

Practice of Settling Joint Property: A Review Based on The Islamic Law Compilation

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Abstract

Introduction: Joint property is property obtained during marriage and is an important object in divorce settlement. In practice, joint property settlement is often carried out amicably without going through the courts.

Purposes of the Research: This study aims to determine the practice of post-divorce joint property settlement in Padang Cermin Village, Selesai District, Langkat Regency, and to review its compliance with the provisions contained in the Compilation of Islamic Law (KHI).

Methods of the Research: This study uses a qualitative approach with a case study method, through interviews, observations, and documentation from related parties, such as former husband and wife, community leaders, and village officials.

Results Main Findings of the Research: The results of the study show that joint property settlement in the village is mostly resolved through deliberation by involving family or traditional leaders. However, not all of these processes are in accordance with the provisions of the KHI, especially regarding the principles of justice and the rights of each party. Therefore, more intensive socialization and legal education are needed for the community so that joint property settlement can run in accordance with applicable laws and protect the rights of both parties.

Keywords: Joint Assets; Property Settlement; Compilation of Islamic Law.


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INTRODUCTION

Islam's law is conceptually perceived as a universal, dynamic, elastic, and flexible law. Islamic law can adapt, interact, and accommodate various forms of development anywhere and at any time. The application of this principle within the empirical-historical framework has given rise to great figures and monumental works in the field of Islamic legal thought, in accordance with the level of societal development and the surrounding socio-cultural demands.¹ Islamic law that developed in Indonesian society is Islamic law formed on the basis of customs and traditions that reflect the values of Indonesian society, so legal products are adapted to societal developments. However, during the colonial era (Dutch), legal thought was heavily suppressed by the colonizers, making it difficult for Islamic law to develop.² Islamic law and classical fiqh books do not regulate the institutionalization of joint marital property.³ According to jurists, the husband has his own property and the wife

¹ Azni, *Poligami dalam Hukum Keluarga Islam di Indonesia dan Malaysia*, (Pekanbaru: Suska Press, 2015), p. 1.

² Amir Syarifuddin, *Pembaharuan Pemikiran dalam Hukum Islam*, (Padang: Angkasa Raya, 1993), Cet. X, p. 1.

³ Mohd Norhusairi Mat Hussin and Raihanah Abdullah, "Distribution Practice of Harta Sepencarian in Malaysia: A Literature Review", *Journal of Shariah Law Research*: 1, no. 1 (2016) p. 77.

also has her own property. As an obligation, the husband gives a portion of his property to his wife in the name of maintenance, which the wife then uses for her household needs.⁴ This is different from the marriage laws in Indonesia. In Indonesian marriage law, there are regulations regarding the institutionalization of joint property.

The institutionalization of joint property means the unification of assets acquired during the marriage to become the joint property of the husband and wife, regardless of who is working and in whose name the assets are registered. Even if only one spouse works, the property acquired is still considered joint property. Each husband and wife has an equal right to use the joint property. Then, when the marital relationship between husband and wife ends, whether due to death or divorce, the property must be divided in half.⁵

The regulation of the unification of the husband's and wife's assets into joint property in Indonesian law is strongly suspected to be due to the long-standing recognition and practice of this joint property institution in the daily lives of Indonesian Muslim communities. The institutionalization of joint property has been known since ancient times in customary law in Indonesia. Customary law regarding joint property has been and continues to be applied as a living law in this country.⁶

If a dispute arises concerning marriage, divorce, inheritance, or matters related to family law, including joint property cases between Indonesian citizens who are Muslim, then these cases can be submitted to the Religious Court for resolution. The source of the rules used by the judges of the Religious Courts to decide cases before 1974 was based on Islamic law derived from thirteen books of jurisprudence determined by the Ministry of Religious Affairs.⁷ After the enactment of Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law), the judges of the Religious Courts decided marriage cases based on Islamic law found in books of jurisprudence and the Marriage Law.⁸ In 1991, after the publication of the Compilation of Islamic Law (KHI) based on Presidential Instruction of the Republic of Indonesia Number 1 of 1991, the legal source for judges of the Religious Courts in deciding cases concerning marriage, inheritance, gifts, wills, and waqf (Islamic endowments) refers to the provisions contained in the KHI.

