



(MUDIMA)



## Division of Joint Property According to the Compilation of Islamic Law

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### ABSTRACT

One of the efforts to reform family law in modern Muslim countries, including Indonesia, is to evaluate various provisions of classical Islamic law that are considered no longer appropriate to social conditions and the needs of the changing times. Among the results of this evaluation is the issue of jointly owned property in marriage. The requirements of joint property between married spouses are not governed by Islamic law or traditional fiqh literature. The combining of assets gained during a marriage into the husband and wife's property, regardless of who contributed or whose name the property is recorded in, is referred to as joint property. All assets obtained are still regarded as joint property even if only one partner—the husband or wife—works. The joint property may be used by the husband and wife. The property must be shared equally in the event of a divorce or death. The consolidation of the husband and wife's assets into joint property under Indonesian law is believed to be rooted in practices that have long been known and carried out in the daily lives of the Islamic community in Indonesia

## INTRODUCTION

One of the efforts to update family law in Muslim countries today, including Indonesia, is to evaluate several provisions of ancient Islamic law that are considered incompatible with the current social situation and demands or changes of the times. One of the results of this evaluation is the issue of joint assets in marriage.

The institutionalization of joint property between a husband and wife in marriage is not governed by Islamic law or traditional fiqh texts. The fuqaha states that both the husband and the wife own property. As part of his duty, the husband provides his wife *nafkah*, or a portion of his property, which she spends for household expenses.

This is not the same as Indonesian marriage laws. Joint property management is covered by Indonesian marriage law. Regardless of who created it or whose name it is registered in, the administration of joint property refers to the combination of assets obtained during the marriage contract to become the joint property of the husband and wife. The property obtained is nevertheless regarded as joint property even if only one person—the husband or wife—contributes to the project. The rights to use the joint property are equal for the husband and wife. The property must then be divided in half if the husband and wife's marriage terminates, either by death or divorce.

It is thought that the long-standing acceptance of the idea of joint property, which has been a part of the everyday existence of the Islamic community in Indonesia, is what led to the regulation in Indonesian law governing the merger of husband and wife's possessions into joint assets. The Indonesian customary law system has long recognized the idea of joint property. In this country, customary law pertaining to joint property has been applied consistently and is still regarded as pertinent.

Conflicts pertaining to marriage, divorce, inheritance, or other family law matters, such as disagreements over shared property among Indonesian Muslims, may be brought before the Religious Court for settlement. Before 1974, judges of Religious Courts relied on Islamic law, which was

developed from thirteen volumes of fiqh (jurisprudence), as decided by the Ministry of Religious Affairs. *Al-Bâjûrî* is one of these books. (2) *Fatḥ al-Muʿo*, (3) *Syarqâwî 'alâ al-Taḥrîr*, (4) *Qalyûbî/Maḥ allî*, (5) *Fatḥ al-Wahhâb* with its commentary, (6) *Tuḥ fah*, (7) *Targhîb al-Musytâq*, (8) *Qawân' al-Syar' iyyah li al-Sayyîd bin Yaḥ yâ*, (9) *Qawân' al-Syar' iyyah li al-Sayyîd S adaqah Daḥ lân*, (10) *Syamsûrî fî al-Farâ` iḤ*, (11) *Bughyat al-Mustarsyid*, (12) *al-Fiqhu' alâ al-Madzâhib al-Arba' ah*, and (13) *Mugnî al-Muḥ tâj*.

Judges in the Religious Court rendered verdicts on marriage issues based on Islamic law as specified in the book of fiqh and the Marriage Law following the passage of Law No. 1 of 1974 on Marriage (henceforth referred to as the Marriage Law). Judges at the Religious Court use the KHI's rules as a legal guide for deciding issues involving marriage, inheritance, grants, wills, and *waqf* after the KHI was introduced in 1991 based on Presidential Instruction No. 1 of 1991.

Regarding the issue of assets in marriage, which includes joint property, it is regulated in at least two laws applicable in Indonesia, namely Law No. 1 of 1974 and the Compilation of Islamic Law (KHI). In Law No. 1 of 1974, the provisions governing this matter can be found in Chapter VII concerning Property in Marriage, which consists of three articles, namely Articles 35, 36, and 37, as well as in Chapter XIII concerning transitional provisions in Article 65. Meanwhile, in the KHI, the term “joint property” is mentioned in Chapter I on General Provisions, specifically in Article 1 letter (f). The provisions regarding joint property in the KHI are contained in Chapter XIII on marital property, which consists of thirteen articles, from Article 85 to Article 97.

