“DIGITAL ASSETS AS PART OF HERITAGE OBJECTS: AN APPROACH TO INDONESIAN POSITIVE LAW AND CONTEMPORARY FIQH MAWARIS”

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Abstract

Technological developments and technological advancements are unavoidable for modern humans today. For example, technology has given rise to various forms of digital assets with economic value and legally valid ownership. This situation raises new questions regarding the status of digital assets as objects of inheritance under Indonesian positive law and contemporary Mawaris fiqh. This study aims to analyze the legal status of digital assets as inheritance property from the perspective of Indonesian positive law and contemporary Mawaris fiqh. This research was conducted using normative research methods with a juridical-comparative approach. The results indicate that pluralism in inheritance law in Indonesia has not fully addressed the complexity of inheritance issues in the form of digital assets. This has the potential to create legal uncertainty and trigger conflict between heirs. However, contemporary Mawaris fiqh views digital assets as al-amwal al-mutaqawwimah (inheritance) that must be inherited by heirs as long as they fulfill the elements of benefit and value. Therefore, legal reform that is responsive to the development of digital technology is needed, both through specific regulations for digital assets and strengthening more adaptive inheritance mechanisms.

Keywords: digital assets, positive law, contemporary Mawaris fiqh.

INTRODUCTION

Humans are creatures whose thought patterns continue to evolve over time, particularly through the influence of technological advancements. This technological advancement has led some people to convert their assets into digital forms, meaning that tangible assets are transformed into intangible or digital-based assets. Assets are valuable possessions in human life. In other words, assets are wealth owned by a person, whether in the form of money or other tangible objects (maulana, 2023, p. 1).

With the passage of time and technological advancements, the function and form of assets have shifted, from tangible or conventional forms such as gold, gems, and other valuables to digital assets. Digital assets are goods or objects contained within an electronic system that contain value that can be owned or controlled by individuals or legal entities (sukresna, 2024, p. 1).

The existence of digital assets raises complex questions regarding ownership, such as the ownership and recording of digital asset ownership, which is carried out through a digital system and can be directly controlled by the owner. This then goes hand in hand with the basic principle of social media account ownership, which is a type of digital asset that uses a username and password system to control it.

These digital assets are also evolving into payment methods or trade transactions. For example, digital technology has penetrated and significantly influenced transaction patterns and interactions in society, especially since the advent of various digital assets such as cryptocurrencies, digital wallets, and NFTs (Non-Fungible Tokens).

Over time, e-wallets have become one of the most prominent innovations, simplifying daily financial activities. Services like DANA, GOPAY, OVO, and ShopeePay facilitate various online transactions, making them highly suited to the needs of the digital age. Several studies also show that university students, part of the millennial generation, prefer using e-wallets because they recognize the benefits and convenience offered by this technology (Luthfi, 2024, p. 2213). From this reality, it can be understood that a digital asset does not have a real physical form, but the existence of a digital asset can only be owned with a digital/internet system

From an Indonesian legal perspective, discussions regarding the legal status of digital assets remain novel and challenging. On the one hand, digital assets are beginning to be recognized as tradable commodities on the futures market, based on Regulation of the Indonesian Commodity Futures Trading Regulatory Agency (Bappebti) No. 8 (2021) and Regulation of the Minister of Trade No. 99 of 2018. However, on the other hand, there is no comprehensive regulation that adequately and specifically governs ownership status and legal implications, particularly regarding property law and inheritance law (Komang Adi Wijaya, 2025, p. 847).

Social media accounts, as one of several digital assets whose access patterns are unique to their owners, pose further issues regarding the continuity of ownership after the owner's death. This is crucial due to their high economic value, which, if left unattended, will be wasted and even misused by irresponsible parties. The economic value generated through these digital assets is typically relatively large, for example, YouTube and Instagram accounts, which are now used not only for personal enjoyment but also as a means of generating wealth.

If viewed from a positive legal perspective, namely Article 583 of the Civil Code (KUHPerdata), a person's ownership rights to an object can be lost in several ways, namely being taken for the purpose of ownership, expiration, attachment, inheritance according to law or according to a will and by appointment or delivery. This law also regulates that the process of transferring assets from the heir to the heir is based on marital relations and blood relations/descent.

When someone dies, the law will automatically regulate that the assets they leave behind will be transferred to their heirs through an inheritance system. So the inheritance system is one of the steps that can be taken to maintain continuity of ownership of wealth assets, including digital assets in the form of social media accounts.

