

The Legal Status of Intellectual Property Rights as Marital Property in Marriage: Indonesian Positive Law and Islamic Law

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Abstract: The rapid growth of the creative economy and digital technology has elevated the strategic role of Intellectual Property Rights (IPR) as high-value assets in modern society. Within the context of marriage, a crucial legal question arises whether IPR can be considered as joint marital property, particularly in cases of divorce or inheritance or not. This study seeks to examine the legal status of IPR as marital assets under Indonesian positive law and the Compilation of Islamic Law (KHI), as well as to explore their distribution mechanisms from a legal perspective. This is a normative legal research conducted through library-based analysis, employing statutory and conceptual approaches. Primary legal sources, including national laws and the KHI, are analyzed alongside secondary legal materials such as scholarly journals, books, and relevant court decisions. A logical-deductive method is used to construct coherent legal arguments based on applicable norms and doctrines. The findings indicate that the economic rights attached to IPR may be classified as joint marital assets, as recognized in several court rulings. However, the absence of explicit statutory regulation necessitates progressive judicial interpretation to uphold fairness between disputing parties. This highlights the importance of consistent jurisprudence and the need for future legal refinement in this area.

Keywords: Intellectual Property Rights, Joint Marital Assets, Marriage, Divorce, Islamic Law

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Malik Nahar, YUSDANI

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Introduction

Intellectual Property Right (IPR) has highlighted a global economic development and creative industry as strategic assets with high economic value. Discussions about intellectual property rights as shared assets in marriage are becoming increasingly relevant, especially with the rapid development of the creative economy and technology. Intellectual works, such as songs, writings, inventions, and trademarks, now have substantial economic value and often serve the financial foundation of households. However, as the contribution of IPR to household welfare increases, the status of IPR as joint property (*gono-gini*) acquired during marriage remains unclear. The same applies to the distribution mechanism in the event of divorce or inheritance. This issue has become increasingly relevant as courts begin to face disputes over IPR ownership in divorce cases, but the lack of explicit provisions in national legislation leaves room for broad interpretation.

One precedent within this area is the decision of the West Jakarta Religious Court Number 1622/PDT.G/2023/PA.JB, which stipulates that copyright royalties are joint property.¹ This decision reflects at least two things. First, the courage of judges in conducting *rechtsvinding* (legal discovery).² Second, this decision also shows regulatory disharmony between Law No. 1 of 1974 concerning Marriage (*Undang-Undang Pernikahan*) and specific IPR laws, such as Law No. 28 of 2014 concerning Copyright, Law No. 13 of 2016 on Patents, and Law No. 20 of 2016 on Trademarks.³ Article 35 Paragraph (1) of the UUP (*Undang-Undang Pernikahan*) generally states that assets acquired during marriage are joint property, but there is no detailed explanation regarding how intangible assets such as intellectual property rights should be viewed in this context. Meanwhile regulations concerning intellectual property rights emphasize the exclusive nature of the

¹ Ariel Alvi Zahry, Dwi Fidhayanti, and Damia Batrisyia Binti Muhammad Jebat, "Post-Divorce Copyright Legal Status: An Indonesian Legal Perspective," *Jurnal Mahkamah : Kajian Ilmu Hukum Dan Hukum Islam* 9, no. 2 (December 24, 2024): 213–30, doi:10.25217/jm.v9i2.4978.

² Dewi Rinjani and Diana Tantri Cahyaningsih, "Royalti Hak Cipta Sebagai Objek Harta Bersama Dalam Perceraian Berdasarkan Putusan Pengadilan Agama No. 1622/Pdt.g/2023/PA. JB," *Hukum Inovatif : Jurnal Ilmu Hukum Sosial Dan Humaniora* 1, no. 3 (June 8, 2024): 264–71, doi:10.62383/humif.v1i3.340.

³ Bismar Siregar, "Pembagian Royalti Kekayaan Intelektual Sebagai Objek Harta Bersama Pasca Perceraian: Perspektif Hukum Positif Dan Hukum Islam," *Judge : Jurnal Hukum* 06 (2025), doi:10.54209/judge.v6i02.1256.

The Legal Status of Intellectual Property Rights as Marital Property

Malik Nahar, YUSDANI

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inventor/creator, without directly linking it to the concept of property in marriage.

