

**LEGAL PROTECTION OF HERITANT RIGHT TO THE OWNER OF
INACTIVE-ACCOUNT IN REGULATION AND ISLAMIC LAW
IN INDONESIA**

Thesis

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2014**

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In the name of Allah (swt),

With consciousness and responsibility towards the development of science, the writer declares that the thesis entitled:

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Malang, 26th of March 2014

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TRANSLITERATION GUIDANCE

A. Consonant

Arab	Latin	Arab	Latin
ا	a	ط	Th
ب	B	ظ	Zh
ت	T	ع	'
ث	ts	غ	Gh
ج	J	ف	F
ح	H	ق	Q
خ	kh	ك	K
د	D	ل	L
ذ	dz	م	M
ر	R	ن	N
ز	Z	و	W
س	S	ه	H
ش	Sy	ء	'
ص	Sh	ي	Y
ض	Dl		

B. Vocal, long-pronounce and diphthong

Vocal *fathah* = A

Vocal *kasrah* = I

Vocal *dlommah* = U

Long-vocal (a) = Â e.g. قال become Qâla

Long-vocal (i) = Î e.g. قِيلَ become Qîla

Long-vocal (u) = Û e.g. دُونَ become Dûna

Diphthong (aw) = و e.g. قَوْلَ become Qawlun

Diphthong (ay) = ي e.g. خَيْرَ Become Khayrun

C. Ta' marbûthah (ة)

Ta' marbûthah transliterated as “t” in the middle of word, but if *Ta' marbûthah* in the end of word, it transliterated as “h” e.g. الرسالة للمدرسة become *al-risalat li al-mudarrisah*, or in the standing among two word that in the form of *mudlaf* and *mudlaf ilayh*, it transliterated as *t* and connected to the next word, e.g. في رحمة الله become *fi rahmatillâh*.

D. Auxiliary Verb dan Lafdh al-Jalâlah

Auxiliary verb “al” (ال) written with lowercase form, except if it located in the first position, and “al” in lafadh jalâlah which located in the middle of two word or being or become *idhafah*, it remove from writing.

- Al-Imâm al-Bukhâriy said ...
- Al-Bukhâriy in muqaddimah of his book said ...
- Masyâ' Allâh kâna wa mâ lam yasya' lam yakun.*

TABLE OF CONTENT

FRONT COVER
TITLE SHEET	i
STATEMENT OF AUTHENTICITY	ii
APPROVAL SHEET	iii
CONSULTATION PROOF	iv
LEGITIMATION SHEET	v
ACKNOWLEDGEMENT	vi
TRANSLITERATION GUIDANCE	ix
TABLE OF CONTENT	xi
TABLES	xiii
GRAPHS	xiv
FIGURES	xv
ABSTRACT	xvi
CHAPTER I : INTRODUCTION	1
A. Background of Research	2
B. Statement of Problem	6
C. Objective of Research	6
D. Significance of Research	6
E. Abbreviation	7
F. Research Method	7
G. Previous Research	10
H. Structure of Discussion	15
CHAPTER II : THE CONCEPT OF INACTIVE-ACCOUNT AND LEGAL PROTECTION	17
A. The Concept of Inactive-Account	17
B. The Concept of Legal Protection	20
C. Legal Analysis	30
CHAPTER III : LEGAL PROTECTION OF HERITANT RIGHT TO THE OWNER OF INACTIVE-ACCOUNT IN REGULATION AND ISLAMIC LAW IN INDONESIA	33
A. The Right of Account Owner in Virtual Account	33
1. Ownership contract on Yahoo account	35
2. Ownership contract on Dropbox account	38
3. Ownership contract on Paypal account	41
B. Legal Protection of Heritant Right to The Owner of Inactive Account in Regulation and Islamic Law in Indonesia	47
1. Legal protection in regulation in Indonesia	49
2. Legal protection in Islamic law	59

C. Future Legal Protection of Heritant Right to The Owner of Inactive Account in Indonesia	68
1. Preventive legal protection	69
2. Repressive legal protection	71
CHAPTER IV : CONCLUSIONS AND SUGGESTIONS.....	76
A. Conclusions.....	76
B. Suggestions	78
BIBLIOGRAPHY	80
CURRICULUM VITAE.....	84



TABLES

No.	Caption	Page
1.1	Previous research	11
3.1	Rights and obligation attached to Yahoo account user	36
3.2	Rights and obligation attached to Dropbox account user	39
3.3	Rights and obligation attached to Paypal account user	44



GRAPHS

No.	Caption	Page
3.1	Argument analogy to both property in virtual world and property in real world	53
3.2	Argument analogy to both data online and intellectual property	57
3.3	Argument analogy to both sale revenue in virtual and real world	58
3.4	<i>Qiyas</i> of account services to <i>wadi'ah</i>	62
3.5	Differentiation and similarities of legal protection in regulation and Islamic law	67
3.6	Future preventive legal protection	71
3.7	Future repressive legal protection	72

FIGURES

No.	Caption	Page
3.1	Yahoo account UI	38
3.2	Dropbox account UI	41
3.3	List of minimal confirmation in Paypal account	43
3.4	Paypal account UI	47



ABSTRACT

Nur Triyono, 10210107, *Legal Protection of Heritant Right to The Owner of Inactive-Account in Regulation and Islamic Law in Indonesia*, Thesis, Department of Al-Ahwal Al-Syakhshiyah, Sharia Faculty, The State Islamic University (UIN) Maulana Malik Ibrahim Malang, Supervising: Burhanuddin Susanto, S.H.I. M.Hum.

Key words: Legal Protection, Heritant Right, Inactive Account

The use of electronic technology in the form of communication in cyberspace or Internet is growing. The uses vary according to the needs of the users. Some of the services that used in the account services in the virtual world are not only as a communication tool, but also a place of storage, documents, even used as the storage of sale revenue. The rights that exist in the owned account when the owner of the account is still active/alive surely will return to ownership to the account owner himself. But when the owner of the account is inactive / dead, there is no provision in most of the providers account services for the transferring those rights to the heirs. Such as handled by Rod Cunich, Australian lawyer. Heirs were demanding some data that belongs to the owner of inactive-account in the Facebook as a social networking account. While, in Indonesia, although it has not happened yet, but it needs to be cautioned, because the amount account users in Indonesia has reached 72 million at the end of 2013. And possibility, the heritant right of the account owner will be lost if they do not obtain any legal protection.

In this study, the statement of the research are: 1) What are the rights attached to the account owner in virtual account?, And 2) How do the legal protection of heritant right to the owner of inactive-account exist in legislation and Islamic law in Indonesia?.

This research is one of normative research, because of using literature data or library research. This study uses the approach of juridical normative that uses a combination of the legislation, concept, and comparative approach. The analysis of data which used in this study is a “grounded theory” analysis, or a combination of the categorization of information that collected, and placing it in a theoretical model, and then narrate the relationship between concepts and data that found.

The results of research indicate that some rights attached to the owner of the account from the three categorization of accounts, such as: the protection of personal information, legal protection, and freedom of use of the service. While the forms of legal protection to the owner of inactive-account can be found with the argument analogy and *qiyas* analogy. Either the use of argument analogy and *qiyas* analogy are stating that the account owner has the right to be protected as an heritant. So the virtual world property on those accounts can be inherited on to the heirs.

ملخص البحث

نور تريونو، ١٠٢١٠١٠٧، الحماية القانونية عن حقوق المورث لصاحب الحساب المعطل في القانون الحكومي والقانون الإسلامي في إندونيسيا، شعبة الأحوال الشخصية، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية، مالانج. المشرف: . برهان الدين سوسمتو، الماجستير

الكلمات الرئيسية: الحماية القانونية، حقوق المورث، الحساب المعطل

استخدام التكنولوجيا الإلكترونية كشكل من أشكال التواصل في الفضاء الإلكتروني أو الإنترنت أخذ في الازدياد. والاستخدام يختلف وفقا لاحتياجات المستخدمين. بعض الخدمات التي تُستخدم في الخدمات الحسابات في العالم الافتراضي ليست فقط كأداة الاتصال فحسب، بل كذلك مكان للتخزين، والوثائق، و التخزين في إيرادات البيع. الحقوق الموجودة في الحساب يملكها صاحب الحساب الذي لم يزل نشيطا سوف يعود إلى ملكية صاحب الحساب نفسه. ولا يجري ذلك لصاحب الحساب المعطل لأن ليس هناك أي حكم في معظم مزود خدمات الحساب لنقل هذه الحقوق إلى الوارثين. كما يعالجها "رود كونيك"، المحامي الأسترالي، حين يطالبون الوارثون البيانات التي ينتمي إليها صاحب الحساب المعطل في الفيسبوك (Facebook) أي أحد من حساب الشبكات الاجتماعية. بينما في إندونيسيا، على الرغم من أنه لم يحدث حتى الآن، لكنه يحتاج إلى حذر، لأن عدد المستخدمين للحساب في إندونيسيا قد وصل إلى ٧٢ مليون في نهاية عام ٢٠١٣. ويمكن فقدان الحق المورث كصاحب الحساب اذا لم يحصل على أية حماية قانونية.

هذا البحث مركز في مشكلتين، وهما: ما هي الحقوق المتعلقة لصاحب الحساب في الحساب؟ وكيف هي الحماية القانونية عن حق المورث لصاحب الحساب المعطل في القانون الحكومي والقانون الإسلامي في إندونيسيا؟.

هذا البحث هو أحد البحوث النصوصية. باستخدامه البيانات المؤلفات أو البحث في المكتبة. تستخدم هذه الدراسة منهج المعيارية القانونية التي تستخدم مزيجا من التشريعات، والمفهوم، و المقارن. وتحليل البيانات المستخدم في هذه الدراسة هو تحليل "نظرية الارض" (Grounded Theory)، أو المزيج من تصنيف المعلومات التي تم جمعها، ووضعها في نموذج نظري، ثم تحكي العلاقة بين المفاهيم والبيانات التي تم تحليلها.

و نتائج البحث تشير إلى أن هناك الممكنات بأن نجد بعض الحقوق المتعلقة بصاحب الحساب من تقسيم ثلاثة أنواع الحسابات، مثل: حماية المعلومات الشخصية، والحماية القانونية، وحرية استخدام الخدمة. ووجود الحماية القانونية لصاحب الحساب المعطل يمكن تحقيقها بتجانس الحجة (Argument Analogy) والقياس. استخدام تجانس الحجة و القياس يقيس بأن لدي صاحب الحساب حق في الحماية باعتباره كالمورث. والملكية في العالم الافتراضي على تلك الحسابات يمكن أن تكون موروثة إلى الوارثين.



ABSTRAK

Nur Triyono, 10210107, *Perlindungan Hukum Hak Pewaris Terhadap Pemilik Akun Nonaktif Dalam Peraturan Perundang-undangan dan Hukum Islam*. Skripsi, Jurusan Al-Ahwal Al-Syakhshiyah, Fakultas Syariah, Universitas Islam Negeri (UIN) Maulana Malik Ibrahim Malang, Pembimbing: Burhanuddin Susamto, S.H.I. M.Hum.

Kata Kunci: Perlindungan Hukum, Hak Pewaris, Akun Nonaktif

Penggunaan teknologi elektronik yang berupa komunikasi di dunia maya ataupun internet semakin berkembang, pemakaiannya pun beragam sesuai kebutuhan para pengguna. Dari beberapa layanan yang digunakan pada layanan akun dalam dunia maya tidak hanya sekedar sebagai alat komunikasi, tetapi juga menjadi tempat penyimpanan data, dokumen, bahkan menjadi tempat penyimpanan hasil jual-beli. Hak-hak yang ada pada akun yang dimiliki ketika pemilik akun masih berstatus aktif/hidup pastinya kembali kepada kepemilikan daripada pemilik akun. Tetapi ketika pemilik akun telah berstatus nonaktif/wafat, belum ada ketentuan di sebagian besar penyedia layanan akun tentang peralihan haknya kepada para ahli waris. Seperti kasus yang ditangani oleh Rod Cunich, pengacara Australia. Ahli waris menuntut data-data milik dari seorang pemilik akun nonaktif yang berada di akun jejaring sosial Facebook. Sedangkan di Indonesia, meskipun hal tersebut belum terjadi, namun perlu diwanti-wanti, karena pengguna pengguna akun di Indonesia sudah mencapai kisaran 72.000.000. pengguna pada akhir 2013. Dan dengan jumlah tersebut, tidak menutup kemungkinan beberapa hak pewaris akan hilang jika para pemilik akun tidak mendapatkan perlindungan hukum.

Dalam penelitian ini, rumusan masalah yang ditentukan adalah: 1) Apa saja hak yang melekat pada pemilik akun dalam sebuah akun?; dan 2) Bagaimana perlindungan hukum hak pewaris terhadap pemilik akun nonaktif dalam peraturan perundang-undangan dan hukum Islam di Indonesia?.

Penelitian ini termasuk jenis penelitian normatif yang menggunakan data kepustakaan ataupun *library Research*. Pendekatan yang digunakan adalah pendekatan yuridis normatif dengan kombinasi pendekatan peraturan perundang-undangan, konsep, dan perbandingan. Sedangkan analisis data yang digunakan dalam penelitian ini adalah model analisis *Grounded Theory*, atau kombinasi dari kategorisasi informasi yang diperoleh, dan menempatkannya dalam satu model teoritis, lalu menarasikan hubungan antara konsep-konsep yang ditemukan.

Dari hasil penelitian diketahui bahwa dari tiga kategorisasi dalam beberapa akun kita menemukan beberapa hak yang melekat pada pemilik akun, seperti: perlindungan informasi pribadi, perlindungan hukum, dan kebebasan penggunaan layanan. Sedangkan bentuk perlindungan hukum terhadap pemilik akun nonaktif dapat kita temukan dengan proses argumen analogi dan analogi *qiyas*. Baik dalam proses argumen analogi maupun analogi *qiyas* menyatakan bahwa pemilik akun memiliki hak untuk dilindungi haknya sebagai seorang pewaris. Sehingga harta dunia maya yang dimiliki pada akun-akun yang ada dapat diwariskan kepada para ahli waris.

CHAPTER I

INTRODUCTION

A. Background of Research

The technology, telecommunications and computer technology based on the developments in the field of micro-electronics, materials, and software are developing rapidly. From computer technology such as computer network that spawned a global information and communications space known as the internet, The use of computer technology, telecommunications, and information are encouraged the development of electronic transactions through the network in the world.