If the wife does not have a job, in other words, she functions as a housewife, and the husband spends his time earning an income outside the home, then in the event of a divorce, the two rules based on the KHI are very relevant to apply. Considering that the wife's role in managing the household means that she has fulfilled her responsibilities as a spouse, she is

entitled to half of the joint property. However, if the husband fails to fulfill his obligations properly, for example, by not providing for his wife, children, and household needs, forcing the wife to take on a double burden of managing the household and working to improve the family's financial situation, while the husband makes no effort to help, then when the marriage ends, the rules on the division of joint property in the KHI seem unfair.

#### B. Formulation of Problems

According to the background information provided above, the issues this study raises are:

1. What does it mean to have joint property in a marriage?
2. How does one go about bringing a joint property lawsuit?

#### C. Objectives and Benefits

a) The objectives of this study are:

1. To understand and analyze the concept of joint property in marriage.
2. To understand and analyze the process of joint property litigation.

b) Benefits of the Study

The benefits of this study are:

##### 1. Theoretical Benefits

- a. Development of Legal Science: Enriching the wealth of legal science, particularly in the field of Islamic law related to the division of joint property.
- b. Testing and Development of Theory: Testing the relevance of existing legal theories to actual conditions, strengthening or even refuting previous theories.
- c. Academic Reference: Serving as a reference for future legal research related to the division of joint property.
- d. Conceptual Understanding: Providing a deep understanding of the principles, doctrines, or concepts of Islamic law and applicable laws and regulations.

#### D. Practical Benefits

- a. Legal Problem Solutions: Provides alternative solutions to legal issues in the community related to the division of joint property.

b. Input for Law Enforcement Officials: Serves as input for judges, police, prosecutors, and advocates in handling specific cases related to the division of joint property.

c. Policy Basis: Serves as a consideration in the formulation of legislation or public policy (legal policy).

d. Increased Legal Awareness: Provides the community with an understanding of their legal rights and obligations related to the division of joint property.

## METHODS

### 1. Type of Research

The legal research conducted is a type of non-doctrinal or empirical legal research (legal social research), which shows that law as a social structure is always related to various other social variables. Therefore, law cannot be studied solely by relying on a collection of laws (law in books), but rather there must be an analysis of the application of law in practice (law in action), its historical context, its connection to the spirit of society or the nation, and so on.

Hans Kelsen. that the rules in legislation are often not in line with the implementation of law in the field, and may even be contradictory. Non-doctrinal research is research that emerges in the empirical study area in the concept of sociological jurisprudence, which has produced many legal results based on legal sociology.

### 2. Approach Method

The approach method in research is very important because it can be used as a guideline to facilitate the process of studying, analyzing, and understanding existing problems. Regarding this empirical research, the approaches used in the research are:

- a. Statute approach
- b. Conceptual approach.
- c. Sociological approach

### 1. Types and Sources of Data

According to Soerjono Soekanto, the data sources in this study use primary data as the main data and secondary data as

supporting data. Secondary data sources include primary legal materials and secondary legal materials. The legal materials that have been collected are then discussed in a descriptive-analytical manner, which is a presentation that describes in detail various aspects related to the issue, then analyzes its validity.

The method or means of concluding the analysis results is carried out using qualitative analysis, namely by examining and reviewing issues related to applicable legal provisions, as well as descriptive analysis, namely by explaining the issue in general through a description based on materials obtained from library sources.

The method used to check whether the data collected in this study is correct and valid is triangulation. The triangulation used is source triangulation, which is comparing and rechecking the level of confidence in information obtained through different times and tools in qualitative research. According to Moleong, triangulation is a way of checking whether the data is correct and accurate by using something different outside the data as a checking tool or for comparison with the data.

## **RESULTS AND DISCUSSION**

### **1. The Concept of Joint Property in Marriage**

Married life cannot be guaranteed to always run harmoniously and happily, because if one of the spouses does not understand their respective rights and responsibilities as husband and wife, then it is very likely that conflicts and disputes will arise, which can lead to divorce. When a marriage ends in divorce, there will certainly be legal consequences for the parties involved in the household. One of the legal implications of divorce, especially in Indonesia, is related to the division of joint assets.

In essence, Islamic law does not address assets in a marriage. Islam holds that each person's property remains private, with the husband having his own property and the woman

having her own, and marriage does not result in the combining of the husband and wife's property. The wife is not required to work, but it is the husband's duty to support his spouse and the household.