Previous studies in recent years have reinforced the urgency of this debate. This legal vacuum, as revealed by Miftahul Haq and Akbarizan (2023) creates challenges in judicial practice and is still unfamiliar to some legal practitioners. It also reveals that many legal practitioners still do not understand the characteristics of IPR in the context of family law.⁴ Dwi Suryahartati (2025) confirms that royalties, as intangible movable objects, can be considered as assets in marital property from various legal perspectives, but confirm the empirical difficulties in court practice.⁵ Previous studies, including by Anis Mashdurohatun (2020) in 'Transfer of Intellectual Property Rights', have identified that IPR can be categorized as property and transferable through mechanisms such as inheritance and grants (*hibah*), but have not comprehensively reviewed the ideal concept of its distribution after divorce in the context of positive and Islamic law simultaneously, especially highlighting the disharmony between the UUP and IPR laws.⁶

Studies show that although many studies have examined common property, in-depth analysis of intellectual property rights as an object of common property is still relatively new. Therefore, this study attempts to fill the gap in the literature by presenting an integrated analysis between the normative framework and contemporary fatwa or fiqh views, as well as evaluating existing jurisprudence. Thus, the scientific novelty of this study lies in the explicit construction of IPR as common property through a comparative approach, while also providing ideas for regulatory reconstruction to harmonize the national legal system, which is still overlapping.

In the Indonesian legal system, joint property is defined in the Marriage Law, Government Regulation No. 9 of 1975, and Article 119 of the Civil Code as all property acquired during marriage, regardless of its form. However, because intellectual property rights are intangible and *sui generis*, their classification as joint property is not explicitly mentioned. From an Islamic law perspective, Article 1(f) and Articles 85–97 of the KHI state

⁴ Miftahul Haq and Akbarizan Akbarizan, "Tinjauan Hukum Terhadap Harta Bersama Dalam Perkawinan Yang Berasal Dari Intellectual Property Rights (Ipr) Hak Cipta, Hak Paten Dan Hak Merek," *Jotika Research in Business Law* 2, no. 1 (2023): 30–42.

⁵ Dwi Suryahartati, "Royalty Hak Kekayaan Intelektual Sebagai Harta Bersama Dalam Perkawinan Di Indonesia : Trilemma Yuridiksi," 2025, doi:10.28918/jhi.v15i1.80.

⁶ Anis Mashdurohatun, *Transfer of Intellectual Property Rights (Studies on the Division of Joint Property (Gono-Gini) Post-Divorce)*, 2020.

The Legal Status of Intellectual Property Rights as Marital Property

Malik Nahar, YUSDANI

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that property acquired during marriage is joint property.⁷ Although classical fiqh tends to separate assets between husbands and wives,⁸ the concept of *syirkah* in contemporary fiqh has been used to explain joint ownership rights that arise during married life.⁹ Reinterpretation is needed to bring forward the principle of justice and *maslaha* in Islamic law in a modern context.

Methodology

This research is normative legal research (doctrinal legal research)¹⁰ with data collection techniques carried out through library research using a statute approach and a conceptual approach, without being directly involved in empirical field observations.¹¹ The legislative approach was applied by examining several relevant legal instruments, such as the Marriage Law, the Copyright Law, the Patent Law, and the Compilation of Islamic Law (KHI), as well as classical and contemporary Islamic legal doctrines, with the analysis focusing on legal provisions governing joint property in marriage, ownership of intellectual property rights, and the mechanisms for their distribution in the context of divorce and inheritance. A conceptual approach is used to understand the position of intellectual property rights as shared assets through the lens of *maqāṣid asy-syarī'ah* and *syirkah* in contemporary fiqh. Legal materials consist of primary sources (laws, court decisions, KHI) and secondary sources (books, scientific journals, dissertations). The analysis technique used is descriptive-critical interpretative, combining a systematic review of legal regulations and doctrines with a synthesis of literature and jurisprudence, which in this case is IPR as shared assets in marriage.

Result & Discussion

⁷ Republic of Indonesia, Law of the Republic of Indonesia Number 1 of 1974 Concerning Marriage.

⁸ Kutbuddin Aibak and Inama Anusantari, "Pengaturan Harta Bersama Pasca Perceraian: Studi Komparatif Hukum Keluarga Islam Indonesia Dan Malaysia," *Hukum Islam* 22, no. 2 (2022): 73–96.

⁹ Riyan Erwin Hidayat et al., "WAHBAH AZ-ZUHAILI AND MUHAMMAD SYAHRUR'S METHODS OF THINKING ABOUT MARRIAGE," *SMART: Journal of Sharia, Traditon, and Modernity* 2, no. 1 (June 30, 2022): 13, doi:10.24042/SMART.V2I1.13118.

¹⁰ Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006).

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum*, Cetakan ke-13 (Jakarta: Kencana, 2017).

The Legal Status of Intellectual Property Rights as Marital Property

Malik Nahar, Yusdani

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The Concept of Joint Property and The Position of IPR

In Indonesian Positive Law, the concept of joint property is explicitly regulated. Article 35 paragraph (1) of Law Number 1 of 1974 concerning Marriage (UUP) states, “*Any property acquired during marriage becomes marital property*”. This principle confirms that any property acquired from the date of marriage until the marriage is dissolved, whether by divorce or death, is considered joint property. However, Article 35 Paragraph (2) of the Marriage law also stipulates that the personal property of each husband and wife, as well as property obtained by each as a gift or inheritance, remains under the control of each party as long as the parties do not specify otherwise in the marriage agreement.¹² This differs from Article 119 of the Civil Code (KUHPdata), the law prior to the enactment of the UUP, which by default adhered to the principle of full community of property (*algemene gemeenschap van goederen*) between husband and wife since marriage.¹³ This principle indicates the existence of joint ownership property, whereby all assets, both existing and obtained during the marriage, become one entity. Government Regulation No. 9 of 1975 concerning the Implementation of the Marriage Law has regulated this. Yet, it does not specifically regulate intellectual property rights as joint property. This indicates that regulatory gap needs to be filled by legal interpretation.