The use of electronic networks as if it has become mandatory for Indonesian people who want the ease of collecting, storing, or distributing the desired information. This is evidenced by the increasing number of users of Internet services of the Indonesian population, from the owner of the account which amounts approximately 2 million people in 2000, increasing to approximately 20 million people in 2009 and increased more dramatically with a value of about 55 million people in the year 2012 and 72 million¹ people by 2013. The number of the

¹Reza Wahyudi, *Menkominfo: Kalau Internetnya Cepat Mau Dipakai buat Apa?*, <http://tekno.kompas.com/read/2014/01/30/1512510/Menkominfo.Kalau.Internetnya.Cepat.Mau.Di.pakai.Buat.Apa>, accessed on 19th of February 2014.

account owner makes Indonesia as the fourth highest percentage in Asia with 5.4%, after Japan 9.4%, India 11.4%, and China 50.0%.²

In line with this, the account owner in Indonesia who used electronic networks definitely use their account in the transaction. The account owner has the right to use all these services as long as he is still alive / active, the account owner can also use the results of his wealth at will. As long as the criteria do not violate the prohibited acts under Chapter VII, Article 27-37 of Law No.. 11 of 2008 on Information and Electronic Technology (IET Act). Under the IET Law, the owner of the active account is also may file a lawsuit if there is a loss, with the civil lines.³

But with the percentage of those listed above, besides increasing of the owner of the account from year to year, there is certainly also the owner of the account who are inactive / dead. When the owner of the account is not active / dies, we do not know where all the wealth away, or disappears from the right of the account owner's family.

Some cases of non-active assets of the account owner which claimed by the heirs happened in often case. For example in Australia, Rod Cunich an Australian lawyer who is engaged in property management real world and the virtual world after death, said:

"We, for example have the bank account details are stored electronically, the investment account, an account of learning, various documents stored in email, social media such as

²<http://www.internetworldstats.com/stats3.htm>, accessed on 10th of December 2013.

³Jogja Bangkit Team, *Undang-Undang Informasi dan Transaksi Elektronik Nomor II Tahun 2008*, (Yogyakarta: Galangpress, 2009), p. 30-35.

*Facebook. Many people now store their data online via programs such as Cloud, and the data that can be lost, if we do not prepare well as the legacy we leave behind."*⁴

Rules on non-active account owners are still not regulated in all internet services. For example in some other services than the Facebook service that are handled by Cunich, such as Google e-mail service (Gmail), social networking (Google+), data storage (GoogleDrive), online payment (GoogleWallet) and others, has provided a groove to access the accounts of people who have died. The access performed by the owner of the inactive account's heir who still alive and transferring that account access from someone who has died to himself. The transition of data has specific requirements of the physical data of the account owner and heir, which is sent to the headquarters of Google Inc..⁵

While other services, there are still many that have not provide such services. In Dropbox online data storage service, It simply stated "We will keep your information as long as your account is active or as necessary to provide services"⁶, so that when someone has died, the assets owned by the owners of non-active account will be lost, and can not be accessed by anyone.

As same as cash deposit accounts such as PayPal and E-Gold which there are not mentioning about any procedure if the owner of the account is inactive / dead. In a policy which is formulated by the e-Gold, the service only provide an

⁴<http://www.radioaustralia.net.au/indonesian/2013-10-28/hatihati-dengan-warisan-facebook-setelah-meninggal/1210696>, accessed on 28th of October 2013.

⁵https://support.google.com/accounts/answer/2842525?hl=id&ref_topic=30755 32, accessed on 28th of October 2013

⁶ <https://www.dropbox.com/privacy>, accessed on 28th of October 2013.

additional services by contacting the head office which is located in the e-gold Ltd c/o G&SR, ATTN: Privacy Contact, PO Box 372425, Satellite Beach, FL 32937 USA.⁷ As same as the PayPal services that only provide services for My Account Settings and Upgrade, although Paypal also provide Customer Support and Contact PayPal.⁸

Look back on the principles and objectives of the IET Act, the rules established for gives a sense of security, justice, and legal certainty for users and providers of Information Technology.⁹ Then, the principles and objectives have not been achieved, because the property of the account owner who inactive / died are still have an unclear position.

Refer to the five basic principles of human primary requirement in Islam, we would have this problem as natural rights of the account owner. The account owner has the right to the protection of religion (*hifdzu din*), personal protection (*hifdzu nafs*), the protection of property (*hifdzu mal*), mind protection (*hifdzu 'aql*), and protection of descendant (*hifdzu nasl*) as described in maqashid sharia.¹⁰

Thus, the account owner must obtain a proper protection, both when the owner is still active / alive or when the owner of the account has been inactive / dead. Under such protection, protection of descendant (*hifdzu nasl*), and the protection of property (*hifdzu mal*) has a major role to the owners of inactive

⁷ <http://www.e-gold.com/unsecure/privacy.html>, accessed on 10th of December 2013.

⁸ <https://www.paypal.com/us/webapps/helpcenter/helphub/home/>, accessed on 10th of December 2013.

⁹ Jogja Bangkit Team, *Undang-Undang Informasi dan Transaksi Elektronik Nomor II Tahun 2008*, h.15.

¹⁰ Muhammad Abu Zahrah, *Ushul Fiqh*, (Mesir: Dar Al-Fikr Al-‘Arabi, 1985), p. 366.

accounts. Because of both protection, the property owned by the owner of inactive account must be passed on to their heirs. Even it is in the form of a will or the division of inheritance which specified in *faraidl*. As well as Said by *Kalam Allah* SWT.

كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدُكُمْ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةَ لِلْوَالِدَيْنِ
وَالْأَقْرَبِينَ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ

*"Obliged upon you, if one of you arrival (signs of) death, when he left a lot of property, a will saying to the mother-father and dear relatives in kindness, (this is) an obligation on those who fear Allah."*¹¹

And another *Kalam Allah* said.

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ
وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا

*"For men there is the right part of the possessions of the mother-father and relatives, and for women there is a right part (also) from inheritance mother-father and relatives, either a little or a lot according to a predetermined portion."*¹²

With this background, this study is intended to provide an objective in revealing the importance of legal protection of the right of the heritant for the owner

¹¹ QS Al-Baqarah (2): 180.

¹² QS An-Nisaa (4): 7.

of inactive account; whether it be a protection of descendant and the protection of property, which is contained in the legislation and Islamic law in Indonesia. So it can be an idea to the parties that concerned to determine the rights which held by each of them.

B. Statement of Problem

From the background of the problem, the subject matter will be proposed in this title is as follows:

1. What are the rights attached to the account owner in a virtual account?
2. How do the legal protection of heritant right to the owner of inactive-account exist in the regulation and Islamic law in Indonesia?

C. Objective of Research

From the formulation of the problem used above, this study aims to:

1. Know any rights attached to the account owner in a virtual account, and:
2. Know how do the forms of the existing legal protection in regulations and Islamic law in Indonesia in protecting the rights which owned by the owner of the inactive account.

D. Significance of Research

The results of the present study is expected to be a useful reference, both theoretically and practically. Theoretically, this study aims to describe, determine, and analyze the legal protection of the rights owned by the owner of the account after they are not in active condition in legislation and Islamic law.

While practically this study is intended to be a useful input to fill the legal vacuum, so it is useful for the preparation of legislation on Technology and

Electronic Transactions in Indonesia, as well as an improvements to the legislation that has loopholes that may be used by offenders to do a crime. In addition, it is also expected to become knowledge for the owner and the relatives that are concerned, that they have the right to an account that has been left by the owners from this mortal world.

E. Abbreviations

- CoIL = Compilation of Islamic Law
- BoCL = Book of Civil Law
- IET = Internet and Electronic Technology
- IR = Intellectual Right
- *ius constitutum* = laws that apply in current/present
- *ius constituendum* = laws that are expected to apply in the future
- i.e. = in either

F. Research Method

1. Kind of research

Based on the background presented by researcher, this research is study in the field of law. This research uses normative research or study on literature (*library research*), so by Amiruddin,¹³ this study also called doctrinal legal research. Because this study conceptualizes what is written against the norms of society behaves as a standard. So then the data used are secondary

¹³Amiruddin, *Pengantar Metode Penelitian Hukum*, (Jakarta: PT. RajaGrafindo Persada, 2004), p. 118.

data consisting of primary legal materials, secondary legal materials, and tertiary legal materials.

2. Research approach

This research as described, using a perspective that does not depart from existing law to understand the data. Such matter done, because (it is for researcher) this problem is still not yet or do not have any rules written in the law. Thus, this research moved from the concept of Legal Protection, Inactive Account, Ownership concepts, and model of conceptual approaches.¹⁴

Another approach that used is a normative juridical approach; are done with a combination of legislation approach (statute-approach), the concept approach (conceptual approach), and the comparative approach. Legislation approach is taken to examine the statutory rules contained in the IET Act which still have a minimal discuss about the right of the owner of the account. the concept approach used to understand the concepts of legal protection, the concepts of ownership rights of the account, which is expected to explain the rights that are owned by the concerned owners of account or his relatives. Whereas comparative approach is done to see how it compares to the rights and rules, relating to the inactive account owner, judged in legislation and Islamic law.¹⁵

3. Source of data

¹⁴Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2010),p. 137.

¹⁵Jhonny Ibrahim, *Teori dan Metode Penelitian Hukum Normatif*, (Malang: Bayumedia Publishing, 2011), p. 302-316.

According to Marzuki, the data sources used in the normative research is secondary data, which consists of primary legal materials; secondary legal materials, and tertiary legal materials.¹⁶

Therefore, the research literature, will use the data to help research in the form of secondary data which divided into primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials which will be used is the Law. 11 of 2008 on Information and Electronic Transactions, and also some legislation which has a connection to do with IET Act, and some literature on legal protection.

Secondary legal materials are materials that help research in the form of books, literature, regulations and other concepts related to the approach in this study. While the tertiary legal materials in this study are materials that give instructions or additional information to the primary legal materials and secondary legal materials, which from a dictionary or encyclopedia.

4. Collection data method

Both primary legal materials and secondary legal materials collected by topic issues that have been formulated based documentation system¹⁷ that allows researcher to explore the materials obtained and classified according to the source and hierarchy to be studied comprehensively.

5. Analyzing Data Method

¹⁶Peter Mahmud Marzuki, *Penelitian Hukum*, h.118.

¹⁷Jhon W. Creswell, *Research Design: Pendekatan Kualitatif, Kuantitatif, dan Mixed*, terj. Achmad Fawaid, (Yogyakarta: Pustaka Pelajar, 2010), p. 269.

A collection of legal materials obtained in the study of this literature study, in the form of legislation and the articles presented and linked to such an extent, so it can be presented in a more systematic writing to address concerns that have been formulated. By using *Grounded Theory*¹⁸ researcher will make the categories of the information obtained (open coding), select one of the categories and placing it in a theoretical model (axial coding), and then assemble a narrative that describes the relationship between the concepts that found (selective coding). Furthermore, the existing legal materials were analyzed to see that there is a legal vacuum in the legislation, so as to help the research as a basic reference and legal considerations are useful in the preparation of subsequent legislation or to provide knowledge to the owners or concerned relatives, that they have the right to access the inactive account.

G. Previous Research

Researchers	Titles of research	Similarities	Differentiation
Hadian Jusil Bachtiar ¹⁹	Perlindungan Hukum Nasabah Pemilik Kartu ATM Dalam Perjanjian Auto Debet Pada Bank Internasional Indonesia Balikpapan	Using the concept of legal protection	Bachtiar's research is legal protection for customers. whereas this study focusing on the concept of legal protection for the owner of the inactive account

¹⁸ Jhon W. Creswell, *Research Design: Pendekatan Kualitatif, Kuantitatif, dan Mixed*, p. 275.

¹⁹Hadian Jusil Bachtiar, *Perlindungan Hukum Nasabah Pemilik Kartu ATM dalam Perjanjian Auto Debet pada Bank Internasional Indonesia Balikpapan*, Skripsi, (Yogyakarta: Universitas Islam Indonesia, 2010).

Ginanjar Sapto Hadi ²⁰	Tindak Pidana Cyber Crime Dalam Perspektif Undang – Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik	The primary of research object is IET Act No. 11 year 2008	Hadi’s research is a research that study on the crime of criminal law which viewed from the perspective of IET Act, while this research attempted to describe the legal protection of the owner of the inactive account in the IET Act
Iman Immanuel Sinaga ²¹	Perlindungan Hukum Terhadap Hak Waris Anak Angkat Warganegara Indonesia Keturunan Tionghoa Sehubungan Dengan Surat Waris Yang dibuat oleh Notaris	Using the concept of legal protection in an inheritance matter.	Sinaga’s research is a study discusses about the inheritance of Chinese descent, and his relationship with wills that made by a notary. While this research is about the owner of the inactive account heritage protection in the IET Act and Islamic law.

Table 1.1 Previous research

Research on legal protection has been done by several researchers, such as **Hadian Jusil Bachtiar** in the title **Perlindungan Hukum Nasabah Pemilik Kartu ATM Dalam Perjanjian Auto Debet Pada Bank Internasional Indonesia Balikpapan**, year 2010. In the thesis, Bachtiar said that the legal protection provided by the bank was not independent from the existence of a form of responsibility. The responsibility of the bank within the meaning of the bank as a corporation in his capacity as a legal entity is become the subject of the legal holder

²⁰Ginanjar Sapto Hadi, *Tindak Pidana Cyber Crime Dalam Perspektif Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik*, Skripsi, (Surabaya: Universitas Pembangunan Nasional Veteran, 2012).

²¹Iman Immanuel Sinaga, *Perlindungan Hukum Terhadap Hak Waris Anak Angkat Warga Negara Indonesia Keturunan Tionghoa; Sehubungan Dengan Surat Waris Yang dibuat Oleh Notaris*, Disertasi Tesis, (Semarang: Universitas Diponegoro, 2005).

of the rights and obligations, it should hold the precautionary principle in the management of the bank (*prudential banking practice*). Ideally, the bank's are responsibility under Article 2 of Law No. 10 Year 1998 on the Amendment of the Law No.. 7 Year 1992 on Banking, that the precautionary principle is an important principle that must be applied or implemented by the bank in business.

But the reality is, the results of research in Balikpapan BII frequently forget that the precautionary principle, it can be seen in the presence of fake money in the ATM machine. The principle that should be in the hold, as in ignore it, because the bank accuracy in selecting the money before the money entered into the ATM machine that still in doubt. Moreover BII also has not been able to overcome the problem of ATMs that accept cash deposits are highly susceptible to the entry of fake money. Some of the things that is one that is very detrimental negligence for BII customers.

While, research on electronic services has also been done by **Ginanjar Sapto Hadi**, on year 2012, in title **Tindak Pidana Cyber Crime Dalam Perspektif Undang – Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik**. The research was done by Hadi to know the implementation of Law No. 11 Year 2008 on Information and Electronic Transactions. Studies using normative juridical methods concluded that if the verification process is done by a team of police not find any evidence, then the case file can not be complete or P21, then the file can not be transferred to the court, but in the process of proving the case is Cyber Crime it certainly can be done by submitting written evidence in the form of electronic documents that can be implemented directly in the trial with

the results in the form of a print out or electronic documents. As it is contained in Article 5 paragraph (1) of the IET Act.

In the implementation of the EIT Law in Indonesia in accordance with the laws and regulations on the application of appropriate sanctions and the threat of the acts committed by criminals cybercrime. Hadi as well as suggest to the police in order to explore the science of advanced countries and are experts in dealing with cases of cybercrime. Knowledge is the importance to be given to the general public to be more careful in doing any action related to the internet.