This differs from existing legislation in Indonesia, where marriage laws contain provisions on joint property. This rule arose because the term joint property has long been recognized in customary law in Indonesia. To better understand this discussion, this chapter will explain several things about the concept of joint property in marriage. However, before discussing joint property in more detail, we need to first understand property in marriage, because based on customary law and positive law in Indonesia, joint property is part of the marriage property itself.

Therefore, if property is linked to the context of marriage, it can be interpreted as a single unit of wealth controlled and owned by a family during their marriage. In addition, property related to marriage is also known as marital property, which is the wealth belonging to the husband or wife that was acquired by each of them before marriage, also known as separate property, as well as items acquired by them throughout their marriage.

The definition of marital property according to customary law includes all assets owned by a husband and wife during their marriage. This includes property originating from the family, as well as personal property obtained from inheritance, gifts, individual income, the fruits of cooperation between husband and wife, and items received as gifts. All of these aspects are influenced by the kinship values upheld and the type of marriage practiced by the couple.

According to Law No. 1 of 1974, the law distinguishes between two categories of property in a marriage, namely joint property and personal property or separate property. This is regulated in Article 35 paragraphs 1 and 2. Paragraph (1) states that "Property acquired during the marriage

is joint property,” and paragraph (2) explains that “The separate property of the husband and wife and property received as gifts or inheritance are the property of each party unless otherwise agreed by both parties.”

Meanwhile, based on Sayuti Thalib's view, when considering the origin of the assets owned by the husband and wife or the property from the marriage, they can be divided into three categories, namely:

a) Assets owned by each spouse before they were married, whether inherited, gifted, or earned independently, are known as separate property.

b) Assets owned by each spouse after they were married, but not earned through their individual or joint efforts, are acquired through gifts, bequests, or inheritance for each spouse.

c) Assets acquired after marriage from the efforts of both spouses or the efforts of one of them are referred to as joint property.

Article 35 paragraph (1) of the Marriage Law states that “property acquired during marriage is joint property”. Meanwhile, in Chapter I concerning General Provisions in KHI Article 1 letter (f), it can be understood that joint assets are assets acquired either individually or collectively by the husband and wife during the marriage without questioning who is registered as the owner of the assets. On the other hand, Article 119 of the Civil Code states that “From the moment the marriage is solemnized, the law considers joint ownership between husband and wife to exist, unless otherwise specified in the marriage agreement.”

So, from the previous discussion, it can be concluded that joint property refers to assets owned in a marriage that are acquired by the husband and wife, either collectively or individually, during the marriage, except for items received as gifts or inheritance. In other words, this joint property is truly wealth acquired by the husband or wife through effort and hard work.

Article 35 paragraph (1) of Law Number 1 of 1974 concerning Marriage defines joint property in accordance with positive law that applies in Indonesia. It states: "Property acquired during marriage becomes joint property."

According to this article, all property gained during a marriage is considered joint property, which seems to be a fairly broad definition of the term. Who worked to earn the riches during the marriage is irrelevant. According to the law, any property acquired during a marriage becomes joint property regardless of who contributed to it—whether it was the husband alone while the wife stayed at home to care for the children and run the household, the wife alone while the husband lived a leisurely life, or both husband and wife actively sought income during the marriage.

A more thorough definition of joint property can be found in Article 1 letter f of the Compilation of Islamic Law. "Property acquired during marriage or partnership is property acquired either individually or jointly by the husband and wife during the marriage and is hereinafter referred to as joint property, regardless of whose name it is registered under," according to Article 1 letter f of the Compilation of Islamic Law.

The provisions of Article 1 letter f of the Compilation of Islamic Law seem more moderate, because this article requires that property acquired during marriage can only be considered joint property when it is obtained from the efforts of the husband and wife, either individually or jointly. This means that the Compilation of Islamic Law requires the involvement of contributions and roles from both the husband and wife in acquiring marital property, so that both the husband and wife actively strive to acquire marital property.

#### **Joint Property Lawsuit Process**

Claims regarding joint property can be filed simultaneously with divorce proceedings, or they can be filed separately after the divorce has been finalized and has obtained permanent legal

force, and then the claim regarding joint property can be filed separately. This provision is regulated in the Marriage Law, specifically in Article 86 paragraph (1), which states that “Claims related to child custody, child support, spousal support, and joint property of the couple can be filed simultaneously with the divorce claim or after the divorce decision becomes legally valid.”