On the other hand, classical Islamic jurisprudence generally does not recognize the term for the mixing of wealth between husband and wife due to marriage (*gono-gini*).¹⁴ This is because there is no text from either the Qur'an or Sunnah that explicitly mentions the concept of *gono-gini*. The absence of this term in classical fiqh is due to the social and economic structure of Arab society in the past, which distinguished the roles of husband breadwinners and wives as homemakers, with clearly separate ownership of property.¹⁵ While

¹² Presiden Republik Indonesia, “UU No. 1 Tahun 1974,” Pub. L. No. 1 (1974).

¹³ Ika Atikah, Ahmad Zaini, and Iin Ratna Sumirat, “Intellectual Property Rights as the Resource for Creative Economic in Indonesia,” *Jurnal Penelitian Hukum De Jure* 22, no. 4 (2022): 451.

¹⁴ Nurunnisa et al., “IMPLICATIONS OF ANNULMENT OF MARRIAGE ON THE DISTRIBUTION OF JOINT ASSETS ACCORDING TO THE COMPILATION OF ISLAMIC LAW AND NATIONAL LAW,” *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 1 (June 26, 2023): 25–35, doi:10.18592/sjhp.v23i1.8611.

¹⁵ Firman Wahyudi Pengadilan Agama Bangil Jl Raya Raci and Kab Pasuruan -Jawa Timur, *INTERPRETASI PASAL 97 KHI TENTANG PEMBAGIAN HARTA BERSAMA DALAM PERSPEKTIF MAQASHID SYARIAH*, n.d., <https://fahmina.or.id/gono-gini-bukti-dinamisnya-hukum-islam/>.

The Legal Status of Intellectual Property Rights as Marital Property

Malik Nahar, YUSDANI

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in Indonesia, the Compilation of Islamic Law (KHI) accommodates the concept of joint property obtained during marriage, in line with customary law (*urf*) that exists in Indonesian society.¹⁶ Article 1 letter (f) of the KHI defines joint property as property obtained either individually or jointly by husband and wife during the marriage, regardless of the name under which the property is registered.¹⁷ This concept is reinforced by Article 85 of KHI, which states that the existence of joint property in a marriage does not preclude the existence of separate property belonging to either the husband or wife.¹⁸

This approach is the result of the *ijtihad* of contemporary scholars who analogize joint property with the term *syirkah* or *syarikah* (partnership), particularly *syirkah abdan* (partnership based on labor or effort), which represents the cooperation between husband and wife in building a household.¹⁹ This analogy represents the view that as long as the property was obtained through the joint efforts of the husband and wife during the marriage, then the property can become joint property. Wahbah Az-Zuhaili, discusses ownership (*al-milk*) as a person's right to something that can be used legally and is protected by Sharia law as long as it does not harm others.²⁰ This view, along with Imam Shafi'i's assertion that everything of economic value can be traded and requires compensation if damaged, forms the basis of contemporary interpretations in Islamic jurisprudence to accommodate new intangible assets.²¹

Thus, despite the fundamental differences between the principle of joint property in the Civil Code and the principle of separate property in

¹⁶ Arso Arso, "Hak Atas Kekayaan Intelektual (HAKI) Sebagai Harta Bersama Perspektif Kompilasi Hukum Islam," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 7, no. 1 (2017): 28–56.

¹⁷ Wahyudi Pengadilan Agama Bangil Jl Raya Raci and Pasuruan -Jawa Timur, *INTERPRETASI PASAL 97 KHI TENTANG PEMBAGIAN HARTA BERSAMA DALAM PERSPEKTIF MAQASHID SYARIAH*.

¹⁸ "Menilik Harta Gono-Gini Dalam Perspektif Fikih Dan Hukum Indonesia | STISNU," accessed January 3, 2026, <https://stisnutangerang.ac.id/news/menilik-harta-gono-gini-dalam-perspektif-fikih-dan-hukum-indonesia/>.

¹⁹ Wahyudi Pengadilan Agama Bangil Jl Raya Raci and Pasuruan -Jawa Timur, *INTERPRETASI PASAL 97 KHI TENTANG PEMBAGIAN HARTA BERSAMA DALAM PERSPEKTIF MAQASHID SYARIAH*.

²⁰ Wahbah az-Zuhaili, *Al-Fiqh al-Islāmī Wa Adillatuhu*, vol. 9 (Damaskus: Dār al-Fikr, 1989). p. 6619.