The community of Padang Cermin Village, Selesai District, Langkat Regency, has a custom of resolving the division of joint property through family means. There are several reasons why the people of Padang Cermin Village, Selesai District, Langkat Regency, do not resolve joint property issues through the Religious Court, including: the lengthy time required for hearings and the predetermined court costs. Consequently, people choose to resolve their joint property issues based on the family system. Therefore, the author is interested in conducting research to determine whether the resolution of joint property issues by the community of Padang Cermin Village, Selesai District, Langkat Regency, complies with the provisions of the Compilation of Islamic Law, with the aim of knowing the practices of resolving joint property disputes in the community of Padang Cermin Village, Selesai District, Langkat Regency, after divorce, whether through formal or non-

⁴ Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia: Antara Munakahat dan Undang-undang Perkawinan*, (Jakarta: Kencana, 2006), p. 175.

⁵ Mesraini, "Konsep Harta Bersama dan Implementasinya di Pengadilan Agama", *Jurnal Ahkam*: XII no. 1 (2012): p. 63

⁶ Mesraini, *Ibid.* p. 63.

⁷ Departemen Agama, *Pengadilan Tinggi Agama, dan Mahkamah Agung tahun 1983 s/d 1990 yang sumber hukumnya merujuk pada kitab fikih dan Undang-undang Perkawinan*.

⁸ Marzuki Wahid, *Fiqh Indonesia: Kompilasi Hukum Islam dan Counter Lefal Draft Kompilasi Hukum Islam dalam Bingkai Politik Hukum Indonesia*, (Bandung: Penerbit Marja, 2014), p. 120.

formal channels. The research also aims to analyze the practices of resolving joint property disputes in accordance with the provisions of the Compilation of Islamic Law (KHI), and to identify the customary law and socio-cultural factors of the local community in resolving joint property disputes. This research is expected to contribute to increasing understanding of how the theory in the Compilation of Islamic Law (KHI) is applied in the practice of resolving joint property in rural communities, as well as revealing the gap between written legal norms and their implementation in the field. It will also help identify the social and cultural values that influence the practice of resolving joint property. This is important for building an Islamic legal approach that is not only normative but also responsive to local wisdom and the social conditions of the community, both for the author and especially for all readers.

METHODS OF THE RESEARCH

This research uses a qualitative method with a case study approach. This method was chosen because the research focus is to deeply understand the practice of resolving joint property from an Islamic legal perspective that occurs in Padang Cermin Village, Selesai District, Langkat Regency. Through this approach, this research not only relies on numerical data but also places greater emphasis on understanding the social and cultural context that influences the process of resolving joint property. The data collection techniques used were in-depth interviews, participant observation, and document analysis. In-depth interviews were conducted with a number of key informants, such as traditional leaders, married couples who were currently or had resolved joint property issues, and local religious figures who had an understanding of Islamic law. Participatory observation was conducted by directly engaging in activities related to the settlement of joint property in the village, such as mediation carried out by village officials or authorized parties. Meanwhile, document analysis was conducted on existing legal documents, such as village regulations, court decision documents, and the Compilation of Islamic Law itself.

RESULTS AND DISCUSSION

A. Definition of Joint Property According to Islamic Law Compilation and Customary Law

Joint property in the existing laws and regulations in Indonesia is mentioned in Article 35 Paragraph (1) of Law Number 1 of 1974 concerning Marriage, which states, "property acquired during marriage becomes joint property." The concept of institutionalizing joint property in Law Number 1 of 1974 concerning Marriage cannot be separated from the definition of marriage in Article 1 of Law Number 1 of 1974 concerning Marriage, where marriage is defined as "the bond, both physical and spiritual, between a man and a woman as husband and wife, forming a happy and lasting family (household) based on the Almighty God." Article 2 Paragraph (1) of Law No. 1 of 1974 concerning Marriage states, "marriage is valid if it is performed according to the laws and beliefs of each religion."