Legal protection research also performed by **Iman Immanuel Sinaga** in his dissertation on year 2005, in the title **Perlindungan Hukum Terhadap Hak Waris Anak Angkat Warga Negara Indonesia Keturunan Tionghoa; Sehubungan Dengan Surat Waris Yang dibuat Oleh Notaris**. Research conducted by Sinaga a normative study conducted by the normative juridical approach or examine the enactment of positive law in society. With the background of Law. 23 of 2002 on Child Protection, Sinaga try to describe that child protection is not only the responsibility of the adoptive parents for the care, education, and raising adopted children alone. However, it is also the responsibility of the protection of a special responsibility with respect to the heritage legacy of the adoptive parents.

Sinaga formulate the problem in two points: first, how the adoption procedure for groups of Indonesian citizens of Chinese descent in order to be legally valid, and secondly, how do the position adopted son of Indonesian citizens of

Chinese descent in the case of inheritance according to civil law in Indonesia. Furthermore Sinaga concluded that the adoption procedure is done through a petition to the District Court, which is then passed to the determination of the judge's decision. While his position, for the sake of prioritizing the welfare of a child, adopted child standing position is the same as biological children. But because the rule is not specified whether the adopted child has the same rights as biological children, adopted children will require registration to the notary as a safety and legal protection of inheritance rights of the adopted child.

From those previous studies on the above results, it can be seen that the research to be carried out has its own characteristics. In the results of research conducted by Bachtiar has same topic with research to be done, which is about the protection of the law. This study is similar, but the research that will be conducted is an effort to examine the legal protection of the owner of the inactive account.

And the results of the second study had the same legal material that is about the Law No.. 11 in 2008. But the results of these studies Hadi research focuses on the application of sanctions and criminal threats against Cyber Crime. While this study was conducted to reveal the legal vacuum that exists in the IET Act on the rights held by the owner of the inactive account after he died. Thus, contributing to the protection of individual rights, particularly in the areas of inheritance.

Whereas in the third study had the same discussion concept, namely the legal protection of heritage assets. But Sinaga study discusses the inheritance of Chinese descent, and his relationship with wills made by a notary. And this research

is about the owner of the inactive account heritage protection in the EIT Law and Islamic law.

H. Structure of Discussion

This thesis will be prepared with a systematic procedure, and organized in four chapters. Each chapters have their focused discussion as described as follows:

Chapter I (Introduction), contains a description of the background that lead to research on the legal protection of the owner of the inactive account. Developments that triggered ownership, as well as the negative impact on the inactive account owner who lost his protection. In this chapter also provides a foundation of thinking, research focus, research purpose, research benefits, research methods, and a basic overview of the flow of research that will be done by researcher.

In Chapter II, to review the concepts and theoretical basis for study and analysis. It will be revealed the concept of the inactive account owner. Further in this chapter will also discuss the concept of legal protection, and legal analysis. Then, these concepts will be used as the basis of analysis of the research.

The results of the research and discussion will be presented in Chapter III. In this chapter will describe the legal materials that have been obtained from the research literature. Where next will be presented with the form of grounded theory analysis; make the categories of the information obtained (open coding), select one of the categories and placing it in a theoretical model (axial coding), and then assemble a narrative that describes the relationship between the concepts found

(selective coding), to reveal the *ius constitutum* law or regulatory conditions governing the inactive account owner in force of Indonesian society today, and try to give an idea of *ius constituendum* law or regulatory developments towards the future.

In Chapter IV presented the conclusions of the study analyzes the previous chapters, so it can be known about the importance of protecting the legal right of the heritant to the owner of the inactive-account in legislation and Islamic law in Indonesia. In this chapter also stated some suggestions that are expected to become a contribution of scientific ideas and gave some feedback to enhance regulations on Information and Electronic Technology.

CHAPTER II

THE CONCEPT OF INACTIVE ACCOUNT AND LEGAL PROTECTION

A. The Concept of Inactive-Account

Account is an adapted word from English “account” which mean an agreement that somebody has with a company that allows them to use the internet, send emails, etc.¹ Account also interpreted by Fanani as accounts or records of all transactions that occur within the company, property, debts, income, and expenses that all stated in the credit or debit lines and arranged systematically and chronological which make it easy to read.²

Meanwhile, according to Ali and colleagues in insurance dictionary, the account can be defined by something that shows the individual investment funds in

¹Victoria Bull (ed.), *Oxford Learner's Pocket Dictionary*, (China: Oxford University Press, 2011), p. 3.

²Achmad Fanani, *Kamus Istilah Populer*, (Jogjakarta: Mitra Pelajar, 2009), p. 13.

a cash-value life insurance products. In this term also means a reduction or regular registration as an expense or debt.³

Active account is defined by Hartono and others. as a bank customer accounts that are often mutated form of deposits and / or withdrawals account: the process of recording, classifying, and summary of corporate transactions in the value of money and the preparation of financial reports and analysis. Thus, it can also mean that the account is an information system to accumulate, process and communicate all information related to financial transactions of economic players.⁴

The account intended here, in terms, is a user or user account which means a person who uses something,⁵ or to be more details it can be interpreted as a user or agent, either a human agent (end-user) or software agent, who uses a computer or network service. Where a user often has a user account and is identified as the username. Another term for the username used to enter a login name, screen-name, or a nickname for accessing an Internet service or other computing.⁶

Inactive word is adapted from English that means not active, inactive or not doing any business, do not run the job (task) again (as employees, workers, or soldiers).⁷ So the intention of the owner of inactive account is a condition in which the account owner does not perform any task or job to run again as a user, neither in the real world nor the virtual world, or in other words he died.

³A. Hasymi Ali, Agustinus Subekti, dan Wardana, *Kamus Asuransi*, (Jakarta: Bumi aksara, 1996), p. 4.

⁴Sri Redjeki Hartono, Paramita Praningtyas, dan Fahimah, *Kamus Hukum Ekonomi*, (Bogor: Ghalia Indonesia, 2010), p. 7.

⁵Victoria Bull (ed.), *Oxford Learner's Pocket Dictionary*, p. 488.

⁶[http://en.wikipedia.org/wiki/User_\(computing\)](http://en.wikipedia.org/wiki/User_(computing)), accessed on 10th of December 2013.

⁷Victoria Bull (ed.), *Oxford Learner's Pocket Dictionary*, p. 5.

While the IET Act does not mention any statement of the account, the account owner, or user. Inside it we just found a general provision concerning "person" which defined as an individual, both Indonesian citizens, foreign nationals, and legal entities. So, in order to facilitate the study, accounts are divided into three categories based on its function:

1. Virtual address account

It is the category of account used by the user to have an address in cyberspace. The function is as same as the address in the real world, which is for a place to exchange information, send mail to each other, and relate to each other. Certainly, in the virtual address all the activities carried out by the virtual connection, such as e-mail, chat, video calls, and so on. Examples of virtual address account, are: Gmail, Yahooemail, Facebook, Twitter, and others.

2. Virtual storage account

This category of virtual storage is a virtual form of repository, data storage, or files storage. It has same function as the function of data storage in the real world, so the account owner can store the desired data in the virtual world, and access it when needed. Some example of a virtual storage account are: GoogleDrive, Dropbox, JustCloud, and so on.

3. Virtual payment account

Virtual payment is a form of payment service. The function from this virtual payment is as same as what occur in the payment function in the real world, its use for online financial transactions, such as making storage, purchasing,

and selling. Some examples of a virtual bank account, such as: E-Gold, Paypal, GoogleWallet, Bitcoin, and others.

The use of the three categories of the virtual account is likely as same as the address usage, storage shelf, and payment procedure is in the real world. But mostly, the virtual service users prefer to use a virtual account because it has excess to be accessed anywhere and anytime as long as the account owner is on an online status. And it is easier for them to receive some information or important documents, share documents, access documents, and even do a financial transactions.

B. The Concept of Legal Protection

Protection comes from the word "protect" which means placing somebody under, behind, or behind something, in order not to be seen or not to be in contact with wind, heat, and so on. The word "protected" also significantly hiding or located in a safe place to be protected, and this word also has the sense to ask for help to the Almighty God to be saved or spared from temptation, disaster, and sin. And protection is defined as a shelter, or conceal things and actions, as well as the processes, methods, and actions to protect.⁸

Protection, as quoted by Saeful Aschar, also be interpreted as a shelter, and hiding, and protection, means of shelter, provide protection as: actions to protect,

⁸ *Kamus Besar Bahasa Indonesia*, Cet. 2, (Jakarta: Balai Pustaka, 1989), p. 526.

protectionism, cover, or a document issued by a notary public or other person to the sailors who travel to abroad, which confirms the holder is a U.S. citizen.⁹

While the legal protection is defined by Philipus M. Hadjon as a loan word from Dutch that reads "*rechtbescherming*" or in English is called the "legal protection". This legal protection has two forms of protection, namely: first, the protection of preventive law, and secondly, the protection of repressive laws.¹⁰

Preventive legal protection that is means legal protection preventing acts against the law by the recognition of the rights that proposed by the owner of a right itself, which is then converted into a legislation or act that protects individuals from what related to legal issues.

While protection is a form of protection of repressive laws that deal with what had happened, and thus protection in the form of repressive means of protection against things that are happening in court proceedings.

For describing the shape of the maximum legal protection in this study, researcher tried to take the theoretical concepts related to the legal protection of the heritant right. So researcher divided this study into three legal protection point focus: first, the rights and obligations, the second, the theory of legal protection in human rights, and the third, the theory of the legal protection in human primary requirement in Islam.

1. The right and obligations

⁹Saeful Aschar, *Perlindungan Hukum Untuk Pekerja Perempuan Dalam Hubungan Industrial*, (Malang: UB Press, 2011), p. 73.

¹⁰Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat di Indonesia: Sebuah studi tentang prinsip-prinsipnya, Penanganannya oleh Pengadilan Dalam Lingkungan Peradilan Umum dan Pembentukan peradilan Administrasi Negara*, (Surabaya: PT. Bina Ilmu, 1987), p. 2.

In “*Kamus Besar Bahasa Indonesia*” mentioned that the “right” meaning is belonging, belonging to, the authority, the power to do something, the true power over something or to demand something, the degree, dignity and authority by law.¹¹ And obligations means something meaningful to do, or should not to be not implemented or abandoned, it should, or should be done.¹²

In terms, Satjipto Raharjo stated that the right is in the interest of a person by means of allocating power to him for acting in his interests. The allocation of power is carried out in a measured or determined the breadth and depth of power. And the interest itself is a target of rights, not only must be protected by law, but also because of the recognition toward it.¹³

The right in terminology, as Robeth Audi said in The Cambridge Dictionary of Philosophy, as cited by El-Muhtaj Majna, giving affirmation of rights, as follows:

*Rights, advantageous positions conferred on some processor's by law, moral, rules, or other norms. There is no agreements on the sense in which rights are advantages. Will theories hold that rights favor the will of the possessor over the conflicting will of some other party: interest theories maintain that rights serve to promote the interests of the high holder.*¹⁴

¹¹*Kamus Besar Bahasa Indonesia*, p. 292.

¹²*Kamus Besar Bahasa Indonesia*, p. 1006.

¹³Satjipto Raharjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2006), p. 53-54.

¹⁴Majna el-Muhtaj, *Hak Asasi Manusia dalam Konstitusi Indonesia: dari UUD 1945 Sampai Dengan Amandemen UUD 1945 Tahun 2002*, (Jakarta: Kencana, 2005), p. 38.

This statement confirms that the right is an advantageous position, discussed in the legal, moral, regulatory, or other norms. Thus, an advantageous position for the right owner can be tolerated by the rules in force in the community. And the right which said by Audi has two models of emphasis: the emphasis on a will, and the emphasis on interests. Emphasis on a will (will theory) is determining that the priority rights from owner various willingness desires that different with others will. While the emphasis on the interest (interest theory), emphasizes that the right is acting to protect or develop the interests of owner's rights. So a right in Audi's perspective are divided into two categories; someone who has the will, and someone who has an interest.

The right are being grouped by Satjipto Raharjo into 5 (five) groups, they are:¹⁵

a. Perfect and Imperfect Rights

Perfect rights are rights that can be implemented with or without legal force. And imperfect right is the opposite or right which is not recognized by law.

b. Primary and Additional Right

Primary rights are rights that can be extended by other rights, whereas additional rights are rights which complements the primary rights.

c. Public and Civil Right

Public rights are rights that exist in the general population, whereas a civil rights are the person's rights on goods they owned.

¹⁵Satjipto Raharjo, *Ilmu Hukum*, p. 61.

d. Positive and Negative Right

Positive rights are rights held by a person for demanding positive actions of the parties related to the owner of such rights. While the negative right is the opposite, or right to be free from the demands of negative actions from related parties.

e. Private and Property Right

Property rights relating to goods owned by someone, and usually can be transferred. While private rights are rights that relate to the position of a person and is not transferable.

From the explanation of those rights, we know that in every right there is a related obligations closely. So as stated by El-Muhtaj Majna that citing from Sudikno Mertokusumo, he said that any legal relationship created by the law always has two terms that the contents on the one hand present as a right, while on the other hand present as an obligations. There are no rights without obligations, otherwise no obligations without rights. This is what he said that even there are any different legal rights and obligations, the both of them are inseparable. The rights and obligations become applicable at the time the law firmly involved in the concrete case.

And based on that close relationship, Satjipto Raharjo classifying the obligations into 5 (five) groups, they are:¹⁶

a. Absolute and Relative Obligation

¹⁶Satjipto Raharjo, *Ilmu Hukum*, p. 60.

Absolute obligation is an obligation that does not have the right partner, and present itself, while the relative obligation is an obligation that comes due to a right of the other party.

b. Public and Civil Obligation

Public obligation is an obligation that correlated with public rights, while civil obligations is an obligation that is correlative with civil rights.

c. Positive and Negative Obligation

Positive obligation is the obligation to act in a positive, while negative obligation is an obligation to not to do something negative.

d. General and Special Obligation

General obligation is an obligation directed to a class of the general public, while the special obligation is an obligation directed to a particular group that concerned.

e. Primary and Sanction Obligation

Primary obligation is an obligation not arising from act against the law, whereas sanction obligation is an obligation that arises because there is a law against the elements in it.

2. Theory of legal protection of human right

Literally Saeful Aschar stated that human rights are rights inherent in human beings are universal, and lasting, and therefore must be respected,

protected, maintained, and should not be ignored, reduced or taken away by anyone.¹⁷

Suhardi also said that human rights are rights inherent to the human person since humans are born to defend the dignity and value of humanity that knows no racial marginalization, nation, religion, degree or position. Human rights is inherent to human nature, is the flexible and freedom that accepted and valued as a social value in the community and is absolutely necessary in the embodiment of authenticity that has been outlined by the God.¹⁸

The concept of legal protection of human rights first emerged as a response to human rights directed to limit the obligations and rights between the public and government.¹⁹ The development of human rights expressed by Todung M. Lopez, as quoted by Saeful Aschar, divided into four (4) development of theory, they are:

a. Theory of Natural Right

This theory views that human rights are the rights possessed by all human beings based on the time and place of his destiny as a human.

b. Theory of Positivism

¹⁷Saeful Aschar, *Perlindungan Hukum Untuk Pekerja Perempuan Dalam Hubungan Industrial*, p. 61.

