

JUSTICE IN THE DISTRIBUTION OF MARITAL PROPERTY UPON THE DISSOLUTION OF MARRIAGE

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Abstract

In marriage, there is joint property that is included in the marital property owned by the couple in the marriage. Indonesia regulates this marital property in several regulations, one of which is Law Number 1 of 1974 concerning Marriage. Joint property is property acquired during marriage by the husband and wife. The existence of property in marriage often becomes a problem when the couple divorces. Divorce can be the beginning of problems regarding property in marriage. Regarding the division of property, it cannot be done arbitrarily, but must be emphasized in terms of fairness. In this regard, the Marriage Law gives freedom to every divorced couple who wish to divide their joint property according to their respective laws. In the provisions of the Marriage Law, joint property, personal property, and earned property are types of property in marriage. This study aims to analyze the legal provisions on joint property in the Marriage Law and the Compilation of Islamic Law, as well as the division of property for divorced couples, which must be based on fairness. This study uses a normative juridical research method through a legislative approach based on written laws in Indonesia as the legal material used.

Keywords: Joint Property, Marriage, Divorce, Distribution, Fairness

INTRODUCTION

Indonesia is a constitutional state in the form of an archipelago, consisting of diverse ethnicities, customs, and beliefs. This diversity is also reflected in its legal regulation, particularly in the field of civil law, where the existence of numerous legal norms gives rise to legal pluralism. This is especially evident in matters relating to marriage, which is governed not only by statutory civil law but also by customary law and religious law. Amidst this plurality, the State bears the responsibility to ensure harmonious coexistence among its people (Aristoni & Abdullah, 2016). The manifestation of such responsibility is realized through the establishment of a national legal framework by enacting legislation governing marriage.

Every individual aspires to continue life and to form a family. The 1945 Constitution of the Republic of Indonesia guarantees the freedom of its citizens to exercise their right to life and to establish a family (Lestari, 2017). Article 28B of the 1945 Constitution states that “Every person shall have the right to form a family and to procreate through a lawful marriage” (Zahara, 2019). It is this foundation of mutual affection and respect that enables a family to live harmoniously and sustainably. The emergence of property within a marriage constitutes a legal consequence of the union between a man and a woman as husband and wife. Each spouse may bring into the marriage assets acquired prior to the marital union.

Law Number 1 of 1974 on Marriage (the Marriage Law) grants both parties in a marriage the freedom to possess and manage their respective assets, whether acquired before or during the marriage (Teguh, 2023). Nevertheless, disputes over joint property frequently arise after divorce, particularly concerning the division of such assets. Ideally, these matters should be resolved by the parties themselves, as they are the ones most knowledgeable about how the property was acquired. In resolving such disputes, the principle of fairness must be emphasized for both the husband and the wife, considering the obligations they fulfilled during the marital relationship.

The division of joint property is inherently complex. Numerous cases demonstrate that joint property disputes are often left unresolved by the parties. Due to this complexity, courts frequently encourage amicable settlement as the initial step before proceeding with adjudication. Joint property cannot be divided arbitrarily; its settlement must be carried out clearly and in accordance with applicable positive law. The division of joint property should prioritize fairness, ensuring an equitable distribution for both parties (Edi et al., 2024). Such equitable distribution is what the parties reasonably expect in order to obtain their rightful share.

Marital assets may be owned individually by each spouse prior to the marriage or acquired during the marriage, whether through the efforts of both parties or only one spouse. This condition commonly becomes a source of dispute when former spouses seek the division of joint property following divorce. Such disputes generally arise because one party perceives that their rights have not been fulfilled. Although normative legal provisions exist, disagreements regarding the acquisition of joint property often prolong the settlement process.

Based on the foregoing background, the research questions formulated in this study are as follows:

1. How is joint property regulated under the Marriage Law and the Compilation of Islamic Law?
2. How is fairness reflected in the division of joint property after the dissolution of marriage?

