

Juridical Analysis of the Distribution of Joint Assets in Divorce According to Indonesian Positive Law

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Abstract

In a divorce, there is a process of dividing joint assets. Issues regarding joint assets often occur between ex-husbands and ex-wives. For Muslims, the provision for sharing joint assets is contained in article 97 of the Compilation of Islamic Law (KHI) that "widows or widowers who are divorced, each is entitled to half of the joint assets as long as the marriage agreement is not specified otherwise". Referring to this article, it means that a husband and wife who are divorced are entitled to half or half of the joint property as long as there is no marriage agreement. Meanwhile, for adherents of other religions it is regulated in the Criminal Code which is stated in Article 128 of the Civil Code. According to the Civil Code, division can be made based on the distribution of evidence submitted by plaintiffs and defendants. Basically, these two articles stipulate that in the event of a divorce, the property is divided 50:50. The division of joint assets can be filed together with a divorce suit and does not have to wait for a divorce decision from the court. The formulation of the problem in this study is a juridical analysis of the division of joint assets in divorce according to Indonesian positive law. This research uses normative research with descriptive research specifications and uses primary legal materials, secondary legal materials and tertiary legal materials which are arranged systematically, reviewed, and then concluded.

Keywords: Divorce, Joint Assets, Distribution of Assets



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INTRODUCTION

The divorce rate in Indonesia is increasing over time. In 2022 Indonesia has a divorce rate of 516,334 cases. This figure increased by 15.31% compared to the previous year. Divorce is a process or legal action that officially ends a marriage bond between two people who were previously married (Colisao, 2023c). Divorce can occur due to several things such as communication problems, domestic violence affairs, economic problems and others (Inovatif, 2023). Dissolution of marriage due to divorce must have legal consequences for the husband and wife, the most basic thing in the event of a divorce is the legal consequences for joint assets and legal consequences for children who have been legally born from marriage. In the divorce process there is a process of dividing the assets/assets and debts owned by the divorced spouses (Yumna, 2023). The assets or assets to be divided must be proven that a number of these assets are joint property, so that the distribution can be subject to individual portions as stipulated in Article 97 of the Compilation of Islamic Law (KHI) which applies to Muslims and article 128 of the Book of Laws Civil law for non-Muslims. Basically, joint property arises as a result of marriage. In Islam joint property can be said to be syarikah abdaan mufawadhah because basically husband and wife in Indonesian society both work hard to earn a living.

In the Marriage Law, property is only regulated in three articles, namely, articles 35 to 37. Law Number 1 of 1974, joint assets are categorized into 3 parts, namely, (1) Assets acquired during marriage. This property is shared property during marriage. (2) Inheritance.

Inheritance is property that was brought by each party before the marriage. This property is controlled by each party as long as the parties do not specify otherwise. (3) Acquired assets. Acquired assets are assets obtained from gifts or inheritance. This property is controlled by each party as long as both parties do not specify otherwise. The problem of this property is often not thought of by the bride and groom who are about to get married because they only think that marriage is forever (Amalia, 2023). This means that it is unthinkable for those who want to get married that one day their marriage may end in divorce. They will only think about joint assets when there is a divorce (Kusuma, 2012). Divorced married couples will be increasingly concerned about the distribution of shared assets which is known to be complicated. In accordance with the background above, the problem to be discussed in this paper is "How is the division of joint assets in divorce according to Indonesian positive law?"

RESEARCH METHODS

The type of research used in this study is normative legal research, with descriptive research specifications. Normative legal research only concerns secondary data, which consists of primary legal materials, secondary legal materials and tertiary legal materials. These materials are arranged systematically, reviewed, and then a conclusion is drawn in relation to the problem being studied.

RESEARCH RESULTS AND DISCUSSION

In KBBI, the word divorce is defined as separation, breaking up as husband and wife while both are still alive. Divorce is the breaking of a bond in a husband and wife relationship that causes the marriage law to break and causes both of them to no longer have the status of husband and wife and no longer live life together in a household (Tizrah, 2023). Non-gambling assets are shared assets, both movable assets (cars, etc.) that were held during the marriage period, and what are not included in arbitrary assets are inherited, gifted and innate assets. If a husband and wife divorce, the distribution of joint assets is regulated according to their respective laws (Colisao, 2023b). This provision is contained in article 37, "If the marriage is broken up due to divorce, joint assets are regulated according to their respective laws". What is meant by their respective laws includes customary law, religious law, and others. For Muslims the distribution of assets is regulated in KHI, while for non-Muslims the provisions for distribution of assets are regulated in the Civil Code (Astuti, 2023).