¹⁸Saeful Aschar, *Perlindungan Hukum Untuk Pekerja Perempuan Dalam Hubungan Industrial*, p. 62

¹⁹Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat di Indonesia: Sebuah studi tentang prinsip-prinsipnya, Penanganannya oleh Pengadilan Dalam Lingkungan Peradilan Umum dan Pembentukan peradilan Administrasi Negara*, p. 38.

It is the view that because of the rights that set out in the law should be absolutely real, then the right is a right that has a guarantee in a constitution.

c. Theory of Cultural Relativist

Form of the antithesis of natural rights theory, which the theory holds that considers universal rights is a violation of the cultural dimension against other cultural dimensions.

d. Theory of Marxist Doctrine

This theory rejects the theory of natural rights because a collectivity or state where the rights of all those gathered. So when someone gets the recognition of individual rights from state or collectivity, these rights can only be recognized as a right.

Although the development rights above are having conflict between one and the other, each of these theories still claim the protection of the rights obligations. Therefore, this research still insists on human rights that should be protected.

Human rights which must be protected is a developmental form of the first theory, which is derived from the term "natural rights" that are used by the thoughts of "natural law" that play a role in the 17th century. What is right according to this concept is "what is nature" or what God laid on humans. The term "human rights" were popular in the 18th century was the development of the concept of "natural rights" in disposition; secular, rational, universal, individual, democratic, and radical. Furthermore, the concept of "natural rights"

to say that every human being is equal before God. So with that analogy every human being is equal before the law.²⁰

Thus, we can know that in the core of a right there is also a claim, so when it talk about rights it will also discuss about the claims in which the laws relating to the protection of those who have such rights. It is also intended as an implication of the functions of law, that the owner of the inactive account in this study requires a legal protection of their rights as an heritant.

3. Theory of legal protection of primary human needs in Islam

Islam states that a human presence in the world is none other than solely for worshipping Allah SWT.²¹ As *rahmatan lil-Alamin* religion, it absolutely has some protections intended to humans in general, and specifically to its followers. Such protection is one of the goals of the *maqasid* sharia, which globally is creating a safe community to ensure the various necessities of life, either primary need (*dlaruriyah*), the secondary needs (*hajjiyah*), or complementary needs (*tahsiniyah*).²²

The primary needs of human beings that become the ultimate protection in *maqasid* sharia as stated by Muhammad Abu Zahrah as follows:²³

a. Protection of Religion (*hifdz din*)

²⁰Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat di Indonesia: Sebuah studi tentang prinsip-prinsipnya, Penanganannya oleh Pengadilan Dalam Lingkungan Peradilan Umum dan Pembentukan peradilan Administrasi Negara*, p. 40.

²¹Q.S. Adz-Dzariyat (51): 56.

²²Abdul Wahab Khalaf, *Ilmu Ushul Fiqh*, (Jeddah: Alharomaini Press, 2004), p. 197.

²³Muhammad Abu Zahrah, *Ushul Fiqh*, (Mesir: Dar Al-Fikr Al-‘Arabi, 1985), p. 367-368.

To maintain the religion here is the obligation of humans to carry five (5) pillars of Islam, in the form of: (1) bear witness there is no god but Allah and Prophet Muhammad is the Messenger of Allah, (2) implement the obligatory prayers five times a day, (3) give charity for those who can afford, (4) fasting during Ramadan, and (5) perform the pilgrimage for those who have the ability.

b. Protection of Soul (*hifdz nafs*)

In an effort to maintain and ensure the survival of the soul of man, Islam requires men to trying to fulfill the basic needs of human life, such as: food, clothing, and shelter. And to protect the soul from the caprices of others, Islam also prescribed law of *qisas*, *diyat*, and *kafarat*.

c. Protection of Wealth (*hifdz mal*)

To protect one's property ownership rights, Islamic law forbids theft, burglary, robbery, or other actions which can which can remove, destroy or threaten the safety of another man's treasure.

d. Protection of Mind (*hifdz 'aql*)

In an effort to protect the mind of Islamic law forbids the consumption of food or beverages that have an effect on sense or another form of vandalism that could harm the function in a healthy mind. Such as: food or drink intoxicants such as alcohol, or acts that interfere with the function of common sense as gambling.

e. Protection of Decendant (*hifdz nasl*)

Protection of the descent is a form of protection against self-esteem, and honor of human and their descendants. So as to maintain it, Islam had imposed a punishment (*jild*) for adultery, and those who accuse others for committing adultery without any evidence or witnesses.

Thus, this research which focusing on the legal protection of the heritant right of the inactive account here, will use Islamic law protection of wealth (*hifdz mal*) and protection of descendant (*hifdz nasl*).

C. Legal Analysis

With these two concepts of legal protection as an approach, this research will also use two concepts analogy of analysis based on the concerned theory. In an analysis of the concept of rule, legal protection laws will use the theory of argumentation analogy, and in the analysis of the concept of legal protection under Islamic law will use the theory of *qiyas* analogy.

1. Theory of *Argumentum Per Analogiam* (argumentation analogy)

Analogy method means extending legislation that are too narrow in scope, and then applied to a similar event, similar or identical to the word that regulated in the legislation. This method is a method of invention of the judge, in which the judges are looking for more general essence of the event either law or legal actions that have been, both set by law or even that there are no set yet.²⁴

²⁴Bambang Sutiyoso, *Metode Penemuan Hukum*, (Yogyakarta: UII Press, 2006), p. 106.

A special regulations in the legislation which not written in law made as a public provisions and expanded, then extracting the principles contained therein and inferred from conditions of common to the special events that are not regulated by law but similar to it. General rules are not written in the law that applied to certain events which are not regulated under the law, but it's a similar one.

For example, in a 1576 article of BoCL set that the sale event is not broking the lease. When the case turned into a case of *hibah*, the judge had to do an invention, because the *hibah* problem does not regulate in BoCL.

In the process of invention of the law, the judge must determine the essence of a genus (public event) and species (special events). Then it will be found that both species have a similar genus (the sale and grant) in a transfer of rights. Both are a similar events, and it can be treated equally in the law.²⁵

So, this study will use the *argumentum per analogiam* by trying to find the genus and species of the legal protection of the heritant right in the laws for the owner of the inactive account.

2. Theory of *qiyas* analogy

Qiyas literally means to know the size of something, while in terms defined by Wahbah Zuhaili as likening a case which there is no *nash* in it, with other cases that have *nash* because both have the similarity of *illat hukm*.²⁶

Qiyas has 4 (four) pillars, they are:

²⁵Jazim Hamidi, *Hermeneutika Hukum*, (Malang: UB Press, 2011), p. 108.

²⁶Wahbah Az-Zuhaili, *Ushul Fiqh Al-Islami, Juz 1*, (Damaskus: Dar Al-Fikr, 2005), p. 574.

- a. *Ashl*, it's something that become a legal analogy for *qiyas*, and become a basis for it;
- b. *Far'*, ie something that is not available in *nach*, so then analogized to the basis of *ashl*;
- c. *Illat hukm*, ie the reason, or something related to principle of the relationship between both *ashl* and *far'* in law, and;
- d. *Hukm ashl*, ie law contained in the texts and attached to *ashl*, and will be a new law on the *far'*.





CHAPTER III
LEGAL PROTECTION OF HERITANT RIGHT TO THE OWNER OF
INACTIVE ACCOUNT IN REGULATION AND ISLAMIC LAW IN
INDONESIA

A. The Right of Account Owner in Virtual Account

The use of intangible objects are growing and probably will gradually beat the use of tangible objects. It can be proven from the increase of user account in every years, as has been described in the background of this research before.

From the growth amount of users from those accounts, we know there is a drastic change of behavior communication that typically using a paper or paper-based communication into the use of a digital-based or digital data communication, absolutely change the system of people's lives. This lifestyle is finally beginning to switch the use of physical form to electronic form or non-physical world, namely the form of a virtual world.

In the view of civil law, the activities which happens in the virtual world in the forming of an account are performed in the form of a contract. However, the contracts that performed are no longer a paper-based, but the contract that performed by using the form of digital-based.

One of the most important elements of the creation of a contract is an agreement between both of the contracting parties to the agreement. According to the Indonesian civil law, there is a fundamental difference in understanding between the treaty and the agreement. Treaty or more commonly referred to as contracts, means the embodiment of an agreement between the parties who made the contract. So then, a contract can be either be a written or unwritten one. As for agreement, it intended to the rights and obligations of the parties as a result of the making of the contract or agreement which occurs.¹

Meanwhile, according to the consensus principle, an agreement are born on the second that agreement or consent between both parties happened, regarding to the subject which matter from the object of the agreement. While the “agreed” means an attempt to agree between the will of two or more parties. What is desired in the agreement by one party are also must be required by the other parties, although it is not in the same manner, it can be an interrelationship for both parties. And the will of an agreement happen in the deal that met from each parties.²

¹Ninieki Suparni, *Cyberspace: Problematika Dan Antisipasi Pengaturannya*, (Jakarta: Sinar Grafika, 2009), p. 66.

²Iswantoro Dwi Yowono, *Baca Buku Ini Sebelum Tanda Tangan Surat Perjanjian*, (Yogyakarta: Pustaka Yustisia, 2013), p. 12.

After the agreement is performed, which is characterized by the mutual agreement of the parties who made it, the further consequence of the parties are having rights and obligations which must be executed in accordance to the agreements that is poured in the legal agreement. And when one of the parties that concerned did not fulfill their obligations, the consequences for the related party must take their responsibility before the law.

So then, before knowing the legal protection of heritant rights to the owner of the inactive account in legislation or Islamic law in Indonesia. Researcher will describe the existing agreements on several accounts, such as in virtual addresses, virtual storage, and virtual payment, in according to determine the rights that owned by the owner of the inactive account.

1. Ownership contract on Yahoo account

Yahoo is one of the leading providers of virtual worlds that the researcher classify as the category of the virtual address. The services that provided in the form of a virtual media are communications tools, forums, shopping services, search engines, and several other media.³

In providing these services, Yahoo requires personal information from the owner of the account, such as: name, address, e-mail, phone number etc. And after filling out the required information, there is a contract that contains the Terms of Service, and the agreement is performed with the approval of the terms of contract principle by clicking on the button "I Agree", or using the Click-Wrap Contract principle.⁴

³*Yahoo Terms of Service, Section 2: Description of Yahoo Services*, <http://info.yahoo.com/legal/us/yahoo/utos/en-us/details.html>, accessed on 19th of February 2014.

⁴*Click-Wrap Contract* is a form of contract in which a receiver / user license of contracts are required to declare his will to be bound by the terms contained in the service. By *clicking on the button "I Agree"* as if the user has agreed to the terms proposed, because the service provider has provided the opportunity to read the terms written in the

In these terms, contains some of the rights and obligations of the Yahoo related to user rights, as follows:

Rights	Obligations
1) Accepting the truthfully identity of users	1) Protecting the identity of the user by not to sell, to rent, to give, or to link these identity to the other companies, without the consent of the user, except: a) The response to the call, court order, or process of law enforcement, b) The use of the investigation, prevention of illegal acts, acts suspicious, and matters alleged violation of service terms of use ⁵
2) Collecting Yahoo user transaction data and collecting transaction data from Yahoo to the third party partner	2) Using transaction data for general purpose service to clients (ie. user) ⁶
3) Changing the privacy policy	3) Provide the changes of information to the user ⁷
4) Demanding for compensation from a service user who violate the policy. ⁸	4) Provide privacy to the user in changing personal information whenever it necessary. ⁹
5) Terminate the service of the user, if: user violate the policy; or requested by appropriate law enforcement; or it concerned with an illegal act; etc.. ¹⁰	

Table 3.1 Rights and obligation attached to Yahoo account user

contract,.....Read in Niniek Suparni, *Cyberspace: Problematika Dan Antisipasi Pengaturannya*, p. 84-85.

⁵Yahoo Privacy Policy, *Information Sharing and Disclosure*, <https://info.yahoo.com/privacy/us/yahoo/#4>, accessed on 19th of February 2014.

⁶Yahoo Privacy Policy, *Information Collection and Use*, <https://info.yahoo.com/privacy/us/yahoo/#2>, accessed on 19th of February 2014.

⁷Yahoo Privacy Policy, *Confidentiality and Security*, <https://info.yahoo.com/privacy/us/yahoo/#7>, accessed on 19th of February 2014.

⁸Yahoo Terms of Service, *Section 11: Indemnity*, <http://info.yahoo.com/legal/us/yahoo/utos/en-us/details.html>, accessed on 19th of February 2014.

⁹Yahoo Privacy Policy, *Your Ability to Edit and Delete Your Account Information and Preferences*, <https://info.yahoo.com/privacy/us/yahoo/#6>, accessed on 19th of February 2014.

¹⁰Yahoo Terms of Service, *Section 15: Termination*, <http://info.yahoo.com/legal/us/yahoo/utos/en-us/details.html>, accessed on 19th of February 2014.

After knowing the rights and obligations relating to the Yahoo users, we can categorize the rights that are owned by the user as follows:

- a. Protection of personal information
- b. Legal protection
- c. Freedom use of services
- d. The right to terminate the contract

Protection of privacy data in the company of Yahoo, as described in the existing obligations before, is an obligation that must be performed by the Yahoo service provider. If there as an event of misuse from the protection of that data, the user can prosecute Yahoo for his actions according to the Choice of Law and Forum which is located in Santa Clara, California or in the U.S. District Court as already set in the Yahoo terms of service.¹¹

Freedom of use which provided by Yahoo is the freedom of the services to the user to edit and access their personal data, uploading photos, documents, audio, and video, as long as it does not create a conflict against the policy service. Users also have the right to terminate the contract of service, and when it happens Yahoo will delete all data that pertinent to the user account. So that data will not be misused by any party.¹²

However, please note that the owner of the inactive account does not have any rights after his death. The family or heirs can send a letter or a death certificate of owner's account death to the Yahoo, but that owned data will be deleted permanently by Yahoo directly after receiving the death certificate. As stated in the following Terms of Service:

¹¹*Yahoo Terms of Service, Section 28: General Information*, <http://info.yahoo.com/legal/us/yahoo/utos/en-us/details.html>, accessed on 19th of February 2014.

¹²*Yahoo Terms of Service, Section 9: Content Submitted or Made Available for Inclusion on The Yahoo Services*, <http://info.yahoo.com/legal/us/yahoo/utos/en-us/details.html>, accessed on 19th of February 2014.