²¹ Asmuni Asmuni, YUSDANI YUSDANI, and Januariansyah Arfaizar, "Dynamics Response of Indonesian Islamic Law to the Protection of Intellectual Property Rights," *Ulumuna* 27, no. 2 (May 18, 2024): 876–904, doi:10.20414/ujis.v27i2.749.

The Legal Status of Intellectual Property Rights as Marital Property

Malik Nahar, YUSDANI

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classical fiqh, the UUP and KHI attempt to bridge the two by accommodating the concept of joint property obtained during marriage as a common ground that allows for recognition of the contributions of both parties. This harmonization effort reflects the dynamic nature of Indonesian law, which seeks to balance various applicable legal traditions, creating a consistent yet flexible framework for marital property, including intellectual property rights.

IPR as Joint Assets According to Positive Law and Islamic Law

Intellectual Property Rights (IPR) are intangible movable objects that arise from human creativity and have economic value that is protected by law.²² IPR are also referred to as *haqq al-ibtikar*, which is a person's first innovation resulting from the intelligence of the inventor/creator.²³

There are two key elements in IPR, which are moral rights and economic rights.²⁴ Moral rights are rights that are permanently attached to the inventor and cannot be transferred or assigned, giving the creator control over the use of their work and the right to have their work and the right to have their name included in the patent certificate. In contrast, economic rights are the inventor's exclusive rights to obtain economic benefits from their creations or inventions in the form of royalties, which can be transferred through inheritance, grants, endowments, wills, or written agreements.²⁵ In the context of marital property, the main focus is on economic rights to intellectual property, as it is these financial assets that can be divided and managed jointly.

Article 35 paragraph (1) of Law Number 1 of 1974 concerning Marriage is the strongest legal basis in Indonesian legal system for determining joint property. This principle confirms that all types of wealth acquired during marriage, including IPR such as copyright, patents, and

²² "Memahami Hak Kekayaan Intelektual Di Indonesia," accessed January 3, 2026, <https://www.hukumku.id/post/memahami-hak-kekayaan-intelektual>.

²³ Asmuni, YUSDANI, and Arfaizar, "Dynamics Response of Indonesian Islamic Law to the Protection of Intellectual Property Rights."

²⁴ Harry Randy Lalamentik, "Kajian Hukum Tentang Hak Terkait (Neighboring Right) Sebagai Hak Ekonomi Pencipta Berdasarkan Undang-Undang Hak Cipta Nomor 28 Tahun 2014," *Lex Privatum* VI, no. 6 (2018): 12–19, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/1397>.

²⁵ Lc. Jamadi M.E.I., "Mengembangkan Hak Kekayaan Intelektual Sebagai Harta Bersama Dan Cara Pembagiannya Pasca Putus Perkawinan Berbasis Nilai Keadilan" (2022), Tidak tersedia online.

The Legal Status of Intellectual Property Rights as Marital Property

Malik Nahar, YUSDANI

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trademarks, can be classified as joint property given their high economic value, even though they are classified as intangible assets.²⁶ Sectoral IPR laws, such as Law No. 28 of 2014 on Copyright (Articles 8–9), Law No. 13 of 2016 on Patents (Articles 10–12), and Law No. 20 of 2016 on Trademarks and Geographical Indications (Article 41), regulate exclusive rights that can be transferred through inheritance and written agreements, indicating that IPR is a calculable asset.²⁷

The legitimacy of intellectual property rights as joint property is increasingly strengthened by jurisprudence and religious fatwas. The decision of the West Jakarta Religious Court No. 1622/Pdt.G/2023/PA.JB is an important precedent, which stipulates that song royalties are joint property even though the copyright is registered in the name of one of the spouses. The court upheld its decision based on Article 91 paragraphs (1) and (3) of the KHI, which explicitly recognizes intangible objects, including rights and obligations, as part of joint property.²⁸ The precedent is also reinforced by the Indonesian Ulema Council (MUI) Fatwa No. 1 of 2003, which classifies copyright as *māl* (property) that is valid and protected by Islamic law.²⁹ This fatwa confirms that copyright can be inherited, contracted (as an object of *mu'awadhat* or *tabarru'at* contracts), and endowed, which strengthens the argument that the legitimacy of IPR as a legal object that can be included in the regulation of joint property. However, if ownership of IPR is still in dispute, such as a copyright ownership dispute, the Commercial Court must first decide on the basic ownership before the Religious Court can determine its status as joint property.³⁰ At the same time, this also indicates a disharmony that requires regulatory harmonization.

²⁶ Suryahartati, “Royalty Hak Kekayaan Intelektual Sebagai Harta Bersama Dalam Perkawinan Di Indonesia : Trilemma Yuridiksi.”

²⁷ Republik Indonesia, “Undang-Undang Republik Indonesia Nomor 13 Tahun 2016 Tentang Paten” (n.d.).

