



## Case Study

## UNEQUAL DISTRIBUTION OF JOINT ASSETS DUE TO DIVORCE

Ajik Sujoko<sup>1)\*</sup>, James M. Kauffman<sup>2)</sup><sup>1)</sup> Universitas Diponegoro, Indonesia<sup>2)</sup> University of Virginia, United States

\*Corresponding Author, E-mail: ajiks12@gmail.com

## ABSTRACT

**Background.** Joint assets are assets acquired by a husband and wife together during the period of marriage. Marriage Law Number 1 of 1974 does not regulate the division of joint assets, as a result, difficulties arise for legal administrators in resolving cases related to joint assets. This study aimed to describe the unequal distribution of joint assets due to divorce.

**Research Method.** This research is considered as a field research or case study. It uses used descriptive analysis method and the type of research is qualitative research. The data collection procedures of this study were observation, interviews, and documentation. The case study of Semarang Religious Court Decision 512/Pdt.S/2023/PA.Sm.

**Findings.** Joint assets are divided after divorce if the wife is more dominant in terms of looking for property through the Semarang Religious Court decision taken with a percentage of 1/3 for the husband and 2/3 for the wife, this is based on the judgment of the judge who thought that the wife should be the husband's responsibility, the wife was the one who worked hard to collect property, while the husband, who should have been more intensive in meeting household needs, turned out to be passive and only enjoyed the results of his wife's hard work.

**Conclusion.** Marriage Law Number 1 of 1974 regarding the division of joint property adhering to the compilation of Islamic law articles 96 and 97 of the provisions mentioned above, where article 97 determines whether a divorced widow or widower lives each is entitled to half.

**Keywords:** Divorce, Joint Assets, Marriage.

## BACKGROUND

Humans from birth have been equipped with the instinct to always live together with other humans. Man has the desire to have a generation or descendants. In this case, of course, it's the right thing to make it happen is to carry out a marriage. This marriage is necessary as a condition for forming a family. Marriage is an inner and outer bond between a man and woman as husband and wife to form a family (household)[1].

The purpose of marriage is stated in the Law Marriage that is formulated namely forming a family/household happy and eternally aware of the Godhead Almighty One. Following the philosophical foundation of Pancasila and the 1945 Constitution, then the law of Marriage can embody principles contained in Pancasila and the 1945 Constitution[2], and can also accommodate all the facts living in today's society.

In a marriage, there will be polemics or problems that will arise and will shake the unity that is being built so far. In reality, many marriages are also not consummated intact. Divorce is the final path to overcoming problems in marriage. Sharia Muslims, divorce is one of the things that is prohibited, but permitted. That means divorce should be avoided as much as possible, but if strive to be resolved well. However, if both parties (husband and wife) no longer want to be in harmony together, then the best way is through a divorce agency. In Indonesia, divorce according to Islamic Law is one authority of the Religious Court [3].

If there has been a divorce of course it will have legal consequences or impacts as a consequence of divorce namely regarding the status of husband or wife, the position of children, as well as regarding joint assets acquired throughout the marriage status ownership of property during marriage is very important. It is important to gain clarity that cannot be mixed, namely inherited assets and assets acquisition[4].

Marriage Law Number 1 (1974) does not regulate the distribution of joint assets, as a result, difficulties arise for the parties' legal administrators to resolve matters related to property with the presence of the Compilation of Islamic Law provides definitive rules for the institutionalization of assets together with those contained in book I of the Law Marriage. Compilation of Islamic Law in Indonesia is a development of Law Marriage Law Number 1 Year 1974 what is the position of assets if this occurs. In divorce there must be clarity as to the rights wife and which is the husband's right[5, 6].

The provision for joint property are regulated in Islamic law, although only general and non-recognition of commingling assets between husband and wife, but after looking closely and analyzing the division of joint assets adhering to the compilation of Islamic law articles 1996 and 1997. Where article 1997 determines widowhood or divorce widower, each has the right to get half of it is all a condition based on normal standards, in the sense of the husband as head of the family to meet their needs family including clothing, food, shelter and other needs. How to divide assets together after divorce if the wife is more dominant in terms of looking for wealth? This study aimed to describe the unequal distribution of joint assets due to divorce.

## **RESEARCH METHOD**

This research method used normative legal research, and legal research literature, namely legal research. This is done by examining the materials libraries or secondary materials. The authors propose a legislative approach invitation (statute approach), namely the approach using legislation and regulations[7].

Procedures for collecting legal materials that research sources used by this author is primary legal material (have binding force, namely articles of law Number 1 of 1974 concerning marriage, criminal code civil code and compilation of Islamic law available material regarding the position of joint assets, material secondary law (publications about law explain the primary legal material and tertiary legal materials (explaining primary legal materials and legal materials secondary).