No Right of Survivorship and Non-Transferability.
*You agree that your Yahoo account is non-transferable and any rights to your Yahoo ID or contents within your account terminate upon your death. Upon receipt of a copy of a death certificate, your account may be terminated and all contents therein permanently deleted.*¹³

However, in some case where there is an important data from the inactive account owner, the heir can archive the complaint/claim along with the death certificate which sent.¹⁴

This is similarly the form of user interface (UI) from the user account in the Yahoo service.

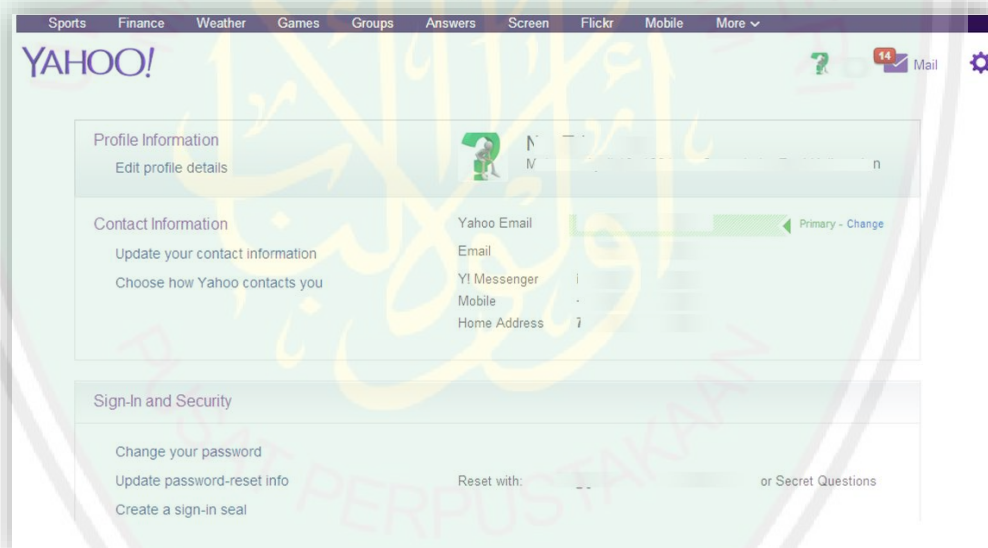


Figure 3.1 Yahoo account UI

2. Ownership contract on Dropbox account

¹³Yahoo Terms of Service, Section 28: General Information, <http://info.yahoo.com/legal/us/yahoo/utos/en-us/details.html>, accessed on 19th of February 2014.

¹⁴Yahoo Privacy Policy, Questions and Suggestions, <https://info.yahoo.com/privacy/us/yahoo/#8>, accessed on 19th of February 2014.

As another services of other virtual world data storage, Dropbox has a service to store data via online. There are two kinds of variations data services: personal and business. Personal service is limited by the storage capacity by 2.5 gigabytes. While the business service determined in accordance of price that desired by the account user.

Contract process between Dropbox and the account user also requires personal information from the owner of the account, such as: name, address, and *e-mails*. And for business features, Dropbox may request credit card or other payment method which needed. And after filling out the required information, this service also uses a system of contracts which contains the Terms of Service (*Terms of Service*), and this approval also using the principles of contract *clicking on the button "I Agree"*, or the principle of *Click-Wrap Contracts*, as existing contracts in the *virtual address* category.

In the terms of service, Dropbox has the rights and obligations associated with user rights as follows:¹⁵

Rights	Obligations
1) Collecting users personal information	1) Do not share users personal information
	2) Save the data uploaded by users
2) Changing the privacy policy	3) Provide the changes information to the user
3) Terminate the service from the user, if: user violates the policy, or because of a court decision, or due to harm others.	4) Provide privacy to the user in changing personal information whenever necessary.

Table 3.2 Rights and obligation attached to Dropbox account user

¹⁵*Terms of Service*, <http://www.dropbox.com/terms>, accessed on 19th of February 2014.

So then, the rights of the user account in the Dropbox service are as follows:

- a. Protection of personal information
- b. Legal protection
- c. Freedom use of services
- d. The right to terminate the contract

Terms of service and user rights that exist in Dropbox is more simpler than the requirements in the categories of virtual address account. Virtual storage service usually gives full freedom access to the users to use their account in storing or sharing the data. So the responsibility for sharing data or uploading that done by the user is the user's full responsibility. Especially in the event of violation on intellectual property rights by uploading data from other people's creation without it's permission, so then, Dropbox is not obligated to take part in the spreading of those intellectual property works.

And if users want to end their using from these services, users can directly delete the existing account in the Dropbox service. And if it's required in legal proceedings or otherwise, the user can request those data by contacting "privacy@dropbox.com". Then the Dropbox will try to provide it within 30 days.¹⁶

In terms of service and privacy policies, there are no policy that written regarding to an inactive accounts or the account holders who have

¹⁶*Dropbox Privacy Policy, Section 4: Changing or Deleting Your Information*, <http://www.dropbox.com/privacy>, accessed on 19th of February 2014.

passed away. However, if necessary, Dropbox provides a service to any concerned questions on the "*privacy@dropbox.com*".

And if there are any demands which concerned within the law, as stated in the contract agreement, the forum is the courts which located in San Francisco, California.¹⁷

This is similarly the form of user interface (UI) from the user account in the Dropbox service

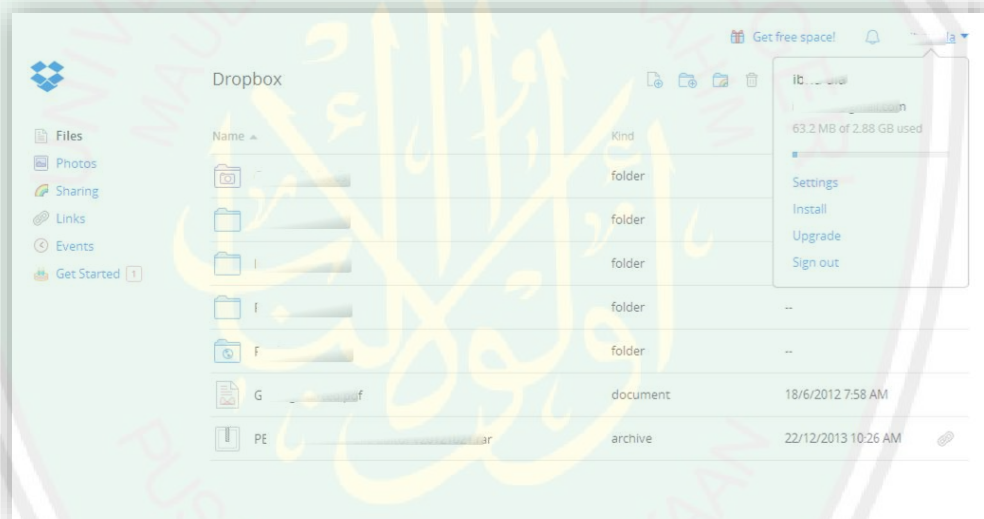


Figure 3.2 Dropbox account UI

3. Ownership contract on Paypal account

Virtual Payment, as what already mentioned in the previous chapter is a payment service in cyberspace. Paypal is one of the service that pretty well-known on virtual payment categories. This service has three variations of

¹⁷*Dropbox Terms of Service*, <http://www.dropbox.com/terms>, accessed on 19th of February 2014.

service accounts: a personal account, premier account and business account. Definitely, each service is giving a different service on each account levels, according to the needs of the service users.

The contract between the service user and Paypal virtual payment account is similar as the contract in category of virtual address account, and virtual storage account, the contract is required the personal information from the owner of the account, such as: name, address, and e-mail. However, with the additional functions as a virtual payment, Paypal requires additional information such as financial information from the account user. And that information may include the real-world bank account, credit card numbers, debit cards, and any other information which required.¹⁸

After filling in the required information, as well as other virtual services, these services also use a contract system that contains the User Agreement. This agreement also using the principle of *clicking on the button "I Agree"* contract, or the principle of *Click-Wrap Contracts* as what used in the previous two *virtual* account category. But, in creating of this account, it required a minimum payment to activate the account. Applicant users can pay the requirement by using a debit card or credit card. So then, user made a payment confirmation via user's *e-mail* after receiving the *passphrase* or

¹⁸*Privacy Policy, How we collect information about you*, https://cms.paypal.com/id/cgi-bin/marketingweb?cmd=_render-content&content_ID=ua/Privacy_full&locale.x=en_US#How we collect information about you, accessed on 19th of February 2014.

passkey for his account. Thus, the virtual payment account has been activated.

Those are the following minimum payments for account confirmation Paypal.

Currency:	Fee :		
Australian Dollar:	\$2.00 AUD	New Zealand Dollar:	\$3.00 NZD
Brazilian Real:	R 4.00 BRL	Norwegian Krone:	15.00 NOK
Canadian Dollar:	\$2.45 CAD	Philippine Peso:	100.00 PHP
Czech Koruna:	50.00 CZK	Polish Zloty:	6.50 PLN
Danish Kroner:	12.50 DKK	Russian Ruble: [^]	60 RUB [^]
Euro:	€1.50 EUR	Singapore Dollar:	\$3.00 SGD
Hong Kong Dollar:	\$15.00 HKD	Swedish Krona:	15.00 SEK
Hungarian Forint:	400.00 HUF	Swiss Franc:	3.00 CHF
Israeli New Shekel:	8.00 ILS	New Taiwan Dollar:	\$70.00 TWD
Japanese Yen:	¥200.00 JPY	Thai Baht:	70.00 THB
Malaysian Ringgit:	10.00 MYR	Turkish Lira:	3.00 TRY
Mexican Peso:	20.00 MXN	U.K. Pounds Sterling:	£1.00 GBP
		U.S. Dollar:	\$1.95 USD

Figure 3.3 List of minimal confirmation in Paypal account

In agreement contained in the User Agreement, PayPal has some rights and obligations associated with the user as follows:

Rights	Obligations
1) Accepting personal information	1) Keeping the personal information save ¹⁹

¹⁹Privacy Policy, How we protect and store personal informatif, https://cms.paypal.com/id/cgi-bin/marketingweb?cmd=_render-content&content_ID=ua/Privacy_full&locale.x=en_US#How we protect and store personal informatif, accessed on 19th of February 2014.

2) Receiving and accessing financial information of user according to existing procedure	2) Assisting the user payments to third parties, as well as Saving money and protecting the results of user transactions in the account
3) Terminating the service from the user, if: the user violates the policy, or because of a court decision, or due to harming others.	3) Provide a privacy to the user in changing personal information whenever necessary. ²⁰
4) Determine the minimum and maximum transaction for money withdrawal ²¹ and payment transactions ²²	4) Protecting user transactions of failure or unauthorized transactions ²³
5) Changing the service policy	5) Providing the changes of information to the user

Table 3.3 Rights and obligation attached to Paypal account user

By those obligations, the rights of users in the service of Paypal account is as follows:

- a. Protection of personal information
- b. Protection of money balance and information
- c. Legal protection
- d. Freedom use of service
- e. The right to terminate the contract

²⁰User Agreement for Paypal Services, Section 11: Your Liability - Actions We May Take, https://cms.paypal.com/id/cgi-bin/?cmd=_render-content&content_ID=ua/UserAgreement_full&locale.x=en_US#11. Your Liability - Actions We May Take. accessed on 19th of February 2014.

²¹User Agreement for Paypal Services, Section 5: Withdrawing Money , https://cms.paypal.com/id/cgi-bin/?cmd=_render-content&content_ID=ua/UserAgreement_full&locale.x=en_US#5. Withdrawing Money., accessed on 19th of February 2014.

²²User Agreement for Paypal Services, Exhibit B - Country-Specific Terms, https://cms.paypal.com/id/cgi-bin/?cmd=_render-content&content_ID=ua/UserAgreement_full&locale.x=en_US#Exhibit B - Country-Specific Terms., accessed on 19th of February 2014.

²³User Agreement for Paypal Services, Section 8: Errors and Unauthorized Transactions, https://cms.paypal.com/id/cgi-bin/?cmd=_render-content&content_ID=ua/UserAgreement_full&locale.x=en_US#8. Errors and Unauthorized Transactions., accessed on 19th of February 2014.

Requirements for the virtual payment services are looked apparently more complex than existing requirements in the previous two categories of virtual accounts. This complexity is reasonable, because the services which offered are using someone's private property to be used in the transactions of cyberspace.

Paypal as a virtual payment services category, also focusing the agreement on financial management in the Paypal system, either from the existing balance in the account, purchasing, selling, even the money withdrawal from the account. The more detail agreement even about the cost or special rules are determined in some countries.

In a matter of law, Paypal determines the forums which located in Singapore or in the location of the defendant. This is determined because there are some specific requirements that more emphasized in the transaction through Paypal service, such as in Argentina, Hong Kong, India, and others countries.²⁴

Users are free to use their account to do transaction with various online market that also has Paypal payment service. But these services impose the limit on every transactions that do not exceed from \$ 10,000 per transaction.²⁵ Even the cost per transaction are free, but if the account owner

²⁴*User Agreement for Paypal Services, Exhibit B - Country-Specific Terms*, https://cms.paypal.com/id/cgi-bin/?cmd=_render-content&content_ID=ua/UserAgreement_full&locale.x=en_US#Exhibit B - Country-Specific Terms., accessed on 19th of February 2014.

²⁵*User Agreement for Paypal Services, 14. Definitions*, https://cms.paypal.com/id/cgi-bin/?cmd=_render-content&content_ID=ua/UserAgreement_full&locale.x=en_US#14. Definitions., accessed on 19th of February 2014.

income in every month are exceeds from EUR 100,000, there will be an extra charged in every 6 (six) month.²⁶

This service also entitles users to end/close their accounts if a user is no longer needs it, anytime as the user desires.²⁷ But unfortunately with those personal fortune that worth in the account, Paypal does not provide any provisions on condition which if the account owner has died. It only provide a service if there is a need and require special services by giving a proper contact. Such as another virtual services, Paypal also has a special service by contacting the Contact Us on https://www.paypal.com/ewf/f=ci_prv.

This is similarly the form of user interface (UI) from the user account in the Paypal service.

²⁶*User Agreement for Paypal Services, Section 3.2*, https://cms.paypal.com/id/cgi-bin/?cmd=_render-content&content_ID=ua/UserAgreement_full&locale.x=en_US#3. Eligibility for Use., accessed on 19th of February 2014.

²⁷*User Agreement for Paypal Sevices, Section 6.1*, https://cms.paypal.com/id/cgi-bin/?cmd=_render-content&content_ID=ua/UserAgreement_full&locale.x=en_US#6. Closing Your Account., accessed on 19th of February 2014.