²⁸ Zahry, Fidhayanti, and Binti Muhammad Jebat, “Post-Divorce Copyright Legal Status: An Indonesian Legal Perspective.”

²⁹ Majelis Ulama Indonesia (MUI), “Fatwa Majelis Ulama Indonesia Nomor 1 Tahun 2003 Tentang Hak Cipta” (Jakarta: Komisi Fatwa MUI, 2003).

³⁰ Jamadi M.E.I., “Mengembangkan Hak Kekayaan Intelektual Sebagai Harta Bersama Dan Cara Pembagiannya Pasca Putus Perkawinan Berbasis Nilai Keadilan.”

The Legal Status of Intellectual Property Rights as Marital Property

Malik Nahar, YUSDANI

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Contemporary fiqh analogies, such as *syirkah abdan*, provide this framework of legitimacy.³¹ This concept views marriage as a partnership in which both financial and non-financial contributions, such as taking care of the household, are valued. Therefore, the economic proceeds from intellectual property created during marriage can be considered joint property. This approach is in line with the principle of *maqasid asy-syar'iah* (the main objectives of sharia) which aims to protect property (*hifz al-mal*), justice (*'adl*), and benefit (*maslahat*) in family life. Protected intellectual property rights are also regarded as *al-mal* (property) that does not conflict with Islamic law and is influenced by proper. y rights as a fundamental human right.³²

Thus, the main argument of this study is that IPR, as intangible assets that have economic value and can be acquired during marriage, can become joint property. Fiqh and *maqasid asy-syariah* serve as instruments of legitimacy for the recognition of non-traditional assets that are included in marital property (*gono-gini*). On the other hand, this process requires responsive legal *ijtihad* regarding the mechanism for dividing intellectual property rights as joint property after marriage and more detailed regulations to provide legal certainty and ensure the principle of fairness in the distributions of assets, especially in the context of divorce and inheritance.

Distribution of IPR in Divorce

In general, the object of joint property that can be divided is the economic rights, not the moral rights. Therefore, the profit generated from intellectual property, in economic rights, become part of the joint property.³³ Economic rights in intellectual property can be divided based on the forms of intellectual property itself. There are three types of intellectual property rights that are legally recognized in Indonesia as transferable economic rights, which are copyright, patents, and trademarks.³⁴

³¹ Wahyudi Pengadilan Agama Bangil Jl Raya Raci and Pasuruan -Jawa Timur, *INTERPRETASI PASAL 97 KHI TENTANG PEMBAGIAN HARTA BERSAMA DALAM PERSPEKTIF MAQASHID SYARIAH*.

³² Ibid.

³³ Rino Witra Perdana, "Penyelesaian Hak Kekayaan Intelektual Sebagai Harta Bersama Pasca Perceraian" (2023); Lalamantik, "Kajian Hukum Tentang Hak Terkait (Neighboring Right) Sebagai Hak Ekonomi Pencipta Berdasarkan Undang-Undang Hak Cipta Nomor 28 Tahun 2014."

³⁴ Indonesia, Undang-Undang Republik Indonesia Nomor 13 Tahun 2016 tentang Paten.

The Legal Status of Intellectual Property Rights as Marital Property

Malik Nahar, YUSDANI

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1. Distribution of Copyrights and Royalties

Copyright, as a form of intellectual property, is categorized as an intangible movable asset. If copyright and the royalties it generates arise during marriage, then those royalties can be considered joint property that can be divided. This has been confirmed in case law, such as Religious Court Decision No. 1622/Pdt.G/2023/PA.JB, in which royalties from assets generated during marriage were decided to be joint property and divided 50:50.³⁵

Even if the copyright is registered in the name of one party (e.g., the husband), if the work was created during the marriage and the wife contributed, either directly or indirectly (e.g., through moral or financial support, or even inspiration), then the economic rights arising from the copyright may become joint property.³⁶ This indirect contribution is recognized in the concept of *syirkah abdan*, which is the main basis for articles 85 to 97 of the KHI as well as a normative basis for explaining joint property (*gono-gini*) in marriage.

If new royalties are generated after the divorce, but the underlying copyright was created during the marriage, those royalties may still be claimed as part of the distribution of joint property.³⁷ This is because the economic value of intellectual property rights is often long-term and continues to generate income even after the marriage has ended. The court will consider the principle of fairness in determining the distribution of assets, which may not always be strictly 50:50 if there are significant differences in the contributions or roles of each party.

2. Distribution of Patent Rights and Trademark Rights

Just like copyrights, patents and trademarks are also intangible movable asset. The parties entitled to obtain patents and trademarks are inventors or persons who receive further rights from inventors. In the context of marriage, if these two assets are registered during the marriage, the

³⁵ Monica Sri Astuti Agustina and Aulia Rahman Hakim, "Tinjauan Yuridis Tentang Royalti Hak Cipta Sebagai Harta Bersama Setelah Perceraian," *Yustitiabelen* 11, no. 1 (2025): 74–84.