In this research, the researchers collected data by reading, studying, and identifying all good data legislation, and literature, which general and then drawn or concluded be specific so that the data obtained related to the issues discussed in this research.

Processing and analysis of the legal materials in this research begins with the author conducting research on legal issues by presenting legal facts that raise legal issues, then issues of law adjusted or analyzed according to the material primary law so that it can be determined rule. Whichever one is used, is the next interpretation through the doctrines of experts' laws contained in legal materials secondary, thus the author can respond to the legal issues raised.

## **FINDINGS**

Property acquired during marriage becomes joint property from marriage. When reached the end of the marriage (either because of death or because of divorce). Enforcement of legal provisions regarding assets together, without having to worry about it. Acquired by whom, the ownership is registered in the name of husband or wife, remains joint assets. If there is a dispute over property together article 37 of Law no.1 the Year 1974 regarding

marriage states “if the marriage broke up due to divorce, assets together regulated according to their respective laws each religious law, customary law, and other laws. For Muslims in Indonesia in general and specifically for judges at the Religious Court, if this occurs disputes regarding joint property refer to the provisions of the compilation of Islamic law. If a divorce occurs then each husband or wife is entitled to half of the assets together with this, both death and divorce life[8].

However, the Semarang religious court judges have become mature, and have the courage not to want to become the mouthpiece of the law. A sense of justice put forward by religious dogma is firmly held. Conscience comes to the fore and legal certainty to resolve the cases submitted. He is obliged to pay attention truly the legal values that are in place in society so that the decisions are by a sense of justice. This article explicitly shows an absolute nature forcing the judge to hold firm and use this article as a basis for morality in making decisions[9].

This is following the mandate of Article 28 paragraph 1 of Law No.4 of 2004. Determination of judges at the Semarang religious court taken with a percentage of 1/3 for husbands and 2/3 for the wife. It is based on consideration of the judge who assesses the wife should be the husband’s responsibility. It is the wife’s responsibility to toil to collect possessions, while the husband should be more intensive only sufficient for household needs passive, and just enjoying the fruits of your labor wife. Division of joint assets 1/3 for the husband and 2/3 for the wife as stated in the decision is not by what is regulated in related provisions, where in the book of Islam law widow or divorced widower, each has the right to live half of the boarding property as regulated in article 97, but in this case, the judge has a lot of consideration for the decision. Based on this description, the decision of the case truly reflects the value of justice and is not contrary to legal values, in fact, one step further on the legal value progressive, developing, and dynamic.

## **DISCUSSIONS**

The compilation of Islamic Law is “applied law” in the religious justice environment in Indonesia which began to be implemented in 1991. In more than one period of time, this decade it has been implemented as a law applied in religious courts as a basis and formal basis for completing and deciding various disputes. Reviews about events at the religious court are only limited to the interests of Muslims. This is what is in the provisions of Law No.7 of 1989 which has been amended and added to Law No.3 of 2006 concerning religious court, referred to as civil, especially for Muslims, these provisions require the implementation of proceedings in Court Religion demands material consequences of Islamic Law which is the basis for the footing and foundation must be held in high esteem[10].

Compilation Islamic law (referred to as CIL) provisions stipulate that the divorced widow or widower lives each is entitled to ½ of the joint property. As long as it is not specified otherwise in the agreement marriage. Based on the CIL provisions, then the distribution of joint assets is divided in half, each gets a 50:50 share. This division of joint assets can be proposed jointly with a divorce suit, you don’t have to wait first the divorce decision from the court religion.

Division of joint assets 1/3 for the husband and 2/3 for the wife as stated in the contents of the decision is not following what is regulated in the CIL provisions, where in the CIL widow or divorced widower, each has the right to live half of the boarding property as regulated in CIL article 97, but in this case, judge has consideration is different. The reason is first, the husband should be responsible for meeting all needs of their children, food,

clothing, place living, and other household needs. Have no role in providing sufficient household needs, however, instead all the basic needs are space stay and the wealth that all have wife's work[11–13].

The second provision in the Qur'an letter An-Nisa verse 32 means "for men, there is a part of what they are trying, and for women, there is a part of what they're trying to do". Based on this consideration, the decision judge of this case is correct and has fulfilling a sense of justice, even if it is not appropriate with those regulated in CIL because the purpose of the law is justice, and justice is everything. This courage has been put into practice on the basis that article 97 CIL is a widow or divorced widower gets half is the provision normal standards, in the sense of an adequate husband all the family's needs, including clothing, food, temporary housing and other needs. The wife works as a housewife work to the house acceptance such as cooking, caring for children, taking care of house cleanliness, and others. Thus, the division of assets together is not always divided equally between husband and wife. Division of joint assets should be done fairly, so it does not give rise to injustice between one and the other which is the husband's right and which is the wife's right.