In Islamic law, assets are generally known as maal (مال) which according to Wahbah az-Zuhaili is defined as "something that is owned and needed by humans, whether in the form of objects (which are visible such as gold, silver, animals and plants) or the benefits of something (such as riding a vehicle, wearing clothes and occupying a place to live. Or in a more concise definition he says "everything that (according to custom) can be taken, stored and utilized" (az-Zuhaili, 2007 / 1427 H, p. 39).

Assets or maal (wealth) which in time will definitely be left behind by all humans in Islam are regulated in inheritance law (fiqh mawaris) which linguistically means "the transfer of a deceased person's wealth to another person is not limited to material possessions, but also includes knowledge, greatness, glory, honor and position (Athoillah, 2018, p. 1).

From the perspective of Islamic jurisprudence, there is no specific study of legal provisions regarding digital assets. Therefore, through this research, the author will examine the Qur'anic arguments, hadiths, and qiyas to obtain legal provisions regarding digital assets from the perspective of Islamic jurisprudence regarding this contemporary problem. This is a characteristic that distinguishes it from previous research conducted by previous researchers. Another urgency is because the positive legal framework in Indonesia does not yet have a clear position, even in Indonesian inheritance law only regulates inheritance in the form of movable and immovable objects. The absence of regulations that explicitly regulate the inheritance of digital assets in the Indonesian inheritance law system will create legal uncertainty, thus creating differences of opinion and debate about whether digital assets can be qualified civilly as objects of inheritance or not, which will then be closely related to the interests of the heirs concerned.

FORMULATION OF THE PROBLEM

Based on the description above, the research questions are as follows: 1. What is the position of digital assets from the perspective of positive law in Indonesia? 2. What is the position of digital assets from the perspective of contemporary Islamic jurisprudence?

RESEARCH METHODS

This research was conducted using a normative method, meaning that it focuses on examining positive legal norms and other relevant legal norms. Then, a statute approach was applied to relevant statutory regulations on digital assets and Islamic inheritance. Furthermore, a conceptual approach was used through an analysis of asset concepts, Islamic inheritance law, and the status of digital assets as legal objects with economic value. A comparative approach was also used by reviewing the practice of regulating digital asset inheritance in several other jurisdictions to identify a model that can be adopted in the Indonesian legal system.

The data sources in this study were drawn from primary legal materials in the form of statutory regulations, secondary materials including reading materials in the form of classical texts, books, journals, and scientific works related to digital assets and Islamic inheritance, and tertiary sources including encyclopedias, legal dictionaries, and supporting guidelines. The data collection technique used was library research, which was then analyzed using qualitative analysis methods to obtain systematic legal arguments.

RESEARCH RESULTS AND DISCUSSION

1. The Position of Digital Assets in the Indonesian Legal System

Indonesia is a country governed by the rule of law, governing all matters, both state affairs and the affairs of all its citizens, based on applicable law. In the area of inheritance, for example, Indonesia still regulates inheritance based on the Civil Code (KUHPerdata). This law defines inheritance as encompassing all assets of the testator, both movable and immovable. It is undeniable that the Civil Code, established in the 19th century, cannot address all aspects of life that continue to evolve with changing times and technological advances, such as digital assets. This situation has led to legal norms lagging behind the social and economic realities of modern society.

In general, the object of legal study is about objects which we can then simplify as a form of assets. According to Article 499 of the Civil Code, "according to the understanding of the law, what is called property is every item and every right that can be controlled by ownership rights." If understood theoretically, this has a fairly broad meaning, because it includes both tangible and intangible objects. This is considering that Articles 506-518 of the Civil Code explain that movable objects include transferable goods such as vehicles, jewelry, savings, valuables, and the like, while immovable objects are objects that cannot be moved or attached to the ground such as land and buildings. Inheritance objects in current inheritance law have experienced many significant dynamics of change. Inheritance is no longer limited to wealth in the form of physical objects, but new aspects have emerged along with social, cultural and technological changes. (Putra, 2025, p. 6).