³⁶ Aibak and Anusantari, "Pengaturan Harta Bersama Pasca Perceraian: Studi Komparatif Hukum Keluarga Islam Indonesia Dan Malaysia."

³⁷ Maulidina and Alfi Dianti, "Tinjauan Yuridis Hak Royalti Sebagai Harta Bersama Dalam Perkawinan" (UPN VETERAN JAWA TIMUR, 2024); Irma Sylviyani Herdian, "Sengketa Kepemilikan Hak Kekayaan Intelektual Sebagai Harta Bersama Dalam Kasus Perceraian," *Aktualita: Jurnal Hukum*, 2020, 398–415.

The Legal Status of Intellectual Property Rights as Marital Property

Malik Nahar, YUSDANI

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economic rights arising from the patent (for example, through licensing or other financial benefits) can be categorized as joint property.³⁸

The distribution of compensation from these assets can be in the form of a specific amount, percentage, or other agreed-upon form. Negotiations between spouses regarding the distribution of financial gains or royalties from brands, or the transfer of rights with specific compensation, can be a solution. If no agreement is reached, the settlement can be submitted to the Religious Court, which will consider the principles of fairness and the contributions of each party.³⁹

3. Legal Position of Inheritance if a Spouse Dies

When a marriage ends due to death, the status of intellectual property rights becomes relevant in inheritance discussions. However, the question is whether intellectual property rights can be categorized as joint assets or not. It should be noted that IPR economic rights, which are part of joint property, will remain attached to the inventor and can become inheritance for the heirs of the IPR economic rights owner. The distribution is divided according to the proportions stipulated in the applicable inheritance law, both according to general civil law (Civil Code) and Islamic inheritance law (KHI).

According to the Civil Code, Indonesian civil law adopts a bilateral individual inheritance system that gives heirs an equal share of the estate.⁴⁰ Eligible heirs include blood relatives, both legitimate and illegitimate, as well as the surviving spouse. The inheritance will be distributed in accordance with the provisions of the Civil Code if the deceased leaves behind legitimate or recognized children.

Meanwhile, in Islamic inheritance law, the estate that can be divided individually among the heirs is the total estate after deducting the personal property of each spouse and the joint property.⁴¹ This means that the

³⁸ “Merek Sebagai Harta Bersama Dalam Kasus Perceraian - Selaras Group,” accessed January 3, 2026, <https://selarasgroup.com/merek-sebagai-harta-bersama-dalam-kasus-perceraian/>.

³⁹ Titie Rachmiati Poetri, “Penyelesaian Pembagian Hak Cipta Dan Hak Atas Merek Sebagai Harta Bersama Dalam Perceraian Islam,” *Lex Renaissance* 5, no. 2 (2020): 344–57.

⁴⁰ Rachel Christie¹, Maria Jessica, and Lauretta Gunawan², “Tinjauan Hukum Perdata Terkait Dengan Kedudukan Hukum Dan Hak Waris Anak Luar Kawin,” *Jurnal Kewarganegaraan* 8, no. 1 (2024).

⁴¹ M Idris Ramulyo, *Perbandingan Pelaksanaan Hukum Kewarisan Islam Dengan Kewarisan Menurut Kitab Undang-Undang Hukum Perdata (BW)* (Jakarta: Sinar Grafika, 1996).

The Legal Status of Intellectual Property Rights as Marital Property

Malik Nahar, YUSDANI

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intellectual property rights, which are joint property, will be separated first, and the deceased's share will become part of the inheritance, which will then be divided among the legal heirs in accordance with the provisions of the Islamic Family Law. Articles 85-97 of the KHI regulate joint property and its distribution in divorce, but the principle also applies to the distribution of joint property before inheritance is divided.

Economic rights of intellectual property, such as ongoing royalties, can continue to be enjoyed by heirs during the term of the rights. Children, parents, or surviving spouses can enjoy the economic rights of the creator transferred through inheritance. This shows that the economic value of intellectual property rights does not end with the death of the creator/owner, but can continue to provide financial benefits to the heirs.⁴²

Overall, the distribution of intellectual property rights in divorce and inheritance is based on the principle that the economic rights of intellectual property rights acquired during marriage are joint property. The contribution and role of the spouse in the marriage are key considerations in determining a fair distribution although intellectual property rights are often registered in an individual's name. A recent court jurisprudence has successfully adapted and filled the legal void in this case, interpreting IPR as a joint asset.