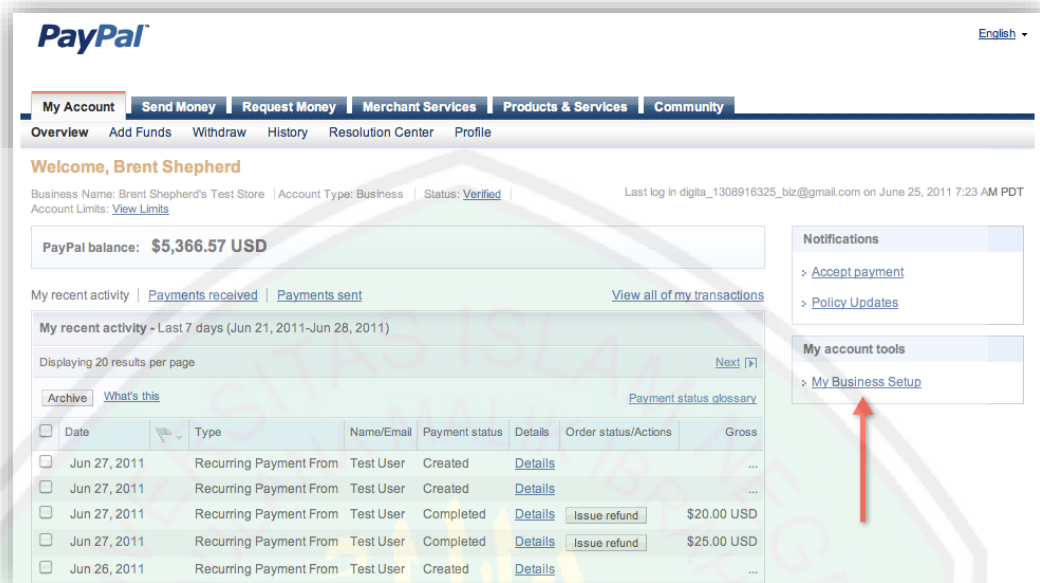


Figure 3.4 Paypal account UP²⁸

B. Legal Protection of Heritant Right to The Owner of Inactive Account in Regulation and Islamic Law in Indonesia

Death is one of the existential case that is definitely happened in human life.²⁹ When we are born, sooner or later death will surely come to take us. People who only live in a traditional period and died in their bed, and while they are surrounded by their family, there is no need to think of their treasure which are not scattered to various places. And the heritant right of property to be inherited to their heir also become clear enough, so it does not cause any problems during the distribution of inheritance to the family they left behind.

²⁸Accepting Subscriptions with PayPal, <http://codex.bbbolt.org/for-plugin-developers/accepting-subscriptions-with-paypal/>, accessed on 19th of February 2014.

²⁹Bryan S. Turner, *Relasi Agama dan Teori Sosial Kontemporer*, (Jogjakarta: IRCiSoD, 2012), p. 444-445.

In addition to, identifying mortality in the old age is not a wise choice, because death can be regarded as a mysterious one. There are who died at a young age was also not in a small amount quantity. Both who died in their old age or young age, certainly have some treasures that can be passed on to their family, although some others do not have any treasures.

However, by looking at the agreement or terms of service that exist in the previous discussion, we know that the conditions of the owner under the inactive account or dead does not have any rights to their property. This is certainly deny their rights as the heritant for the legacy he owned from the account that he had.

For example, in one of virtual address account such as Yahoo, it will erase all the data that connected to the owner of the account which no longer active. Besides, while in the virtual storage account, if the account owner has the property in the form of papers, presentations, applications, program development, etc., It must have an amount of a great value that can be passed on to their rightful heirs.

Even less, the virtual payment account category with their sales results clearly got most valuable. For example, the display that shown in the earlier account, the amount of USD 5,336 is an amount of number that can be inherited as inheritance. With Paypal service that do not set any limit on the balance of sales proceeds, the amount are will become even greater. Paypal only provide an additional service fee if it their proceeds has reached more than EUR 100,000 per month, or approximately USD 137 400 and around IDR 1.5 billion. But with the death of the account owner while he can not access the account, and the undefined rules that describe about the conditions of the account owner's rights as a heritant,

the amount of balance as one of his treasures that should be passed on to his heirs will just disappear.

To avoid this loss of right, we will discuss the legal protection of the owner of the inactive account in legislation and Islamic law in Indonesia. So although all the things about the rights of the owner of the inactive account as the heritant is not contained in existing agreements clearly. The account owner can have the protection before regulation, regulations and Islamic law in Indonesia.

1. Legal protection in regulation in Indonesia

The inactive account owner is the essence of a human being. So whatever the condition, they still has his natural rights as human beings. These rights already exist naturally in their birth, or even after their death.

Humans have the right to do any effort to survive, including the collecting wealth as much as they can. The treasures which collected from these efforts is become as their exclusive right to use it at will. And in Indonesia, this right should not be taken arbitrarily by anyone. As what stated in The Constitution of 1945, Article 28H Paragraph (4)

*Every person has the right to have private property and property rights should not be taken over arbitrarily by anyone.*³⁰

That human either able to use his property freely, they also has a fully sovereign to the property. As stated in Article 570 of BoCL below:

³⁰*Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 dan Undang-Undang Republik Indonesia Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi*, Cet. 11, (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2010), p. 50.

Property rights are the right to enjoy the usefulness of some material freely and to act independently to the material with full sovereign, as long as it is not completely against the laws or regulations which established by a public authority that has the right to define that regulation, and do not interfere with the rights of others, all of it did not reduce the probability of the revocation of rights because of the public interest which based on the provisions of the law and the payment of compensation.³¹

With that kind of freedom and sovereignty, the Indonesian people have the right to develop his property through any network of available communication and information, both in the real world or in the virtual world. In fact it is free to use existing virtual accounts services to store, to process or to use network services in the virtual world. Like what stated in The Constitution of 1945 Section 28F, as follows

Every person has the right to communicate and obtain information to develop personal and social environment, and they also have right to seek, obtain, possess, keep, process and convey information by using all available channels.³²

However, despite of the freedom use and sovereignty over the property and property rights are also acknowledged as one of human rights in

³¹*Kitab Undang-Undang Hukum Perdata*, (Jakarta: Nusantara, 2009), p. 162.

³²*Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 dan Undang-Undang Republik Indonesia Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi*, p. 48.

Indonesia. The state is obliged to protect self, family, honor, dignity, and even property that owned by people. It's the duty of country as a provider of security, and protection from the threat or fear of anything. Either with protection by the government directly, or protection by the laws. As stated in The Constitution of 1945, Article 28G (1), 28I (4), and 28I (5):

Article 28G (1)

Every person has the right for the protection of self, family, honor, dignity, and property under It's (i.e. state) control, and the right for security and protection from any threats which to do or not do something to a human rights things.³³

Article 28 paragraph (4)

Protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government.³⁴

Article 28I paragraph (5)

To uphold and protect human rights in accordance to the principles of a democratic constitutional state, the implementation of human rights guaranteed, regulated, and set in the legislation.³⁵

Legal protection which set in the rules and regulations in Indonesia about The Information and Electronic Technology is only regulated in a

³³Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 dan Undang-Undang Republik Indonesia Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi, p. 49.

³⁴Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 dan Undang-Undang Republik Indonesia Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi, p. 51.

³⁵Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 dan Undang-Undang Republik Indonesia Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi, p. 51.

temporary form of the given regulation No. 11 Year 2008 about IET. Unfortunately, In this regulations, it just provides the terms of the "people" in Article 1 paragraph (21), and that word is defined as an individual, for both Indonesian citizens and foreign nationals, and any kind of legal entities.

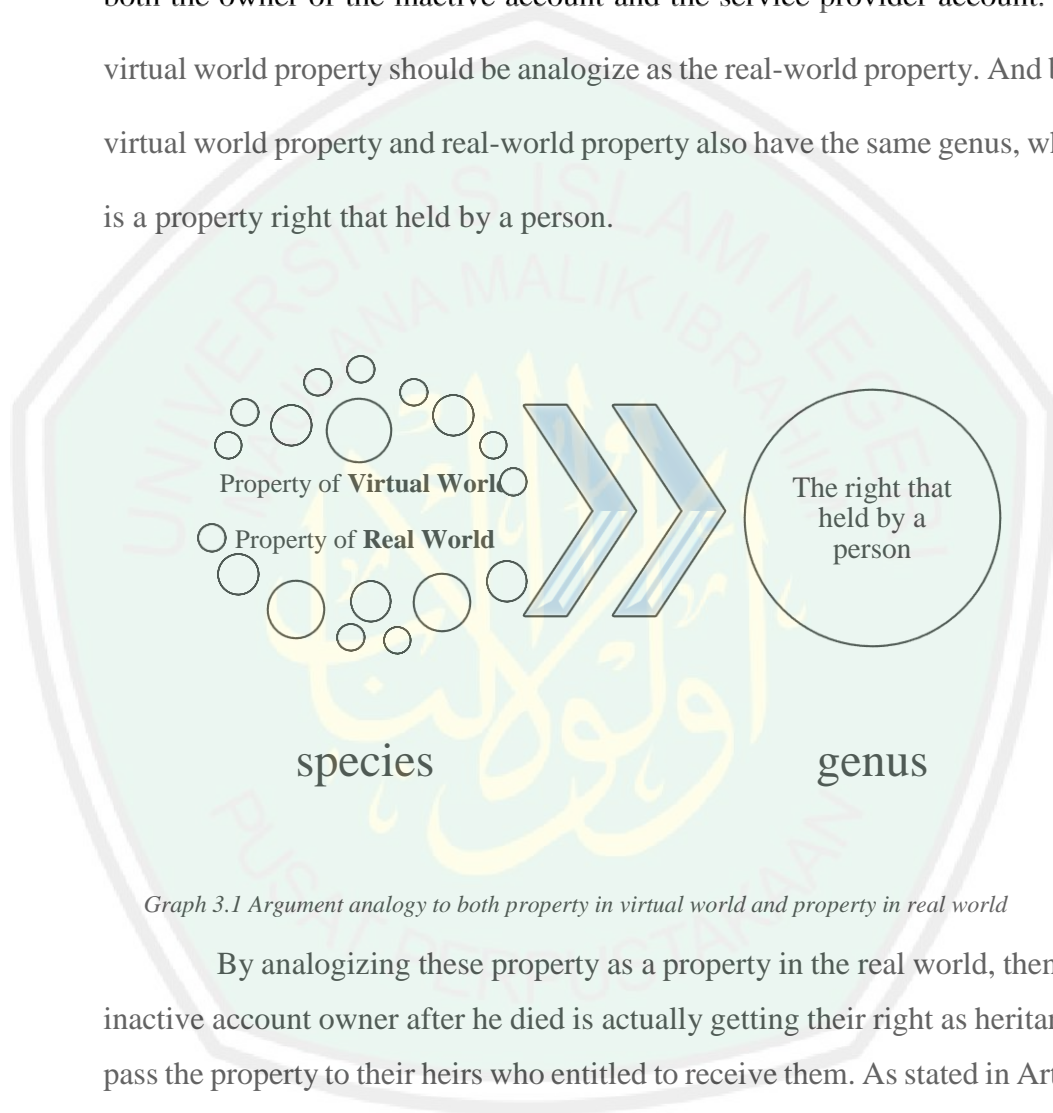
That provision of word can not be taken indirectly to mean the condition about the conflict between the account owner and the provider of the account service in this study. Because, both the account owner is an individual or legal entity, and the service provider was also a legal entity, so we can not differentiate neither account owner nor the provider itself. Then, in this study to facilitate the research, for describing both words which are equally defined by the Act ITE as "person", is defined as the owner of the account and account service provider.

Talking back about the owner of the inactive account or the account owner who has passed away. Although it is not listed in the IET Act, the owner of the inactive account as an Indonesian citizens have the right to inherit the property that held in their virtual accounts to their heirs. Because even though the property is a treasure in the virtual world. It was also a property which owned by the account user. As written in Article 528 of BoCL:

For something material, one can having something dominance, even property rights, inheritance rights, both the proceeds rights, the right kind of land dedication, and the rights of liens or mortgages³⁶

³⁶*Kitab Undang-Undang Hukum Perdata*, p. 155.

Thus, in order to realize a sense of security, justice, and rule of law for both the owner of the inactive account and the service provider account. The virtual world property should be analogize as the real-world property. And both virtual world property and real-world property also have the same genus, which is a property right that held by a person.



Graph 3.1 Argument analogy to both property in virtual world and property in real world

By analogizing these property as a property in the real world, then the inactive account owner after he died is actually getting their right as heritant to pass the property to their heirs who entitled to receive them. As stated in Article 830 of BoCL:

*Heredity can only happened because of the death.*³⁷

³⁷*Kitab Undang-Undang Hukum Perdata*, p. 209,

Inheritance property that should be given to the heirs are should not be lost. Even because of the rules that stated in the agreement between the account owner and the service provider does not specify the terms of the account, or vice versa.

Virtual address account as an address that facilitates the owner of the account to exchange information by sending electronic mail (e-mail), data or any means to communicate with another account owner, absolutely has a file system that archiving the stores conversations, documents, and data which are transmitted. It does not closing any possibility, that these data are important documents that have the selling price.

As well as the condition of virtual storage account. All data which contained in the archive certainly an important document which is the result of hard work of the account owner. So, for easier purpose, those data was intentionally uploaded by the owner of the account, to be accessed wherever and whenever it is needed.

Either the data that exists in the account of virtual storage and virtual address, when each data is a document that contains elements of the work and the hard work of the account owner, it will directly obtain the protection of intellectual property rights. So based on Law No. 19 Year 2002 on Intellectual Property Rights, their hard work in the form of the account owner works / creations in the field of science, knowledge, art or literature, indirectly will owns a lifetime protection of the author plus 50 (fifty) years after the death of the author. As stated in Article 12 paragraph (3) and Article 34:

Article 12 paragraph (3)

Protection referred to what in paragraph (1) and (2), as well as all of creation that is not or has not been announced, but it is already an obvious form, which allows the multification of the work.³⁸

Article 34

Without parsing the copyright on the term of protection of rights which computed from the date of a work was created, calculating the term of protection for the creation is protected: for 50 (fifty) years, and during the life of the author and it continues up to 50 (fifty) years after the creator died from 1 January of the following year after the creation was announced, known by the public, or after the creator's death³⁹

With this, the property in the virtual address and virtual storage which have the value of work or the hard work of the owner of the account in the field of science, knowledge, art and literature is a form of intellectual property that can be passed on to the heirs. Because, intellectual property rights are essentially private rights or civil rights after all.

As one of the civil rights, the nature of the material which is owned by intellectual property rights is the moveable objects. As similar as the immovable object, a movable object can be transferred or switched in whole or in part due to inheritance, grants, wills, written agreement, or other reasons that

³⁸Undang-Undang Republik Indonesia Nomor 19 Tahun 2002 tentang Hak Cipta, p. 5.pdf

³⁹Undang-Undang Republik Indonesia Nomor 19 Tahun 2002 tentang Hak Cipta, p. 10.pdf

are justified by the legislation. This is also confirmed in the Intellectual Property Law Article 3 and 4:⁴⁰

Article 3

(1) Copyright regarded as moveable objects, (2) this rights can be switched and transferred, either in whole or in part because of inheritance; grants; testament; written agreement, or other reasons that are justified by the legislation.