Based on the definition of marriage in Article 1 and the spirit of Article 2 of Law Number 1 of 1974 concerning Marriage, if we draw an understanding related to the institutionalization of joint property in this law, the concept of its institutionalization is based on the fact that the existence of such joint property is an inseparable part or a single unit with the marriage contract. Unlike Law Number 1 of 1974 concerning Marriage, Article

1 Letter f of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI) states, "Property in 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."

The definition of wealth as a partnership (*syirkah*) referring to property acquired during marriage, whether individually or jointly, is called joint property. In this case, the concept of joint property in Presidential Instruction Number 1 of 1991 concerning the KHI (Compilation of Islamic Law) adheres to the concept of joint property in marriage as a consequence of marriage, which is likened to a partnership (*syirkah*). This results in a division of tasks and functions, including those related to the property obtained.

This is supported by Article 86 Paragraph (1) of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI), which states, "in principle, there is no mixing of the husband's and wife's assets due to marriage." Regarding this article, Amir Syarifuddin stated, "there is no merging of assets, except in the form of *syirkah*, which is done through a special contract for *syirkah*." Without that agreement, the property remains separate. Based on the above opinion, it can be concluded that joint property will not be realized according to Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI) unless there is a special agreement to declare the partnership between husband and wife regarding property acquired during the marriage. Article 35 Paragraph (1) of Law No. 1 of 1974 concerning Marriage only mentions that the object of joint property in marriage is property obtained during the marriage. Paragraph 2 of that article provides exceptions for several things: 1) Separate property; 2) Gifts; 3) Inheritance; 4) And all marital property, unless otherwise stipulated by agreement.

The discussion of joint property is more extensively covered in the Islamic Law Compilation in Chapter XIII, which consists of 13 articles. In the Islamic Law Compilation, under General Provisions in Book I, Chapter I, Article 1, letter f, it is stated that "property in marriage or *Syirkah* 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 the Islamic Law Compilation, the division of joint property is clearly regulated in Article 96: 1) In the event of death by divorce, half of the joint property becomes the right of the surviving spouse; 2) The division of joint property for a husband or wife whose spouse is missing must be postponed until there is certainty of the actual death or legal death based on a decision from the Religious Court.

Next, Article 97 regulates the division of joint property in the event of divorce, stating, "A widow or widower who is divorced is each entitled to one-half of the joint property, unless otherwise stipulated in the marriage agreement." These regulations state that in the event of death or divorce, the joint property of the husband and wife must be divided equally, with the husband receiving half and the wife receiving the other half. In essence, the Compilation of Islamic Law recognizes the existence of separate property for each husband and wife. The Compilation of Islamic Law also regulates liability for the debts of husbands and wives, as stipulated in Article 93 paragraphs (1), (2), (3), and (4). To cover household expenses, if the joint property is insufficient, it is taken from the personal property of either the husband or the wife. Even then, this is only when their marriage is monogamous, which has a relatively low chance of conflict compared to polygamous marriages.

Regarding polygamous marriage, the Compilation of Islamic Law regulates it in Article 94 paragraph (1) and (2). The explanation is intended to prevent disputes between the first, second, third, and fourth wives, including anticipating the possibility of inheritance lawsuits among the families of each of the wives. Due to the unclear ownership of joint property between the first and second wives.⁹ Discussing the concept of joint property in customary law is essentially inseparable from the system of descent within customary law itself,¹⁰ where three societal systems are recognized: 1) Maternal society (matrilineal), where members trace their lineage through the mother, for example, the Minangkabau system; 2) Paternal society (patrilineal), where lineage is traced through the father, for example, the Batak system of descent; 3) Bilateral or parental society, divided into two: first, Javanese bilateral, which is organized into small units consisting of families, relatives, and households; and second, Kalimantan/Dayak bilateral, which is organized into large units consisting of 12 to 20 families in one large house, comprising tribes, clans, or groups.

Customary law essentially recognizes divisions in marital property, which is divided into 4 categories:¹¹ 1) Goods acquired by the husband and wife through inheritance and gifts from their respective relatives and brought into the marriage; 2) Goods acquired by the husband and wife for themselves and through their own efforts before the marriage; 3) Goods acquired by the husband and wife during the marriage as joint property; 4) Goods gifted to the husband and wife together at the time of the wedding.

