized under Islamic jurisprudence as fulfilling the requirements of *māl* and *mutaqawwam* because they offer desired utility, can be stored in digital repositories, and command recognized economic value (Majelis Tarjih dan Tajdid PP Muhammadiyah, 2026). By legal analogy, commercial social media accounts equally satisfy these criteria.

A social media account can be classified as joint property if it functions as an economically productive asset. If an account was registered and developed prior to marriage, it retains the status of separate pre-marital property. However, if an account is acquired, operated, or co-managed by the spouses during the marriage, it falls under the purview of joint marital property. Even in cases of individually registered accounts, if marital collaboration produces monetized shared content (such as ongoing YouTube AdSense revenues), the resulting income stream qualifies as joint property for as long as it continues to yield revenue post-divorce. This aligns with Article 85 of the Compilation of Islamic Law (distinguishing separate and joint property) and Article 35, paragraph (1) of the Marriage Law, which stipulates that "property acquired during marriage becomes joint property".

Under positive civil law, Article 499 of the Indonesian Civil Code (*KUHPerdata*) defines property (*zaak*) as any good or right capable of being subject to proprietary ownership. Digital assets satisfy this definition because account owners exercise exclusive dominion, control, and possession via authentication credentials (email, username, password), which legally exclude third parties. Digital accounts thus constitute property, specifically classified as intangible movable property (*benda bergerak tidak berwujud*) under Article 503 of the Civil Code (Adyawan, 2024).

In the context of digital assets, social media accounts represent non-physical property capable of direct commercial exploitation. Monetization through endorsement contracts represents direct economic fruit derived from account management. The autonomous administration of an account falls under the concept of ownership rights pursuant to Article 570 of the Civil Code, which grants the owner the full right to freely enjoy and dispose of property,

provided such use does not violate laws, regulations, or the rights of others. Consequently, an account holder retains full proprietary rights over the utilization and commercial exploitation of the digital platform.

Evidentiary Mechanisms and Division of Digital Assets as Joint Property in Divorce Proceedings to Achieve Justice

Procedural law in the Religious Courts essentially mirrors the Civil Procedural Law applied in the General District Courts. Religious Court procedural law governs the procedural adjudication of disputes to apply substantive Islamic civil law (Khoirur Rofiq, 2022). Pursuant to Article 49 of Law Number 3 of 2006 amending Law Number 7 of 1989 on the Religious Courts, Religious Courts possess subject-matter jurisdiction over Muslim litigants in matters of marriage, inheritance, wills, grants, endowments (*waqf*), trusts, alms, and Islamic economic matters. In marriage cases, this jurisdiction encompasses divorce, custody, and matrimonial property partition. Grounds for divorce are codified under Article 116 of the Compilation of Islamic Law and the Elucidation of Article 39, paragraph (2) of the Marriage Law.

The procedural trajectory in divorce litigation encompasses structured stages: 1) Filing of the claim/petition (*Pengajuan gugatan*), 2) Court-annexed mediation (*Mediasi*), 3) Reading of the claim (*Pembacaan gugatan*), 4) Defense/Response (*Jawaban*), 5) Interlocutory judgment (*Putusan Sela*, if applicable), 6) Evidentiary hearing (*Pembuktian*), 7) Closing submissions/Conclusions (*Kesimpulan*), and 8) Final Judgment (*Putusan*).

The evidentiary stage is a critical phase where litigants present evidentiary materials to convince the bench of the truth of the contested legal facts (Mentari et al., 2026). Subekti defines proof as the judicial process of affirming legal facts to enable judges to determine whether a claim or defense is substantiated (Irsyaddur Rofiq, 2026). Both plaintiffs and defendants stand on equal footing in submitting admissible evidence. Admissible civil evidence under Article 164 of the *HIR* (*Herziene Inlandsch Reglement*) and Article 1866 of the Indonesian Civil Code comprises written documents, witness testimony, legal presumptions, confessions, and oaths.