Conclusion

Based on analysis according to Indonesian positive law and Islamic law, intellectual property such as patents, trademarks, and copyrights can be considered joint property if they are acquired during marriage and generate economic value, particularly through economic rights such as royalties. Although not explicitly regulated in the Marriage Law or the Islamic Family Law, the principle of "acquired during marriage" in Article 35 of Law No. 1 of 1974 and Article 1 letter (f) of the Islamic Family Law allows intellectual property rights to be categorized as joint property, especially if there is a contribution from the wife or husband, either directly or indirectly. From an Islamic legal perspective, although classical fiqh separates the property of the husband and wife, the contemporary approach allows for analogy through the principles of *syirkah* and *maqasid asy-syari'ah*. Joint ownership of business proceed including intellectual property is justified if there is cooperation or contribution within the household. In the practice of post-divorce distribution,

⁴² Lalamentik, "Kajian Hukum Tentang Hak Terkait (Neighboring Right) Sebagai Hak Ekonomi Pencipta Berdasarkan Undang-Undang Hak Cipta Nomor 28 Tahun 2014."

The Legal Status of Intellectual Property Rights as Marital Property

Malik Nahar, Yusdani

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intellectual property should not be divided equally automatically, but should follow the principle of proportional justice based on contribution. Contemporary jurisprudence and fatwas, such as MUI Fatwa No. 1 of 2003, reinforce the legitimacy of intellectual property as assets that are legally valid under Islamic law and eligible to be included in the category of joint assets.

References

- Agustina, Monica Sri Astuti, and Aulia Rahman Hakim. "Tinjauan Yuridis Tentang Royalti Hak Cipta Sebagai Harta Bersama Setelah Perceraian." *Yustitiabelen* 11, no. 1 (2025): 74–84.
- Aibak, Kutbuddin, and Inama Anusantari. "Pengaturan Harta Bersama Pasca Perceraian: Studi Komparatif Hukum Keluarga Islam Indonesia Dan Malaysia." *Hukum Islam* 22, no. 2 (2022): 73–96.
- Arso, Arso. "Hak Atas Kekayaan Intelektual (HAKI) Sebagai Harta Bersama Perspektif Kompilasi Hukum Islam." *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 7, no. 1 (2017): 28–56.
- Asmuni, Asmuni, Yusdani Yusdani, and Januariansyah Arfaizar. "Dynamics Response of Indonesian Islamic Law to the Protection of Intellectual Property Rights." *Ulumuna* 27, no. 2 (May 18, 2024): 876–904. doi:10.20414/ujis.v27i2.749.
- Atikah, Ika, Ahmad Zaini, and Iin Ratna Sumirat. "Intellectual Property Rights as the Resource for Creative Economic in Indonesia." *Jurnal Penelitian Hukum De Jure* 22, no. 4 (2022): 451.
- az-Zuhaili, Wahbah. *Al-Fiqh al-Islāmī Wa Adillatuhu*. Vol. 9. Damaskus: Dār al-Fikr, 1989.
- Christie1, Rachel, Maria Jessica, and Laretta Gunawan2. "Tinjauan Hukum Perdata Terkait Dengan Kedudukan Hukum Dan Hak Waris Anak Luar Kawin." *Jurnal Kewarganegaraan* 8, no. 1 (2024).
- Dewi Rinjani, and Diana Tantri Cahyaningsih. "Royalti Hak Cipta Sebagai Objek Harta Bersama Dalam Perceraian Berdasarkan Putusan Pengadilan Agama No. 1622/Pdt.g/2023/PA. JB." *Hukum Inovatif: Jurnal Ilmu Hukum Sosial Dan Humaniora* 1, no. 3 (June 8, 2024): 264–71. doi:10.62383/humif.v1i3.340.
- Haq, Miftahul, and Akbarizan Akbarizan. "Tinjauan Hukum Terhadap Harta Bersama Dalam Perkawinan Yang Berasal Dari Intellectual Property Rights (Ipr) Hak Cipta, Hak Paten Dan Hak Merek." *Jotika Research in Business Law* 2, no. 1 (2023): 30–42.

The Legal Status of Intellectual Property Rights as Marital Property

Malik Nahar, YUSDANI

DOI: [altafaqquh.v7i1.1518](https://doi.org/10.24042/SMART.V2I1.13118)