This study focuses on the legal regulation of joint property within Indonesia's legal system pursuant to existing laws and regulations. In general, property acquired during the marriage—whether by the husband, the wife, or both—is categorized as joint property. This study is supported by previous research, including the work of Aristoni and Junaidi Abdullah titled ‘Four Decades of Marriage Law in Indonesia: Examining Legal Problems in Marriage in the Era of Modernization’, which reviews the implementation of marriage law from the period of legal unification until the present (Aristoni & Abdullah, 2016) and Zulfiani's research titled ‘Legal Protection of Personal and Joint Property After Divorce Under Law No. 1 of 1974 on Marriage Based on Justice’, which examines legal protection of marital property as part of human rights (Zulfiani, 2015). Accordingly, this study aims to examine fairness in the division of joint property following the dissolution of marriage.

RESEARCH METHOD

This research constitutes a normative juridical study conducted through an analysis of legal norms, rules, and principles, with the objective of identifying and examining the provisions stipulated in the applicable laws and regulations. The object of analysis in this legal research derives from legal

norms, rules, and principles contained in various statutory instruments relevant to the legal issues under examination (Santoso et al., 2022).

The secondary data in this study were obtained from legal materials in the form of official documents, books, and other written legal sources. These data were collected through library research, namely a method of gathering information by utilizing documentary and literature sources (Matheus, 2021). The primary legal materials used include statutory regulations, such as the Marriage Law and the Compilation of Islamic Law. Secondary legal materials were obtained from books and scholarly journals to support and complement the primary legal materials.

The research process began with the identification and collection of legal materials as the foundation for preparing the analysis of the concrete legal issue. In its formulation, this study applies a statutory approach, which is one of the research methods frequently used in legal studies, by examining and analyzing the norms contained in the relevant legislative instruments, including an analysis of their ratio legis and ontological foundations. Attention must also be paid to the hierarchy of statutory regulations and the normative force contained therein (Santoso et al., 2022). The application of this approach provides the researcher with a conceptual framework to formulate the legal issues presented.

RESULTS AND DISCUSSION

Joint Property Under the Marriage Law and the Compilation of Islamic Law

Referring to the recurring legal issues in marriage dissolution—particularly disputes over the division of marital assets following divorce—it becomes evident how spouses manage, maintain, and utilize their property during the marital relationship. The assets in dispute are not always directly related to the party seeking separation of property. This distinction arises from statutory provisions that clearly differentiate between joint marital property and the personal property of each spouse. In the context of joint property, the object may consist of tangible or intangible assets, and may take the form of movable or immovable property. Broadly, such joint property is used by the spouses for their shared interests, including fulfilling the needs of their children and family.

Every individual is born with inherent rights and obligations as a legal subject, including the right to enjoy the economic benefits derived from joint property. Indonesian law, through both the Marriage Law and the Compilation of Islamic Law, provides a legal framework governing the existence and classification of joint property within marriage. These regulatory schemes aim to ensure legal certainty regarding the status of property owned or used by spouses, either for household affairs or for personal matters. Joint property arises as a legal consequence of marriage. Indonesia adheres to the system of separation of property within marriage. In the perspective of customary law, marital property encompasses all assets controlled by the husband and wife during the marital bond—whether individually owned, inherited, gifted, self-acquired, jointly earned, or received as personal gifts (Zulfiani, 2015).

According to Sayuti Thalib, the classification of marital property can be understood through three principal perspectives that explain the legal relationship between spouses and their assets. From the origin of property, any assets owned prior to the marriage—including premarital property—remain under the exclusive control of each spouse. Assets acquired during the marriage through inheritance, gifts, or wills also remain personal property because they do not derive from joint efforts. Conversely, property obtained through the labor or income of either spouse, or both collectively during the marriage, is categorized as jointly earned property that gives rise to shared rights and obligations (Thalib, 1974).

From the perspective of use, Sayuti distinguishes between assets used to meet household needs—including family expenditures and children's education—and other assets that do not directly serve domestic necessities. This distinction reflects differences in management and allocation of responsibility. Furthermore, in relation to individual ownership within the broader community, Thalib classifies assets into three categories: property jointly owned, property formally owned by one spouse but tied to family interests, and purely personal property free from familial obligations. These three lenses form a comprehensive conceptual framework for understanding marital property, emphasizing how origin, function, and social relations shape its legal status (Thalib, 1974).