In matrimonial property disputes, the evidentiary burden is governed by the principle of *actori incumbit probatio*, codified in Article 1865 of the Civil Code: "Whoever asserts a right or claims a fact to affirm their right or contest another's right is obligated to prove the existence of such right or fact". When the disputed property consists of digital assets, evidentiary proof requires specialized approaches distinct from physical asset tracing. The asserting party must establish: 1) The existence and exclusive control of the digital account, 2) The exact timestamp/date of account creation, 3) Revenue streams and earnings generated during the marriage; and 4) The respective operational contributions of each spouse in managing and scaling the account.

Litigants can substantiate claims through electronic documentation, including account interface screenshots, administrative dashboard data, analytics reports, banking transaction

histories, and ad revenue disbursements. Under the Indonesian electronic court (*e-court*) system, electronic evidentiary lists are filed prior to trial, while native digital devices (smartphones, laptops) can be produced in open court as primary corroborative evidence.

Crucially, the admissibility and probity of electronic evidence must satisfy the principle of chain of custody—ensuring an unbroken, verifiable audit trail from initial extraction to courtroom presentation. Because the Electronic Information and Transactions Law (*UU ITE*) lacks detailed procedural guidelines for civil evidentiary handling, judicial receptivity to electronic evidence can vary depending on individual judicial digital literacy (Bachsin et al., 2025).

Following evidentiary examination, the parties submit their written conclusions (*kesimpulan*) before judicial deliberation. In delivering judgment, judges must evaluate the holistic factual matrix to establish whether the digital asset constitutes joint property and how it should be allocated. In Islamic legal philosophy, this process is anchored in the principle of justice (*al-'Adl*), aimed at realizing the tripartite objectives of law: legal justice, legal certainty, and legal utility (*kemaslahatan*).

In joint property partition, justice is not mechanically defined as an automatic 50:50 equal division. Drawing upon Aristotle's classical doctrine of distributive justice, true equity is attained when rights and entitlements are allocated proportionally. When adjudicating digital assets, judges must evaluate the substantiated creative and commercial contributions of each spouse toward developing the digital entity into an income-generating asset. Thorough judicial assessment of spousal contribution is pivotal to achieving an equitable, proportional, and legally sound partition of digital joint property.

Conclusion

From the perspective of Indonesian positive law, digital assets—such as commercial social media accounts—are classified as intangible movable property (*benda bergerak tidak berwujud*) pursuant to Articles 499 and 503 of the Indonesian Civil Code (*KUHPerdata*). Insofar as these assets are acquired and/or developed during a lawful marriage and possess quantifiable economic value, they constitute joint marital property (*harta bersama*) under Article 35, paragraph (1) of the Marriage Law. Concurrently, from the perspective of Islamic jurisprudence, digital assets fulfill the essential criteria of *al-Māl* and *Mutaqawwim*, as they possess legitimate utility, economic value, are capable of being held or stored in possession, and are permissible for use under Sharia law. Consequently, they are recognized as legitimate objects of marital partnership (*syirkah*) pursuant to Article 1 letter f and Article 85 of the Compilation of Islamic Law (*KHI*).

Regarding the mechanism of evidentiary proof and division in divorce proceedings, the process is governed by the principle of *actori incumbit probatio* (Article 1865 of the Civil Code), whereby the party asserting that a digital asset constitutes joint property bears the burden of proving its existence, acquisition timeline, operational history, and commercial valuation. Evidentiary proceedings rely on electronic evidence (including account analytics, interface

screenshots, transaction/revenue histories, and access-log data on physical devices), the legal validity and integrity of which must be safeguarded through the strict application of the chain of custody principle. The subsequent division of digital assets within the Religious Courts is guided by the overarching principle of justice (*al-'Adl*) and Aristotle's theory of distributive justice. Judges are not bound to enforce an automatic equal split (50:50), but are empowered to allocate assets proportionally based on the tangible and substantiated contributions of each spouse in creating, managing, and monetizing the commercial digital asset.

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