One of the legal reform efforts for technological developments is the concept of objects, for example in the formation of laws on the protection of Intellectual Property Rights (IPR) which categorizes copyright, trademark patents, trade secrets, designs, integrated circuit layouts as objects. Not only that, in its development, Law No. 19 of 2016 concerning amendments to Law No. 11 of 2008 concerning electronic transactions created a new way of thinking about objects, where "information" was born as a concept of objects. This electronic-based information is then explicitly defined through Article 1 number 1 of the ITE Law as follows:

"Electronic information is any or a collection of electronic data, including but not limited to writing, sound, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegrams, telex, telecopy, or similar forms, letters, signs, numbers, codes, access points, symbols, or perforations that have been processed and have meaning or can be understood by those who are qualified to understand them."

The term electronic information can then be equated with the term digital assets, as both share several similarities: both are collections of data in digital form stored on electronic media. This aligns with Abdul Salam's opinion that digital assets are essentially electronic information itself. (Gunawan, 2022, p. 7)

YouTube and Instagram accounts are among the digital assets widely used and frequently accessed by the general public. These can be categorized as digital assets by comparing the physical elements of YouTube and Instagram with those found within civil law classifications and reviewing the definition of objects. The elements we can conclude are as follows:

Object Elements	**Youtube & Instagram Account Elements**
Can be attached to ownership rights / can be controlled	Can be attached to ownership rights / can be controlled
Tangible / intangible objects	Tangible / intangible objects
Ownership can be transferred	Ownership can be transferred
Contains economic value	Contains economic value

The existence of elements of similarity or similarity is a legal approach that can currently be used as a legal basis. On the other hand, in addition to the lack of specific regulations regarding digital assets in Indonesia, the predominantly Muslim community also lacks a foundation for Indonesian inheritance law. This then results in a tendency for inheritance policies to be applied inconsistently, relying on local interpretations or customs. Such conditions often make it difficult for those seeking to claim their rights in accordance with sharia provisions. In response to this need, the government issued Presidential Instruction No. 1 of 1991, which subsequently ratified the enactment of the Compilation of Islamic Law (KHI). The KHI was compiled as the primary guideline in the fields of inheritance, marriage, and waqf, referring to the principles of Islamic law. (Maizidah Salas, 2025, p. 277)

2. The position of digital assets in the perspective of Islamic fiqh

The word "fiqh mawaris" consists of two words: fiqh and mawaris. The word "fiqh" is mentioned 20 times in the Quran, meaning to understand. This word is similar to the word "ilm," which means to comprehend. However, the difference is that while "knowledge" is something that can be obtained through revelation or reasoning, fiqh is an understanding gained through reasoning, although the reasoning here is in an effort to understand the text of the Quran and the Hadith of the Prophet Muhammad (peace be upon him). (Rofiq, 2012, p. 1).

In its early stages, the term fiqh was known as a term encompassing the understanding of any issue, not limited to legal matters. It encompassed all aspects of religious teachings, including faith, attitudes, actions, morals, and law. This explanation can be seen, for example, in the work attributed to Abu Hanifah on matters of faith, called al-Fiqh al-Akbar. However, in subsequent developments, the term fiqh became a technical term whose scope was limited to practical laws ('amaliyah) derived from the Qur'an and the Sunnah (Rahman, 1979, p. 100).

Etymologically, the word "mawaris" is the plural form of the word "mirats," which means "inheritance." For example, the word of Allah SWT:

وَوَرِثَ سُلَيۡمَٰنُ دَاوُۥدَۖ وَقَالَ يَٰٓأَيُّهَا ٱلنَّاسُ عُلِّمۡنَا مَنطِقَ ٱلطَّيۡرِ وَأُوتِينَا مِن كُلِّ شَيۡءٍۖ إِنَّ هَٰذَا لَهُوَ ٱلۡفَضۡلُ ٱلۡمُبِينُ ١٦

It means :

"And Solomon inherited David, and he said: "O people, we have been given understanding of the voices of birds and we have been given everything. Indeed (all) this is truly a real gift." [An Naml:16]

From this verse, it can be understood that Solomon (AS) inherited David (AS) in terms of succeeding David's prophethood and kingdom and inheriting his knowledge.