The settlement of joint property falls under the category of litigation, because in the trial process there are two disputing parties, namely the Plaintiff and the Defendant, and each party defends their interests. Therefore, the examination and settlement process is the same as the examination process for civil lawsuits in general in the Religious Court.

Because joint property claims are classified as contentious cases, the examination procedure is as follows:

1. Filing a Case with the Religious Court  
The plaintiff comes to the Religious Court with a letter of complaint, then goes to the First Desk officer and submits the letter. The clerk at Desk One will estimate the case deposit (clerical fees and case settlement fees), which will then be written in a Power of Attorney to Pay (SKUM). Those who are unable to pay can file a case pro bono (free of charge) by providing proof of financial hardship from the local village head or sub-district head, legalized by the sub-district head.
2. Payment of Case Deposit  
The prospective plaintiff then goes to the cashier, submits the complaint letter along with the SKUM, and pays the case deposit according to the amount stated in the SKUM. The cashier marks the SKUM as paid and returns it to the prospective plaintiff.
3. Case Registration  
The prospective plaintiff then goes to Desk Two, submitting the complaint and the

paid SKUM. Desk Two then registers the complaint in the register, assigns a case number in accordance with the number on the SKUM, returns one copy to the prospective plaintiff, organizes the case file, and submits it to the chief judge through the court clerk.

4. Appointment of the Panel of Judges  
The Chief Judge of the Religious Court shall examine the case files within a maximum period of seven days, after which the Chief Judge shall appoint judges to examine and adjudicate the case in a Panel of Judges. Once the judges who will examine the case have been appointed, the Chief Judge or members of the panel of judges shall examine the completeness of the lawsuit documents.
5. Appointment of Court Clerk  
To assist the panel of judges in resolving the case, the court clerk appoints one or more persons as court clerks, who then submit the files to the panel of judges and record the proceedings of the trial.
6. Setting the Trial Date  
After receiving the case files, the chief judge sets the day, date, and time of the trial and orders the parties to appear on the scheduled date. In this case, the bailiff is ordered to summon the parties involved in the case. The panel of judges will then hear the case.
7. Examination at Trial (Trial Process)  
The process of examining civil cases in court refers to what is stipulated in civil procedural law. It begins with reconciling the parties first. If the plaintiff and defendant agree not to settle, the case proceeds to the reading of the complaint, at which point the plaintiff may withdraw the complaint, add to or reduce the content of the complaint. After the complaint has been read, the defendant may

After the lawsuit has been read, the defendant may submit a response either in writing or orally. The response may also take the form of an exception or a counterclaim (counter lawsuit).

After the defendant's response has been read, the plaintiff will submit a reply, known as a rejoinder, and the defendant will submit a rejoinder to the plaintiff's reply.

Once the question and answer process is complete, the hearing continues with the evidence stage, where the parties present evidence in the form of documents, witnesses, or other evidence such as oaths.

After the evidence stage is complete, the hearing continues with the conclusions of the plaintiff and defendant. Each party is given the opportunity to submit their final opinion in the form of a conclusion based on the examination during the hearing, confirming whether the plaintiff still wishes to continue with the lawsuit in accordance with the petition that has been requested or to determine other matters such as reaching a settlement or withdrawing the lawsuit.

The final stage is the verdict, where after examining the joint property lawsuit, the judge will conduct a question and answer session between the parties and examine the evidence. The judge will then consider the lawsuit that has been filed, including the defendant's response and the evidence from each party.

Once the verdict has been read out, the parties are given fourteen days from the date of the verdict to file an appeal with the Religious High Court. However, after fourteen days have passed, the verdict becomes final and binding, and each party must comply with it.

## CONCLUSION

Based on the above discussion, the following conclusions can be drawn:

- 1) According to Article 1 letter f of the Compilation of Islamic Law, "Property in

marriage or partnership is property acquired either individually or jointly by husband and wife during the marriage and is hereinafter referred to as joint property, regardless of whose name it is registered under."

- 2) The procedure for examining the case is as follows: a) Filing a case with the Religious Court, b) Payment of court fees, c) Registration of the case, d) Appointment of a panel of judges, e) Appointment of a court clerk, f) Examination at trial (trial process).

Based on the above discussion and conclusions, the following recommendations can be made:

1. For men and women who are married under Islamic law, and if they have joint property during their marriage, they should prioritize the principles of joint property distribution in divorce based on the Compilation of Islamic Law.
2. The government, Islamic law researchers, and scholars should inform the public about the provisions of the Compilation of Islamic Law regarding the division of joint property.

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