## CONCLUSION

A compilation view of Islamic Law's general division of joint property is half, this is based on standards normal. Whereas in this case study the division is 1/3 for the husband and 2/3 for wife with consideration due to all joint assets for wife is the result of work that does not match provisions of the compilation Islamic Law article 97, will but for the sake of justice the provisions of the article are meant can be set aside, so that the judge's attitude in deciding the case is not bound with formal statutory provisions, however more on the laws that arise in society.

## Conflict of Interest

The author declares there is no conflict of interest with the publication of this paper.

## REFERENCES

- [1] Utami DP, Ghifarani FK. PERKAWINAN CAMPURAN DI INDONESIA DITINJAU DARI HUKUM ISLAM DAN HUKUM POSITIF. *MASADIR J Huk Islam*; 1. Epub ahead of print 2021. DOI: 10.33754/masadir.v1i2.372.
- [2] Tungga B. SINERGITAS PRINSIP BHINEKA TUNGGAL IKA DENGAN PRINSIP PLURALISME HUKUM. *J Aktual Justice*; 4. Epub ahead of print 2019. DOI: 10.47329/aktualjustice.v4i1.475.
- [3] Nur Sarah Tajul Urus, Alias Azhar. The Application Of Fatwa In Court Decision Making. *Int J Law, Gov Commun*; 3.
- [4] Lopes C, Correia A, Costa e Silva E, et al. Inventory models with reverse logistics for assets acquisition in a liquefied petroleum gas company. *J Math Ind*; 10. Epub ahead of print 2020. DOI: 10.1186/s13362-020-00078-0.
- [5] Lestari N. PROBLEMATIKA HUKUM PERKAWINAN DI INDONESIA. *J Ilm Mizani Wacana Hukum, Ekon Dan Keagamaan*; 4. Epub ahead of print 2018. DOI: 10.29300/mzn.v4i1.1009.
- [6] Suyanto. Problematika Harta Bersama Atas Nama Seorang dalam Perkahwinan. *J Pro Huk*; V.
- [7] Suyanto S. *Metode Penelitian Hukum Pengantar Penelitian Normatif, Empiris Dan Gabungan*. Unigres press, [https://books.google.co.id/books?hl=en&lr=&id=Zg2mEAAQBAJ&oi=fnd&pg=PA16&dq=related:iqKFAloBcDAJ:scholar.google.com/&ots=lfRuZU3Y8R&sig=KYqW2GT6zrCeGd65uJMBogLVF-0&redir\\_esc=y#v=onepage&q&f=false](https://books.google.co.id/books?hl=en&lr=&id=Zg2mEAAQBAJ&oi=fnd&pg=PA16&dq=related:iqKFAloBcDAJ:scholar.google.com/&ots=lfRuZU3Y8R&sig=KYqW2GT6zrCeGd65uJMBogLVF-0&redir_esc=y#v=onepage&q&f=false) (2023).

- [8] Hong CP, Ananda JS, Riser MAG. Juridical Analysis of the Distribution of Joint Assets in Divorce According to Indonesian Positive Law. *IJRAEL Int J Relig Educ Law*; 2. Epub ahead of print 2023. DOI: 10.57235/ijrael.v2i2.663.
- [9] Yoder KJ, Decety J. The neuroscience of morality and social decision-making. *Psychology, Crime and Law*; 24. Epub ahead of print 2018. DOI: 10.1080/1068316X.2017.1414817.
- [10] Hastuti I, Sanjaya E, Prasetyo B. Interfaith Marriage And Its Legal Consequences For Children Born According To Islamic Law. *Int J Educ Res Soc Sci*; 3. Epub ahead of print 2022. DOI: 10.51601/ijersc.v3i1.303.
- [11] Abdelgayed AFR. حقّ الزوجة في مال الزوج المكتسب بعد الزواج - دراسة فقهية. *J Fatwa Manag Res*; 24. Epub ahead of print 2021. DOI: 10.33102/jfatwa.vol24no2.358.
- [12] Qomariah SN, Amin NS, Azizah YN, et al. Stress Management Education and Training Program Reduces The Anxiety Levels Of Students Facing The National High School Exam. ... *Glob Heal J*, <https://syntificpublisher.com/index.php/synthesis/article/view/15> (2023).
- [13] Bakar A, Qomariah SN, Iswati I. Effect of caring behaviour approach to improve nurses' caring character in medical-surgical wards. *J Ners*; 17. Epub ahead of print 2022. DOI: 10.20473/jn.v17i2.34982.



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