Mawaris is also called faraidh, the plural form of faridhah. This word is derived from the word faradha, which means "determination" or "determination." This word is mentioned frequently in the Quran, for example in Surah al-Baqarah 2:237 as follows:

وَإِن طَلَّقۡتُمُوهُنَّ مِن قَبۡلِ أَن تَمَسُّوهُنَّ وَقَدۡ فَرَضۡتُمۡ لَهُنَّ فَرِيضَةٗ فَنِصۡفُ مَا فَرَضۡتُمۡ إِلَّآ أَن يَعۡفُونَ أَوۡ يَعۡفُوَاْ ٱلَّذِي بِيَدِهِۦ عُقۡدَةُ ٱلنِّكَاحِۚ وَأَن تَعۡفُوٓاْ أَقۡرَبُ لِلتَّقۡوَىٰۚ وَلَا تَنسَوُاْ ٱلۡفَضۡلَ بَيۡنَكُمۡۚ إِنَّ ٱللَّهَ بِمَا تَعۡمَلُونَ بَصِيرٌ ٢٣٧

It means:

"If you divorce your wives before you mix with them, even though you have already determined the dowry, then pay half of the dowry that you have determined, unless your wives forgive or are forgiven by the person holding the marriage bond, and your forgiveness is closer to piety. And do not forget the virtues between you. Indeed, Allah is All-Seeing of everything you do. [Al Baqarah:237]

Based on this argument, it can be understood that the word faraidh or faridhah means provisions. If this word is used to indicate inheritance, then the word faraidh means provisions regarding who is entitled to receive the inheritance (heirs), how much portion of the inheritance left by a deceased person, and also provisions on who is not entitled to receive a share and provisions for calculating it.

Islamic jurisprudence is a part of Islamic law study that is not a standard unification and can no longer be interpreted, but rather a normative force that always makes, places and treats or considers the interests of the people as the substance of its flexible position, as long as it is not oriented to sacrifice the truth of the objectives of sharia or what we know as maqashid sharia of Islamic law itself. Therefore, the interpretation of the development of science and technology and the problems of the people in the social reality of society in Islamic law is a non-negotiable need.

Therefore, the scholars then grouped the sources of Islamic law into two parts, namely one part is the sources agreed upon (muttafaq) by the scholars and the other part is the sources of law that are disputed (mukhtalaf). The sources of Islamic law that are agreed upon by the scholars are the Qur'an, Hadith, Ijma' and Qiyas, while those that are disputed are other than the four, namely Istihsan, Mashlahah Mursalah, Istishab, Syar'u man qablana, Syadz adz-dzariah and so on.

From the Islamic legal principles mentioned above, Qiyas is the most feasible source and methodology for developing and exploring legal needs for emerging (contemporary) issues, including the position of digital assets in inheritance matters.

Qiyas is a method of using reason to explore sharia law that has not been clearly established in the Qur'an and Sunnah. Meanwhile, according to scholars of ushul fiqh (Islamic jurisprudence), including Abdul Wahab Khalaf, qiyas is the connection of a problem or event for which there is no text to another problem or event for which there is a text, based on the similarities between the two problems or events in their legal basis (Muslimin, 2019, p. 244).

Through this qiyas, in the Islamic jurisprudence, several types of inherited things can be grouped, namely :

1. Immovable Property

   According to the majority of scholars, immovable property is anything that cannot be changed or moved from one location to another. In simple terms, fixed assets include land. Meanwhile, according to the Maliki school, immovable property also includes anything that has a fixed foundation and cannot be changed or moved from one location to another while maintaining its condition and form. Based on this definition, the

Maliki school considers trees and buildings to be included in the category of immovable property (al-Kabisi).

2. Movable property other than Intellectual Property Rights

In positive law (Article 499 of the Civil Code), objects are termed goods, namely every object and every right that can be the object of ownership rights. Movable objects mean movable goods. There are two provisions regarding movable goods, namely movable goods due to their nature and movable goods due to the provisions of statutory regulations. According to Article 509 of the Civil Code, movable goods due to their nature are "goods that can move by themselves or be moved." Meanwhile, in Law No. 41 of 2004, it is defined that "movable goods are assets that cannot be exhausted due to consumption and other movable goods in accordance with the provisions of sharia and applicable laws and regulations."

Meanwhile, in terms of inheritance or inherited property (tirkah), it is not limited to objects that are not consumed, assets that are consumed also include inherited assets such as food, drinks, fuel with a limited supply that will be used up, perfume, etc. The types of movable objects that cannot be used up due to consumption are money, precious metals, securities, vehicles, Intellectual Property Rights, rental rights, and other movable assets according to the provisions of sharia and applicable laws and regulations (see Civil Code article 16 paragraphs 1-2. According to al-Sayyid al-Bakri in the book I'anah ath-Thalibin volume 4 page 223, it is stated by scholars:

التركة ما خالفه الميت من مال أو حقوق

"Tirkah is a legacy or inheritance, whether in the form of property or rights"

3. Benda bergerak berupa Hak Movable Assets in the Form of Intellectual Property Rights (IPR)

Intellectual Property Rights (IPR) are property rights derived from the results of human ingenuity that produce products useful for the benefit of humanity. Creators and their heirs have the right to economically benefit from the results of intellectual creativity, which will continue to develop in line with the existence and development of human thought in the world.