The Marriage Law expressly separates property within marriage into joint property and individual property. Article 35 of the Marriage Law classifies the assets of husband and wife into joint property, personal property, and jointly earned property. Thus, marital property is not limited to assets acquired jointly during marriage but may also include personal assets brought into the marriage by each spouse in accordance with their mutual agreement.

Management and control of marital assets are regulated differently depending on the type of property. Spouses retain full authority over their personal and premarital property without requiring the consent of the other party. Joint property, however, must be managed collectively. Any legal act involving joint property requires mutual consent, as provided in Article 36 of the Marriage Law. This requirement reflects the balance of rights and duties between husband and wife within the marital relationship.

Normatively, the Marriage Law defines joint property as all assets generated through the marital union itself. Any asset acquired during marriage—regardless of whether it originates from the husband, the wife, or both—is deemed joint property so long as it contributes to the functioning and welfare of the household. Its management and disposition cannot be carried out unilaterally due to the principle of equal standing and shared responsibility between spouses. Joint property therefore embodies economic value intended for collective family welfare and is governed by the principles of fairness and partnership.

In Islamic law, the concept of joint property is not explicitly recognized. However, Islamic law provides space for spouses to regulate the mixing and allocation of property through prenuptial or marital agreements, consistent with the Marriage Law. While the explicit term is absent, Islamic law acknowledges the existence of individual ownership within marriage. The Islamic concept of *syirkah* refers to property obtained through joint effort by husband and wife during marriage. Islam recognizes the separation of property, including premarital assets, assets acquired through inheritance, gifts, or personal effort.

Islamic law mainly affirms the separate ownership of property by men and women, including dowry (*mahr*) given at the time of marriage. Thus, both husband and wife may hold personal assets brought into the marriage. In Islamic *mu'amalah* terminology, joint efforts in acquiring property may be categorized as *syirkah*, representing cooperative economic endeavors. Nonetheless, Islamic law does not explicitly articulate the doctrine of joint property; rather, it emphasizes that each spouse retains ownership over their respective assets unless otherwise agreed.

In practice, household income traditionally derives from the husband, while the wife manages domestic affairs. If spouses wish to merge their assets, they may do so through a *syirkah* agreement based on mutual consent. With the increasing participation of women in the workforce, joint economic cooperation between spouses may take the form of *syirkah abdan* (where the husband provides capital and the wife manages operations) or *syirkah inan*, where both spouses contribute capital and jointly manage the assets (Taufiq et al., 2023).

Article 86 of the Compilation of Islamic Law provides that marriage does not result in automatic mixing of property between spouses. This indicates that each spouse independently manages their property when engaging in legal acts. This differs from the Marriage Law, which regulates the joint management of property acquired during marriage. Assets classified as joint property under the Compilation include tangible assets—immovable property, movable assets, and securities—as well as intangible assets consisting of rights and obligations, and other jointly held assets that may serve as collateral with mutual consent. While the Compilation acknowledges the existence of joint property, it concurrently affirms the possibility of each spouse retaining personal property within the marriage.

Justice in the Distribution of Joint Property After Divorce

Based on its definition, a husband and wife who have entered into a valid marriage and lived together as a household may jointly accumulate assets categorized as joint property. Nonetheless, each spouse may also possess individual property brought into the marriage. The legal consequence of marriage is the emergence of joint property which, under the Marriage Law and the Compilation of Islamic Law, constitutes a shared responsibility of both spouses whenever they intend to undertake any legal action concerning such property. Under the Marriage Law, the dissolution of marriage results in the termination of the joint property regime. When this occurs, the parties are encouraged to resolve issues related to the joint property amicably. Should such efforts fail, the matter may be submitted to the court for resolution.