Article 4

Copyright that owned by the author, after the creator's death it will belongs to their heirs or the recipient of the will, and the copyright can not be confiscated unless the right is obtained unlawfully.

Then, by using argument analogy into the Intellectual Property Law properties that stored in the archives system of the virtual address and data storage in a virtual storage account is a property that should to be passed on to the heirs. Because it is the result of hard work from the account owner which stored or archived via online.

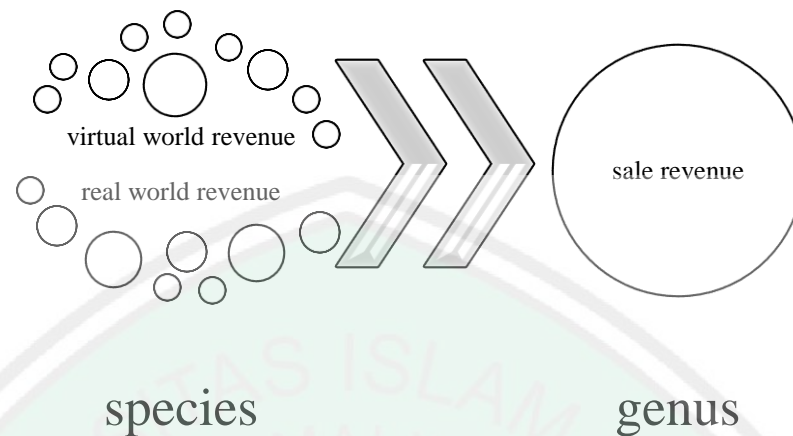
⁴⁰Undang-Undang Republik Indonesia Nomor 19 Tahun 2002 tentang Hak Cipta, p. 3.pdf



Graph 3.2 Argument analogy to both data online and intellectual property

And virtual payment account which there are a balance or a number of deposits from sale proceeds of the account owner, it absolutely a form of property that owned by the owner of the account. This property naturally is one of the movable objects which can be switched, or transferred to another person.

If we use the argument analogy toward the balance which is the result of buying and selling in virtual world -specifically Paypal account- with the proceeds of sale in the real world, both proceeds are having the same genus, namely the proceeds of the sale. So as the objects that owned by the owner of the inactive account, the balance should become an inherited property.



Graph 3.3 Argument analogy to both sale revenue in virtual and real world

So, with the power of property rights that owned by the owner of the inactive account, the property should be inherited to the families who eligible for it. As stated in Article 499 and 832 of BoCL:

Article 499

According to the law what are called as a material are every goods and every right, which can be controlled by the property right.⁴¹

Article 832

According to the law who are eligible to become heirs are the blood relatives for both legitimate and illegitimate, and the husband or wife who lived the longest, all of this provision according to the rules below.⁴²

⁴¹*Kitab Undang-Undang Hukum Perdata*, p. 151.

⁴²*Kitab Undang-Undang Hukum Perdata*, p. 209.

From the implication of argument analogy toward those three categories of accounts, we know that the owner of the inactive account before Indonesian legislation is someone who has the property rights even in the virtual world. As a property owner who died and having some property, he has the obligation to inherent his property to the heirs. So that the property of the virtual address account, virtual storage account, and virtual payment account are the property that must be passed on to their heirs.

2. Legal protection in Islamic law

An heritant as well as a human being in Islam, placed in a noble position. Allah Said that human beings are the most perfect being of every all created beings that he ever created.

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ
وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا

“And verily we have honored the children of Adam, We carried them on land and at sea, We give them sustenance of good things and We favored them with advantages over most perfect creature that We have created.”⁴³

This glory is a kind of general characteristic, Islam pays attention to the rights that possessed by humans, as well as trying to protect it from any damages caused by anyone. Therefore, the provision is made for the prohibition

⁴³Q.S. Al-Isra' (17): 70.

of the blood-shed, honor, property and any confiscated life. And for those who are weak and not able to, must know their rights. Therefore, the right is the first base of the principle love for humanity. Rasulullah SAW also stated this matter in his *khutbah wada'*.

فَإِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ كَحُرْمَةِ يَوْمِكُمْ هَذَا فِي شَهْرِكُمْ هَذَا
فِي بَلَدِكُمْ هَذَا إِلَى يَوْمٍ تَلْقَوْنَ رَبَّكُمْ

“Indeed blood and property all prohibited (to be shed) as what prohibited on this day and this month and in this country, until the day of your meeting with God.”⁴⁴

In addition to this matter, Islam also gives the ownership rights to individuals for obtaining something and use it in certain respects. Because it is kind of human nature and the characteristics in freedom and humanity. Islam makes this right as rule system right to guard people ownership of one's possessions, against any kind of robbery, theft, fraud and so on. Islam also rejects any form of intimidation that could potentially undermine the rights of ownership. And Islam also set the rights of individuals as the fulfillment of the temporal affair of relationship that has been justified, such as: freedom of trade, business, sell, lease, mortgage, grants, wills, and so forth.

In this research, in order to protect the rights owned by the owner of the account as an individual towards the accounts they have. We should know how the condition of the owner of the account in the account services. Based

⁴⁴Raghib As-Sirjani, *Sumbangan Peradaban Islam Pada Dunia*, terj. Masturi & Malik Supar, (Jakarta: Pustaka Al-Kautsar, 2011), p. 70

on the things that have been described in the discussion of the rights of the account owner, the relationship between the service provider and the owner of the account is an agreement to trust each other. Service providers are entrusted with the services he provides about security guarantees and features that facilitate to the account owner. While the account owner trusting the account services and use it to perform the desired transactions.

After viewing the system services and processes on the use of the account. These services can implement the *qiyas* analogy with *wadi'ah* system.⁴⁵ *Wadi'ah* have give an obligation to the recipient and still keeping the right of the owner of the goods to take it back whenever he asks for it. As what said in *Kalam* of Allah and his Prophet, which said:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا

“Indeed, Allah tells you to convey the message to those who deserve it.”⁴⁶

أَدِّ الْأَمَانَةَ إِلَىٰ مَنْ أُتِّمَنَّاكَ

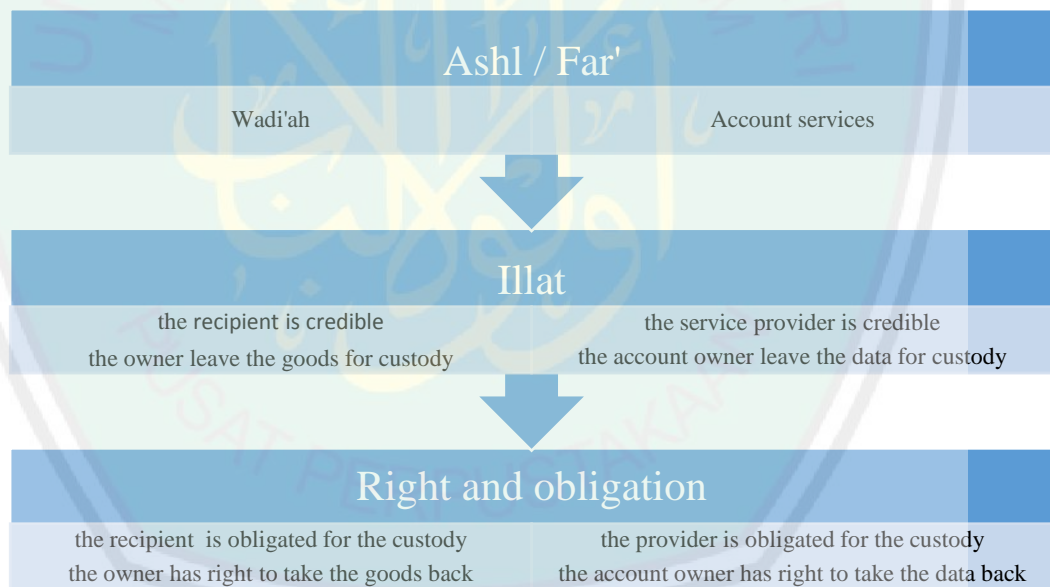
“Convey the message to the person who gave the mandate to you.”⁴⁷

⁴⁵*Wadi'ah* is an adopted word from *wada'a sy syai'*, i.e. leaving something behind. The thing leaved by the owner to someone is what it called by *wadi'ah*. Because he leave it to the one he trust. Read in Abdul Azhim bin Badawi Al-Khalafi, *Al-Wajiz fi Fiqhis Sunnah bal Kitabil 'Aziz*, terj. Ma'ruf Abdul Jalil, (Jakarta: Pustaka as-Sunnah, 2008), p. 705.

⁴⁶QS. An-Nisa (4): 58.

⁴⁷Abdul Azhim bin Badawi Al-Khalafi, *Al-Wajiz fi Fiqhis Sunnah bal Kitabil 'Aziz*, p. 705.

The *Ashl* problem that we use is *wadi'ah*, and the branch of law that analogized is the account service, and both of them happen because of the reason that service providers is credible enough and the owners of goods is leaving the goods in the purpose of custody to the service provider. Then, the legal rights and obligations in *wadi'ah* and account services are similar, namely the right of the account owner that must be returned to, when it requested, and the obligation of the service provider is to maintain the rights which contained in the account.



Graph 3.4 Qiyas of account services to wadi'ah

From the results of analogy (*qiyas*), the account which owned by the owner of the account is one of the properties that owned by the owner of the account. The status of account is causing the account become one of such

property and one of inheritance from the heritant right that should be passed on to the heirs when the owner died.

Inheritance from the heritant that passed away or the owner of inactive account is a kind of right. This right is the right of ownership of dead which transferred to the living descendant or heirs. It also may be any kind of goods, whether in the form of money, property, land, or any form of legal property rights.

Islam that protects all the rights of a person, also protects the existing property rights of the owner account that contained in the account. Even during this life time or active condition, or after his dead ie. his inactive condition. And the conditions after the death of the account owner is the condition as an heritant.

In Islam, inheritance is one of the most problem that taking an attention. And Islam establishes the rules of inheritance with a very organized rules and fair distribution. In Islamic inheritance are set the property ownership rights for every human being, both men and women in a way that is legal. Islamic Law also establishes the right for transferring the ownership of a person after death to his heir, to all relatives and also to the living descendants, without any distinguishing between men and women, or even between an adult and a little one.⁴⁸

⁴⁸Muhammad Ali As-Shabuni, *Al-Muwarits fisy Syari'atil Islamiyyah fi Dlauil Kitabi was Sunnah*, (Jakarta: Dar Al-Kutub Al-Islamiyah, 2010), p. 29.

The Quran describes and details the laws relating to inheritance rights without denying any right from anybody. The distribution parts which must be received entirely explained by the position of the heir to the lineage, whether they are as a son, father, wife, husband, grandfather, mother, uncle, grandson, or even only a half blood relative. As stated in *Kalam Allah* in Surah an-Nisa (4) verse 11, 12, and 176.⁴⁹

Based on the described detail, we know how important the issue of inheritance in Islam. Then Allah as the Most Just will not possible to neglects the rights of the account owner as the heritant, or the rights of his legacy which should be passed on to the heirs. And this right was also conveyed in *Kalam Allah* that said:

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ
الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا

*“For men there is the right part of the possessions of the mother-father and relatives, and for women there is a right part (also) from legacy mother-father and relatives, either a little or a lot according to a predetermined portion.”*⁵⁰

⁴⁹Eman Suparman, *Hukum Kewarisan Indonesia dalam perspektif Islam, Adat, dan BW*, (Bandung, Refika Aditama, 2007), p. 11-13.

⁵⁰QS. An-Nisaa (4): 7.

وَأُولُو الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَابِ اللَّهِ إِنَّ اللَّهَ بِكُلِّ شَيْءٍ

عَلِيمٌ

"... The people who have relatives relationship was partly be entitled to each other (rather than non-relatives) in the Book of Allah. Verily Allah knows all things."⁵¹

From these two verses we know that the account holder who is an heritant when he died, has an obligation to leave his property to his heirs. So that the condition of an archive, a data, an also an income in his accounts of virtual address, virtual storage, and virtual payment which has become a valuable item in cyberspace are must be inherited to the heirs. Because all of the cyberspace items are valuable before the right of the heritant and the rights of the heirs. As what stated in Article 171 b and 171 e of CoIL:⁵²

Article 171 b

Heritant is a person who at the time of death or who was pronounced dead by a Muslim court decisions, leaving heirs and inheritance.

Article 171 e

Inheritance is a property left by the heritant either in the form of objects or in the form of right, that already be his or her ownership.

⁵¹QS. Al-Anfal (8): 75.

⁵²Kompilasi Hukum Islam, p. 24.pdf

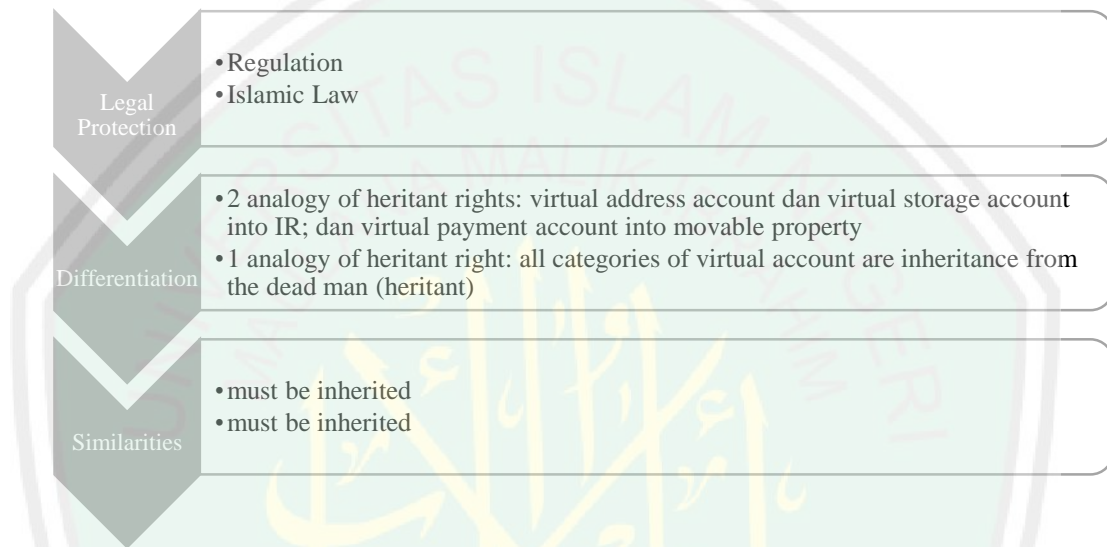
In this discussion, the legal protection as what provided in the regulations in Indonesian law, legal protection also can be analogized by Islamic law about the inactive account as the ownership property. And when the property was left by the owner of the account (because of death), it will directly be given to the heirs who deserve it.

Both forms of protection described above have some similarities and differences. The most similarities in those two forms of legal protection are the attempt to protect the rights of the owner of the inactive account as an heritant, so the owner of the account can transfer the virtual world assets to the heirs. And the difference may be found in the distribution of rights and the kind of property.