- Herdian, Irma Sylviyani. “Sengketa Kepemilikan Hak Kekayaan Intelektual Sebagai Harta Bersama Dalam Kasus Perceraian.” *Aktualita: Jurnal Hukum*, 2020, 398–415.
- Hidayat, Riyan Erwin, S. Suharto, Moh. Bahrudin, and Muhammad Zaki. “WAHBAH AZ-ZUHAILI AND MUHAMMAD SYAHRUR’S METHODS OF THINKING ABOUT MARRIAGE.” *SMART: Journal of Sharia, Traditon, and Modernity* 2, no. 1 (June 30, 2022): 13. doi:10.24042/SMART.V2I1.13118.
- Ibrahim, Johnny. *Teori Dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing, 2006.
- Indonesia, Republik. Undang-Undang Republik Indonesia Nomor 13 Tahun 2016 tentang Paten (n.d.).
- Jamadi M.E.I., Lc. “Mengembangkan Hak Kekayaan Intelektual Sebagai Harta Bersama Dan Cara Pembagiannya Pasca Putus Perkawinan Berbasis Nilai Keadilan.” 2022. Tidak tersedia online.
- Lalamentik, Harry Randy. “Kajian Hukum Tentang Hak Terkait (Neighboring Right) Sebagai Hak Ekonomi Pencipta Berdasarkan Undang-Undang Hak Cipta Nomor 28 Tahun 2014.” *Lex Privatum* VI, no. 6 (2018): 12–19.
<https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/1397>.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Cetakan ke-13. Jakarta: Kencana, 2017.
- Mashdurohatun, Anis. *Transfer of Intellectual Property Rights (Studies on the Division of Joint Property (Gono-Gini) Post-Divorce)*, 2020.
- Maulidina, and Alfi Dianti. “Tinjauan Yuridis Hak Royalti Sebagai Harta Bersama Dalam Perkawinan.” *UPN VETERAN JAWA TIMUR*, 2024.
- “Memahami Hak Kekayaan Intelektual Di Indonesia.” Accessed January 3, 2026. <https://www.hukumku.id/post/memahami-hak-kekayaan-intelektual>.
- “Menilik Harta Gono-Gini Dalam Perspektif Fikih Dan Hukum Indonesia | STISNU.” Accessed January 3, 2026. <https://stisnutangerang.ac.id/news/menilik-harta-gono-gini-dalam-perspektif-fikih-dan-hukum-indonesia/>.
- “Merek Sebagai Harta Bersama Dalam Kasus Perceraian - Selaras Group.” Accessed January 3, 2026. <https://selaraskgroup.com/merek-sebagai-harta-bersama-dalam-kasus-perceraian/>.
- (MUI), Majelis Ulama Indonesia. “Fatwa Majelis Ulama Indonesia Nomor 1 Tahun 2003 Tentang Hak Cipta.” Jakarta: Komisi Fatwa MUI, 2003.

The Legal Status of Intellectual Property Rights as Marital Property

Malik Nahar, YUSDANI

DOI: [altafaqquh.v7i1.1518](https://doi.org/10.15181/tafaqquh.v7i1.1518)

- Nurunnisa, Rahmida Erliyanti, Gilang Fitri Hermawan, and Yehia Mohamed Mostafa Abdelhadi. "IMPLICATIONS OF ANNULMENT OF MARRIAGE ON THE DISTRIBUTION OF JOINT ASSETS ACCORDING TO THE COMPILATION OF ISLAMIC LAW AND NATIONAL LAW." *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 1 (June 26, 2023): 25–35. doi:10.18592/sjhp.v23i1.8611.
- Perdana, Rino Witra. "Penyelesaian Hak Kekayaan Intelektual Sebagai Harta Bersama Pasca Perceraian." 2023. file-E7Gdp9x2D2sGzq6fP95f5D.pdf.
- Poetri, Titie Rachmiati. "Penyelesaian Pembagian Hak Cipta Dan Hak Atas Merek Sebagai Harta Bersama Dalam Perceraian Islam." *Lex Renaissance* 5, no. 2 (2020): 344–57.
- Presiden Republik Indonesia. UU No. 1 Tahun 1974, Pub. L. No. 1 (1974).
- Ramulyo, M Idris. *Perbandingan Pelaksanaan Hukum Kewarisan Islam Dengan Kewarisan Menurut Kitab Undang-Undang Hukum Perdata (BW)*. Jakarta: Sinar Grafika, 1996.
- Siregar, Bismar. "Pembagian Royalti Kekayaan Intelektual Sebagai Objek Harta Bersama Pasca Perceraian: Perspektif Hukum Positif Dan Hukum Islam." *Judge : Jurnal Hukum* 06 (2025). doi:10.54209/judge.v6i02.1256.
- Suryahartati, Dwi. "Royalty Hak Kekayaan Intelektual Sebagai Harta Bersama Dalam Perkawinan Di Indonesia : Trilemma Yuridiksi," 2025. doi:10.28918/jhi.v15i1.80.
- Wahyudi Pengadilan Agama Bangil Jl Raya Raci, Firman, and Kab Pasuruan -Jawa Timur. *INTERPRETASI PASAL 97 KHI TENTANG PEMBAGIAN HARTA BERSAMA DALAM PERSPEKTIF MAQASHID SYARIAH*, n.d. <https://fahmina.or.id/gono-gini-bukti-dinamisnya-hukum-islam/>.
- Zahry, Ariel Alvi, Dwi Fidhayanti, and Damia Batrisyia Binti Muhammad Jebat. "Post-Divorce Copyright Legal Status: An Indonesian Legal Perspective." *Jurnal Mahkamah : Kajian Ilmu Hukum Dan Hukum Islam* 9, no. 2 (December 24, 2024): 213–30. doi:10.25217/jm.v9i2.4978.