Impacted movable assets, in accordance with laws and regulations and not in conflict with sharia principles, are intellectual property rights, as stipulated in Article 171 point d of the Compilation of Islamic Law (KHI), consisting of: (a) copyright, (b) trademark rights, (c) patent rights, (d) industrial design rights, (e) trade secret rights, (f) integrated circuit rights, (g) plant variety protection rights, and so on.

From this category, it can be understood that digital assets are classified as part of inherited assets, the distribution of which applies as with inherited assets in general.

This understanding is also strengthened by the opinions of scholars who group the distribution of assets according to each group and according to each group as follows:

1. Mal mutaqawwim and ghairu mutaqawwim

   Mal mutaqawwim or valuable assets are any wealth that is kept by a person and the Sharia' requires its use and the method used to obtain it is in a way that is permitted by the provisions of the Sharia'. For example, goat meat is halal for consumption, but if the slaughter is not in accordance with the Sharia' guidelines then the goat meat becomes haram for consumption on the basis that it is haram because it is not in accordance with the Sharia'. Meanwhile, mal ghairu mutaqawwil or worthless assets are assets that are not in savings or owned by other people or assets whose benefits cannot be taken, whether in terms of type, method of obtaining them or how they are used.
2. Mithli and Qimi assets

   Mithli assets are assets that are comparable or similar to each other, without any excess or deficiency in any of their parts (physical parts), or in other words, assets whose type is easily obtained. Qimi assets, on the other hand, are assets that have no equivalent in the market, or whose equivalents exist, but the value of each unit is different. Over time, mitsli assets can transform into qimi assets or vice versa under the following conditions:

a. If mitsli assets are difficult to obtain in the market, they automatically transform into qimi assets.

b. If there is a mixture of two mitsli assets of two different types.

c. If qimi assets have many equivalents in the market, they automatically become mitsli assets.

3. Istihlak and isti'mal (goods that are not obligatory)

Istihlak (goods that are obligatory) are assets that must be used up or can only be used once. Meanwhile, isti'mal (goods that are not obligatory) are assets that can be used repeatedly and whose existence and ownership rights will never be exhausted.

4. Manqul mall and ghairu manqul mall.

Mal manqul is property that can be moved, whether it is a tangible substance, from one place to another. Meanwhile, mal ghairu manqul is property that cannot be moved.

Selainnya pembagian tersebut di atas, ada juga sebagian ulama yang menambahkan pembagiannya : *mal 'ain* dan *mal dayn, mal al-'ain* dan *mal al-naf'i, mal qabil li al-qismah* dan *mal ghairu qabil li al-qismah, mal ashal* dan *mal tsamarah, mal khas* dan *mal 'am.* (Maria Ulfah, 2024)

In addition to the divisions mentioned above, some scholars also add to these divisions: mal 'ain and mal dayn, mal al-'ain and mal al-naf'i, mal qabil li al-qismah and mal ghairu qabil li al-qismah, mal ashal and mal tsamarah, mal khas and mal 'am. (Maria Ulfah, 2024).

CONCLUSION

Digital assets as objects of inheritance are part of the development of contemporary inheritance law, so regulations need to adapt to new realities. Under positive law, digital assets in their various forms can be classified as assets with economic value, and are currently regulated under the Civil Code and the Electronic Information and Transactions Law. Although in reality there are no specific regulations, in general principle regarding inherited assets, they have economic value, and in terms of ownership, they strengthen their position as parts that can be inherited.

Meanwhile, in contemporary Islamic jurisprudence, using an element of similarity approach (qiyas method) makes digital assets classified as al-amwal al-mutaqawwimah (valuable assets) as long as the object has an exchange value recognized by society. Therefore, the position of digital assets is the same as conventional assets and must be given and given settlement in accordance with the provisions of the Islamic fiqh.

Overall, both positive law and Islamic jurisprudence have sufficient flexibility to accommodate the existence of digital assets as heritage objects, thus requiring strengthening and ensuring regulations, education, and technical mechanisms to address the needs of society in the digital era.

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