The naming of joint property in the customs of societies in the archipelago varies. In Javanese, it is called gono-gini; in Sundanese, it is called guna kaya; in Acehnese, it is called aruta sihareukat; in Minangkabau, it is called suarang; in Kuningan Regency, it is called sarikat; in Balinese, it is called druwe gabro; in Kalimantan, it is called perpantangan; in Bugis and Makassar, it is called barang cakara; and in Madurese, it is called ghuna ghana (kasah property).

B. Practice in the Case of Joint Property Division in Padang Cermin Village, Selesai District, Langkat Regency

Based on interviews with the Head of Padang Cermin Village, approximately 20 divorce cases were recorded in the village. Interestingly, out of that number, 17 cases were resolved non-formally, meaning outside of the court system. This phenomenon indicates that the culture of resolving household problems within the family or through custom is still strong among the local community. To delve deeper, I interviewed eight people who have experienced divorce. The eight speakers consisted of four people from the Karo tribe: Mr. AG Ginting, Mrs. S Sembiring, Mr. JD Karo-karo, and Mrs. TD Tarigan, as well as four people from the Javanese tribe: Mrs. JA, Mrs. SC, Mr. AS, and Mr. MS. From the confession of one of the speakers, Mrs. TD Tarigan, it was revealed that she did not receive any share of the joint property. According to her, her husband claimed that all the assets were his own. Despite being financially disadvantaged, Mrs. TD chose not to prolong the issue and simply wanted to separate immediately for the sake of her peace of mind.

Based on the author's interview with one of the Karo community leaders, also known as Iting, namely Dewi Masjitah br Ginting, the following information was obtained: In Padang Cermin Village, there is a diversity of ethnic groups residing in the area,

⁹ Chitra Latiffani, *Kajian Pembagian Harta Gono Gini Menurut Kompilasi Hukum Islam*, *Journal of Science and Social Research* 1, (2018)

¹⁰ Bushar Muhammad, *Pokok-Pokok Hukum Adat*, (Jakarta: Balai Pustaka, 2013), 13.

¹¹ Soerojo Wignjodipoero, *Pengantar Dan Asas-Asas Hukum Adat*, (Jakarta: Haji Masagung, 1988), 150.

including the Javanese and Karo ethnic groups. Based on the information I have obtained, disputes regarding the division of joint property in this village are generally resolved outside of court. The local community prefers to resolve the issue through customary mechanisms or family means. For example, in Javanese tribal society, the division of joint property is usually resolved within the family without involving third parties. This process generally only involves immediate family members, such as the husband, wife, and parents from both sides.

A similar situation also occurs among the Karo people. They also prefer family-based resolutions. However, interestingly, in the Karo tradition, there is a role for a third party known as the *anak beru tua*. This *anak beru tua* plays an important role in mediating and resolving the division of joint property within the family. In the Karo society's culture, the term for the division of joint property is known as *ulih encari ras*.

Based on the statements of several residents of Padang Cermin Village, many of them are unaware of or do not understand the reporting procedures and the legal process for resolving disputes through the courts. This lack of knowledge is due to a lack of information and understanding of the law among the public, so many are still unfamiliar with the process. Additionally, there is a widespread belief in society that taking issues to court will only waste time and money. They believe the process tends to be lengthy because they have to wait for a trial date, and it also requires a significant amount of money, without necessarily guaranteeing satisfactory results. This kind of view leads people to prefer resolving issues, including the division of joint property, through family or customary channels outside of court.

In resolving the division of joint property in Padang Cermin Village, there are differences in approach between the Javanese and Karo ethnic communities. Javanese ethnic communities generally do not use third parties in the dispute resolution process. The resolution is done amicably, only involving the disputing parties, such as the husband and wife, as well as the extended families of both sides. They rely on deliberation and consensus within the family without outside interference.