In Islamic Law, the term *syirkah* is known, which is a way of uniting or merging one's assets with other people (Nurhasanah et al., 2023). The assets that are fully entitled to each party are their respective assets that existed before the marriage took place or assets obtained by each, including assets obtained by the husband or wife as a result of grants, inheritance or gifts after marriage. The distribution of joint assets in Islamic law is regulated in article 97 KHI which reads "The divorced widow or widower each has the right to half of the joint property as long as it is not specified in the marriage agreement" (Colisao, 2023a). This article implies that in divorce cases, if there is no marriage agreement, the distribution of joint assets is regulated in Article 97 KHI and each party has the right to receive half of the joint assets (Sholihin, 2023).

Whereas for non-Muslims the distribution of joint assets is regulated in Article 128 of the Criminal Code which reads "After the dissolution of the union, the unit's assets are divided in half between husband and wife, or between their respective heirs, regardless of which party the goods are from." -the item is obtained". Based on this provision, if a husband and wife divorce, their joint assets are divided into two (50:50). This provision is no different from the provisions of KHI article 97. According to Law Number 1 of 1974 concerning marriage. Property in the Marriage Law is only regulated in three articles, namely those contained in

Articles 35 to 37. Article 35 of the Marriage Law regulates the following matters: Property acquired during marriage becomes joint property. The inheritance of each as a gift or inheritance is under the control of each as long as the parties do not specify otherwise. Article 36 of the Marriage Law states that: Regarding joint property, husband and wife can act upon the agreement of both parties. Regarding their respective assets, husband and wife have the full right to carry out legal actions regarding their property (Nugraheni, 2023).

From the statement above, it can be concluded that marital assets according to the Marriage Law are divided into two groups, namely original assets or inherited assets and joint assets. Inheritance and joint property cannot be equated or different because inherited property is inherited property (Nugrahani, 2023). Therefore, inheritance cannot be divided in the distribution of assets *gono gini* in divorce. M. Yahya Harahap stated that basically all property acquired during the marriage bond becomes the jurisdiction of joint property which is developed in the judicial process. Then the marital assets that are included in the jurisdiction of joint assets are as follows:

1. Every property purchased during the marriage bond lasts. Every item purchased during the marriage bond becomes the jurisdiction of the joint property. It doesn't matter who buys, in whose name, and where it is located (Hidayati & Nurgiansah, 2023).
2. Assets purchased and built post-divorce that are funded by joint property. goods that are included in the jurisdiction of joint property or are not determined by the origin of the goods, even if the goods are obtained after a divorce (Colisao, 2023d).
3. Assets acquired during the marriage bond automatically become joint property.
4. Income from shared assets and inherited assets. Income originating from joint property becomes the jurisdiction of joint property, as well as income from personal property of husband and wife including joint property.

Article 36 paragraph (1) of the Marriage Law stipulates that with regard to marital assets, a husband or wife can act upon the agreement of the parties, this reflects an equal position in terms of power over marital assets in marriage (Widanti, 2023). The equal position of the husband and wife with regard to the joint property, therefore, the responsibility of the husband and wife is born when they jointly or one of them commits a legal action.

CONCLUSION

The word divorce is defined as separation. Divorce is the breaking of a bond in a husband and wife relationship that causes the marriage law to break and causes both of them to no longer have the status of husband and wife and no longer live life together in a household. For Muslims the distribution of assets is regulated in KHI, while for non-Muslims the provisions for distribution of assets are regulated in the Civil Code. In Islamic Law, the term *syirkah* is known, which is a way of uniting or merging one's assets with other people. The distribution of joint assets in Islamic law is regulated in article 97 KHI which reads "The divorced widow or widower each has the right to half of the joint property as long as it is not specified in the marriage agreement". This article implies that in divorce cases, if there is no marriage agreement, the distribution of joint assets is regulated in Article 97 KHI and each party has the right to receive half of the joint assets. Regarding suggestions, it would be better for the bride and groom who want to get married to make a prenuptial agreement first.

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