On the legal protection that analogized in the legislation, there are two kinds in differentiating the categories of assets in those three account category: First, the property of virtual address and property of virtual storage will be protected by making them as a form of intellectual work of the account owner; and second, the property of virtual payment that can be interpreted as ownership of a moveable object, so the conditions are as the same as the condition of property ownership in the real world.

While the distribution of rights and assets that set in the form of legal protection in Islamic law is a little more simple. Because, as stated by Ali Ash-Shabuni, that what can be inherited is any form of property or rights which are

owned by the heritant after he died.⁵³ So, all of that accounts categories; virtual address, virtual storage, or virtual payment are means as the property of the account owner which must be passed on to the entitled heirs.



Graph 3.5 Differentiation and similarities of legal protection in regulation and Islamic law

Thus are the form of *ius constitutum* in Indonesia. Although it not obviously written in the law, but by using the two models of analogy we can conclude that either in the legislation or in the Islamic law in Indonesia, the inactive account owner still has rights as an heritant to inherit his property.

C. Future Legal Protection of Heritant Right to The Owner of Inactive Account

The conditions of contract between the account owner and service providers that do not support the right of the heritant as the owner of the inactive

⁵³Muhammad Ali As-Shabuni, *Al-Muwarits fisy Syari'atil Islamiyyah fi Dlauil Kitabi was Sunnah*, (Jakarta: Dar Al-Kutub Al-Islamiyah, 2010), p. 30

account, unlikely need some legal protection to protect themselves as heritant, inheritance, or even the heirs. The form of *Ius Constituendum* as a legal protection which offered by the researcher in this discussion is the legal protection of preventive and repressive. as follows:

1. Preventive legal protection

The preventive legal protection to the owner of the inactive account as described in the previous chapter, is an attempt to prevent unlawful acts by forming or regulating laws or regulations. The preventive attempts that we may try are two things, the amendment of IET Law and the carefulness of applicant of account owner before obtaining his prior approval in the account service:

a. The IET law amendment

The legislature that serves to establish the law has a very important existence in managing the direction of the life in society, nation and state. By knowing the previous discussion, unfortunately the IET Law still has some leaks that could harm or damage people's lives unlawfully.

Based on the leaks of law that could damage people's lives and violate the principles and purposes of the IET law itself to provide security, justice, and legal certainty to users. IET law should get amendment. The amendment⁵⁴ that made are precisely the articles which managing the clarity condition of both account owner and account provider in online services.

⁵⁴The change can be either a replacement or a change that both the anticipation of development of the age,.. Read in Bintan Regen Saragih, *Perubahan, Penggantian dan Penetapan Undang-Undang Dasar di Indonesia*, (Bandung: CV. Utomo, 2006), p. 15.

The amended articles are some of the article that the rules the rights and obligations, and conditions after the owner of the account is inactive/died. It also may rules some other additional provisions that provide better legal protection to the owner of the account. Thus, in facing any unlawful act in the development of virtual world, the account owner can be protected by the amended legislation of IET law.

b. The carefulness of applicant of account owner

The account owner is an applicant of the account owner before the account agreement between the applicant and the service provider occurs. As a law actor, this case of property in virtual world is one of his acts to performing their rights to establish an agreement with the service provider. Actually, that agreement has the impacts and consequences. Applicant of the account owner must understand and examine the anatomy that exist in the agreement carefully.

According to Niniek Suparni there are two kinds of agreement used in any agreement in cyberspace. One of the agreements used is "Clickwrap Contract" or a deal happens between both service users and providers in the services as the principles that have been declared become a valid contracts in online services. Another kind of agreement in the online services contract is a model of "take it or leave it". It is a standard contract that has several stages: first the inclusion of clauses and terms, secondly the inclusion of the terms of

the contract, and third, the acceptance of the terms by using the "clicking on the submit and I accept the button"⁵⁵

Either "Click-wrap Contract" contracts or "take it or leave it" contract, as the contract both has the same effect as a contract in the real world. As has happened in other countries, like Australia that presented in the background of the study. The effects are not only sue to personal account owners only, but also can have an impact on the family, especially in inheritance matters.

Finally, to prevent the possibility of losing rights as an heritant, the owner of the account must be careful in using any online services. The account owner must be careful in choosing, using, and understanding the provisions that exist in the service account, either at the time when he was still an applicant for the owner of an account, or after he became a legal owner of the account.



Graph 3.6 Future preventive legal protection

2. Repressive legal protection

⁵⁵Ninieck Suparni, *Cyberspace: Problematika Dan Antisipasi Pengaturannya*, (Jakarta: Sinar Grafika, 2009), p. 83-84.

Repressive protection, or protection after unlawful act happened, is trying to give a proper response in handling cases that occur. As we know, cyberspace is one of the new legal regime in Indonesia. The event, which is a form of technology and the information is commonly referred to *the law on internet; the law information technology; the telecommunication law; dan lex informatica*. And cyberspace inheritance in this case requires special attention in the search for solutions of problems that occur.⁵⁶

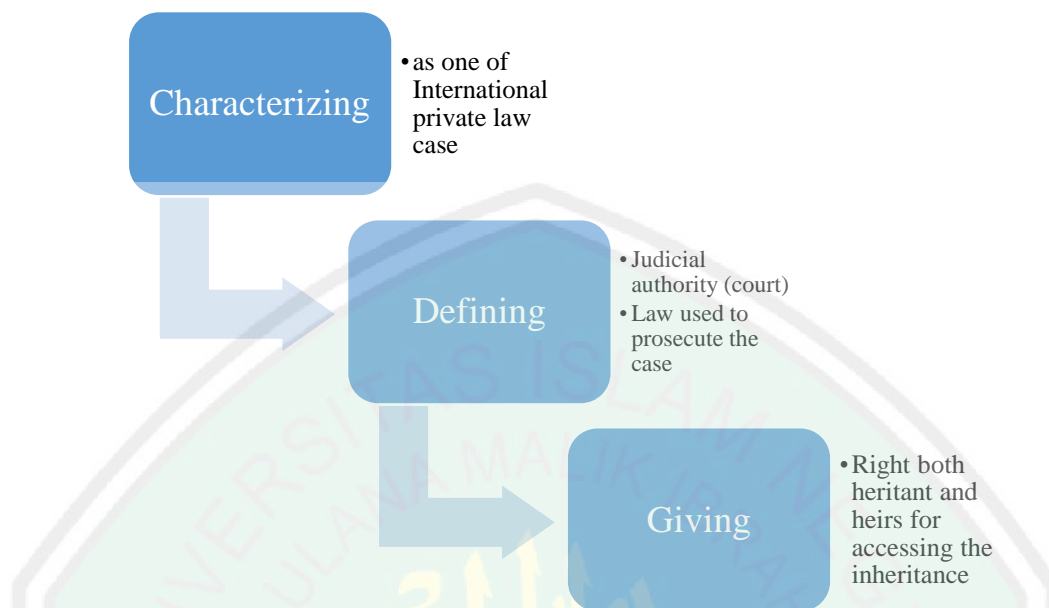
The global nature of the Internet has surpassed the limits of the state which then regulate other private activities. However, indirectly, the law on the Internet also provide the frameworks of international private activity.⁵⁷ As one of the cases that have an international private characteristics, so then the researcher characterizes the nature of this problem into one of the private international law matters.

International private law is the law that regulates the relationship between or among persons who are citizen of different countries. In the case of private international law we are required to define two important points, first the judicial authority to hear the case, and second the law used to prosecute the cases.⁵⁸ So, then the inheritance leaf by the heritant in his inactive account can be inherited to the heirs.

⁵⁶Danrivanto Budhijanto, *Hukum Telekomunikasi, Penyiaran, dan Teknologi Informasi: Regulasi dan Konvergensi*, (Bandung: Refika Aditama, 2010), p. 129.

⁵⁷Hata, *Hukum Internasional: Sejarah dan Perkembangan Hingga Pasca Perang Dingin*, (Malang: In-TRANS Publishing, 2012), p. 106.

⁵⁸Sudargo Gutama, *Hukum Perdata Internasional Indonesia*, Jilid: I, (Bandung: Alumni, 2008), p. 48.



Graph 3.7 Future repressive legal protection

And to face the problem of inheritance in the virtual world, we are required to find a links in any cases that related to the legal system. Either the legal system of local country or the legal system of foreign country.

A party filling suit over an internet dispute must take that claim to a court that has both subject-matter jurisdiction or namely the authority and power to address the particular kind of legal problem being raise.⁵⁹ In order to establish that personal jurisdiction, at least the defendant must either be a resident of the forum state or the place where the case is being tried, or by its actions, must have subjected itself to the jurisdiction of the courts in that state.

For example, in Dropbox account services. When complaints of heirs are acceptable by the service provider after contacting “please contact us at

⁵⁹Tony McAdams; Contributing authors, Nancy Neslund and Kristofer Neslund, *Law, Business, and Society*, 7th ed., (New York: The McGraw-Hill Companies, 2004), p. 693.

privacy@dropbox.com or at 185 Berry Street, 4th floor, San Francisco, CA 94107.”, then the problem can be said to be completed and solved. So then the inheritance left by the owner of the inactive account can be given directly to the heirs.

But if the complaint is not accepted by the provider, as the provisions set in legal terms, Dropbox chooses options with the principles of *the conflicts of law*⁶⁰ for legal jurisdiction of law that existing in California. So that the issues which considered as the act against the private law, may be submitted to the Federal Court of San Francisco, California, as the competent court toward this case.

In court, heirs as a plaintiff may ask for some remedies. First, they can sue for the damages as the legal heirs of the owner of inactive account. Second, they can ask to cancel the contract and order the provider to give back any property or even any money (for payment account) that contained it the inactive account.⁶¹

For the law that used in legal proceedings, as a country that adheres to the common law system, it depending on the wisdom of a judge. Judges can use the law and jurisprudence that examines the philosophical case or using rules that established by the government.⁶²

⁶⁰Conflict of Law is an emphasis on the legal place that has the most significant relationship to the transaction and the parties... Read in. Bayu Seto Hardjowahono, *Dasar-Dasar Hukum Perdata Internasional*, Buku I, (Bandung: Citra Aditya Bakti, 2006), p. 292.

⁶¹Lee P. Arbetman, Edward T. McMahon, and Edward O'Brien, *Street Law: a course in practical law*, (St. Paul: West Publishing Company, 1994), p. 266.

⁶²Lee P. Arbetman, Edward T. McMahon, and Edward O'Brien, *Street Law: a course in practical law*, p. 3.

On the one side, Actually, for American people, inheritance are the result of a wills or a document that explains how a person wants his or her property distributed after death. Everyone who has any money or property should consider making a will. But if people die without any will, state law determines who receives the property. State usually determines that a portion of the property go to the living spouse if he or she is married. And the remainder of property may go to their children, parents, grandchildren, brothers or sisters, and so on.⁶³

On the other side, based on the material status of the virtual world property, it is the kind of movable property. And according to Bayu Seto Hardjowahono this heritage objects can be subjected to the rules of inheritance law of the heritant place as citizen (*lex patriae*) or his fixed resident (*lex domicile*) when he died.⁶⁴

So for Indonesian people as the owner of inactive account, the law used in the trial is the principle rules of private international law is the law of inheritance in Indonesia. And the judge can use the argument analogy or *qiyas* analogy as what used by researcher to provide the right of the account owner as an heritant and distribute the heritage to the rightful heirs.

⁶³Lee P. Arbetman, Edward T. McMahon, and Edward O'Brien, *Street Law: a course in practical law*, p. 380.

⁶⁴Bayu Seto Hardjowahono, *Dasar-Dasar Hukum Perdata Internasional*, p. 302.



CHAPTER IV

CONCLUSSIONS AND SUGGESTIONS

A. Conclusion

Based on the results of the study as described in previous chapters, and according to the purpose and objectives of this thesis, conclusions are can be drawn as follows:

1. From the three categories of accounts are grouped by the researcher (virtual address account, virtual storage account, and virtual payment account). The rights that attached to the account owner in each category are varied, but some general similarities rights that owned by the owner is as follows.
 - a. Protection of personal information
 - b. Protection of money balance and information
 - c. Legal protection
 - d. Freedom use of services
 - e. The right to terminate the contract

2. In the Constitution of 1945 and a number of laws and regulations, particularly in the book of civil law, the law of information and electronic technology, copyright laws, compilation of Islamic law, and Islamic law, we can find a form of legal protection rights of the heritant right to the owner of the inactive account, if we use the argument analogy or *qiyas* analogy. The results of both models are the concluded as follows:

a. The result of argument analogy

The Property of virtual world that does not has any basis as a legalized property in any regulation can analogized as the property when it come with the property of the real world. So that the property can be endorsed, owned, and passed as written in Article 528 of BoCL.

And the archival storage, data, and documents in the system of virtual address, and virtual storage, can be analogized as the result of hard work of the account owner which is protected by copyright, as written in the Intellectual Property Right Act Section 3. Then the condition of the property as the moveable object, the online data collection in this two categories of accounts can be passed down to the heirs of the inactive account owner. As stated in Article 4 of Intellectual Property Right Act.

While the balance as the result of buying and selling in the virtual world in a virtual account payment, can be analogized with the proceeds of sale in the real world. So, the property of the owner of the

inactive account in the virtual payment category must also be passed on to the heirs as same as the other two virtual accounts.

b. The results of *qiyas* analogy

Based on the service system and the use of three categories of account, the service system can be analogized with *wadi'ah*. Both *wadi'ah* and service system are have a similar *illat*. In case of *wadi'ah*, this is performed because of the recipient can be trusted by the owner of the goods, and in the case of service system, the providers also a giving a trustworthy services in account, so then the account owner desired to put in the accounts, data, documents, and even payment transactions via online on those services. While the rights and obligations in both of them is also similar, for *wadi'ah* case, the recipient must maintain the given mandate, and the owner can ask for the goods to be returned to him anytime. While in the case of account services, the providers have an obligation to keep safe anything in custody which placed by the account owner, and the account owner is also free to ask that data whenever he wants.

Qiyas analogy of account services into *wadi'ah* can be analogized further by analogizing this matter as the property. So if the owner died, the property can be passed on to the heirs. as what stated *Kalam Allah* in Surah An-Nisa (4): 7, and Article 171b of CoIL.

B. Suggestions

From the results of those conclusions, there are several recommendations:

1. For the legislator of laws or regulations that forming the state legislature should review and reform back the legislation on information and electronic technologies, especially in the elements of the inactive account and inheritance rights in it.
2. To the applicant of the account owner, in order to be more careful about the agreement, before checking the "I Agree" in Click-Wrap Contracts in every agreement and policy for having an account. So that the applicant can anticipate what should be done, and what should not be done in the service account.
3. The results of this study can be used as a reference for another researchers in the more better and more innovative research.
4. The results of this study may also be a reference to the owner of The inactive account or the heirs to fight and enforce for their rights against the service provider account before law.

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