Meanwhile, the Karo people in that village have different customs. In Karo custom, the resolution of joint property division involves a third party called the *anak beru tua*. Older women play an important role in the mediation and conflict resolution process, especially in maintaining balance and justice between the disputing parties. This role has become part of the Karo tribe's traditions and customs. Based on the interview conducted by the author on Monday, March 11th, with one of the residents of Padang Cermin Village, namely Mrs. Ramiken br Sitepu, it was explained that joint property is understood as property acquired during the marriage. That wealth is the result of the joint efforts or endeavors of the husband and wife throughout their married life. As for the property brought by each bride and groom before marriage, or property given by parents to one of the parties, it is not included in the category of joint property. This is because the property was not acquired through joint effort during the marriage, and is therefore considered the personal property of each individual. In the Karo language, the term for joint property is known as "*ulih encari ras*," which literally means property earned from joint efforts or through the cooperation of husband and wife during the marriage.

Almost more than 80 percent of the people in Padang Cermin Village choose to resolve issues of joint property division through family means or based on applicable customs. This method is considered easier, more efficient, and more in line with the values upheld by the local community, such as deliberation and family harmony. However, there are some cases that ultimately still need to be resolved through the courts. This generally happens when the conflicts that arise cannot be resolved amicably because the level of disagreement is already too high or causes significant disruption among the parties involved in the dispute.

One example of a case that has occurred is when a husband demands a larger share of the property than his wife. He reasoned that he was more entitled because he felt he was the main breadwinner in the household, while his wife only played the role of a homemaker at home. This conflict created tension that could not be resolved through family discussions, ultimately leading to it being brought to court for a legal resolution. One of the biggest challenges in the process of dividing joint property in Padang Cermin Village is the unequal distribution between husband and wife. In many cases, the wife tends to receive a smaller share compared to the husband. In fact, there are some cases where women do not receive their rights at all in the division of property.

Some of the women interviewed revealed that they chose to give in and not assert their rights because they didn't want to prolong the conflict or worsen family relationships. For them, maintaining peace and avoiding conflict is considered more important than fighting for the right to the shared property they should have received. This phenomenon indicates that there is still inequality in the understanding and application of the principle of justice in the division of joint property, particularly concerning the position and rights of women within the household.

Based on the testimony of the community in Padang Cermin Village, resolving the division of joint property through family or customary means is still considered fair in their view. Although it doesn't involve a formal legal process, the community believes this method can still provide justice for both parties. Additionally, customary resolution is considered more efficient because it doesn't require significant costs or a long time. The process is carried out directly through family consultation, without having to go through court procedures which are considered complex and time-consuming. Therefore, this method is preferred by most villagers as a practical, peaceful, and appropriate way to resolve disputes, aligning with their local values.

CONCLUSION

The concept of joint property in marriage in Indonesia is regulated by various laws and regulations, including Law Number 1 of 1974 concerning Marriage and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI). In Law Number 1 of 1974, property acquired during marriage is considered joint property, unless otherwise stipulated, such as inherited property, gifts, and inheritance. This concept is closely related to the definition of marriage, which creates a bond between husband and wife as one unit, and also includes provisions regarding property acquired during the marriage. Additionally, in customary law in Indonesia, the system for dividing marital property can vary depending on the system of descent followed, whether it is matrilineal, patrilineal, or bilateral. The division of property is also categorized into several types, such as inherited property, personal property, joint property, and property acquired during the

marriage. Overall, marital property in Indonesia is influenced by a combination of positive law and customs, which provides different regulations depending on the type of law or system in effect. Based on interviews with several residents in Padang Cermin Village, it can be concluded that the practice of dividing joint property in this area is still heavily influenced by the family values and customs that are prevalent in the community. Although the state legally provides a court system for resolving joint property disputes, the majority of the community, approximately 80 percent or more, prefers to resolve them through family or customary mechanisms. Overall, the results of this interview indicate that the mechanism for resolving joint property disputes in Padang Cermin Village prioritizes social and cultural approaches over formal legal approaches. This reflects the strong role of local values in rural community life, while also serving as an important reminder of the need to increase legal awareness and protect rights, particularly for women.

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