In marital life, circumstances beyond the control of the spouses may lead to the dissolution of marriage through divorce. One of the primary matters addressed by divorced couples concerns the joint property, particularly after a final and binding court decision is issued (Tjan et al., 2024). Gustav Radbruch posits that the balance among the elements of justice (*Gerechtigkeit*), utility (*Zweckmassigkeit*), and legal certainty (*Rechtsicherheit*) forms the basis for an ideal judicial decision (Yusuf, 2014). Article 229 of the Compilation of Islamic Law provides that “Judges, in adjudicating cases

submitted to them, must seriously consider the legal values that live within society so that their decisions reflect a sense of justice.” Therefore, issues relating to joint property cannot be separated from the question of justice in determining the appropriate distribution of such assets in the Religious Court. Justice, as a fundamental objective of Islamic law, is emphasized strongly in the Qur’an, which repeatedly calls for the establishment and upholding of justice. Consequently, the principle of justice in the distribution of joint property in family law constitutes an essential foundation (Taufiq et al., 2023).

The termination of joint property due to divorce may occur when the disputing parties fail to resolve the distribution amicably, prompting them to file a lawsuit before the Religious Court (for Muslims) or the District Court (for non-Muslims). Joint property may also cease to exist due to death or a judicial decision. When divorce occurs, the dissolution of the marital relationship directly affects marital assets, especially those acquired through joint efforts, which must be divided accordingly. Under Article 37 of the Marriage Law, “If a marriage is dissolved due to divorce, the joint property shall be regulated according to the respective laws applicable to the parties.” Thus, the state grants freedom to divorced couples to settle the distribution of their joint property based on their chosen legal framework—whether customary law, Islamic law, or other applicable legal provisions (Bawono, 2012).

From the perspective of Islamic law, if not otherwise agreed upon by the parties, the joint property is divided equally, with each former spouse entitled to one-half (Hermanto, 2024). This is consistent with Article 97 of the Compilation of Islamic Law. This equal distribution reflects the understanding that work within a marriage is not limited solely to economic activities generating income, but also includes non-material contributions such as household management, which signify the balanced roles and cooperation between husband and wife. Both spouses share equal rights and obligations in maintaining the marriage. Accordingly, a wife’s role as a homemaker is recognized as a significant contribution to the family, making an equal division of joint property reasonable even if the spouses performed different kinds of work during the marriage.

However, the determination of joint property may be subject to adjustment. When one spouse fails to properly fulfill their rights and obligations, the standard equal division may be deemed inconsistent with the sense of justice (Amiati et al., 2023). In contemporary society, many wives do not solely manage domestic responsibilities but also contribute economically to the household. Their efforts may support family expenditures or personal needs, thereby reinforcing the importance of substantive and procedural justice in ensuring that rights and obligations are fulfilled and performed during the marriage.

If the fulfillment of marital rights and obligations fails, legal justice may not be realized. Applying John Rawls’ theory (Sunaryo, 2022), equitable distribution through fair negotiation—free from discrimination—can produce balance without harming either party. For this reason, judges handling such matters must carefully consider the social and moral dimensions of justice, taking into account the factual conditions experienced by the spouses throughout the marriage.

CONCLUSION

Both the Marriage Law and the Compilation of Islamic Law, in principle, adopt a system of property separation within marriage. Under their respective provisions, the Marriage Law classifies marital assets into three categories, namely joint property, premarital property, and individually earned assets. Property acquired during the course of the marriage is deemed joint property, which becomes the collective responsibility and shared ownership of both husband and wife. Meanwhile, premarital property as well as assets obtained through each spouse’s personal efforts remain under their respective individual responsibility.

From the perspective of Islamic Law, the concept of joint property is not expressly recognized and is more closely analogous to the concept of *syirkah*, namely a form of partnership that results in the commingling of assets between husband and wife. Nevertheless, the Compilation of Islamic Law acknowledges the existence of joint property within marriage while simultaneously providing space for the existence of personal property, which may in certain circumstances become commingled with it.

Divorce, as one of the grounds for the dissolution of marriage, results in the termination of the legal relationship over joint property between former spouses. In addition to divorce, death and court rulings may also give rise to similar legal consequences. The division of joint property should ideally be carried out by emphasizing the principle of fairness for both parties. The Marriage Law does not stipulate a specific division ratio, whereas the Compilation of Islamic Law generally applies a principle of equal division between the parties. Nevertheless, such provisions may be adjusted in the presence of

particular circumstances that necessitate consideration of equitable factors based on the contribution and condition of each spouse during the course of the marriage.

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