

THE ESSENCE OF SHARING JOINT PROPERTY AS A RESULT OF DIVORCE

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Abstract

All individuals who have entered a household life certainly want the creation of a happy household, inner and outer prosperity and obtain the salvation of the world and the hereafter. Divorce is part of marriage, because there will be no divorce without first marriage. If in a divorce there is a dispute regarding the distribution of joint property, the resolution of a dispute regarding joint property can be submitted through the Religious Court. Property with husband and wife obtained during marriage, both husband and wife, have the same authority in the utilization of household life as well if there is a divorce between husband and wife either because of the death of one of the husband or wife (widowed) or divorce then the joint property have the same rights in the distribution of joint property.

Keywords: *division, divorce, essence, joint property.*

INTRODUCTION

Marriage is very important for every individual human being, in marriage a family will be formed which is expected to remain so that the couple is separated by circumstances where one of them dies. Marriage is considered to be a union between two souls who previously lived alone, once marriage has been carried out, each individual no longer thinks of himself but should think of other people who depend on him, whether it is from a woman or a man. In the Law of the Republic of Indonesia Number 1 Year 1974 concerning Marriage, Article 1 states that marriage is a physical bond between a man and woman as husband and wife with the aim of forming a happy and eternal family based on the Godhead. From the statement, it can be said that the main purpose of marriage is to form a happy and eternal family until death separates the married couple on the basis of the One Godhead.

A marriage bond will bring husband and wife status when a marriage bond is based on a legitimate marriage that is a marriage that fulfills the conditions specified by the marriage law, namely the Law of the Republic of Indonesia Number 1 Year 1974 and Government of the Republic of Indonesia Regulation Number 9 Year 1975. According to the marriage law, Article 2 paragraph (1) states that marriage is legal, if it is carried out according to the laws of each religion and its beliefs.¹ In addition to the marriage rules outlined by the creator in the life of society, nation and state there needs to be a regulation regarding marriage which is certainly inseparable from the rules of God as a fundamental basis, therefore each country has its own rules regarding different marriages - different about the principle, and the principles of this matter in accordance with the religious teachings adopted by the citizens of that country. Likewise in Indonesia, the majority of citizens are Muslim, so they have principles and principles that are different from other countries. In order to regulate marital discipline in Indonesia, there is a need for a regulation that contains legal rules that can also accommodate principles and can be used as a basis and legal guidelines in the field of marriage and applies to all Indonesian citizens in a written rule that is a law regarding marriage in Indonesia.²

Forms and concepts of marriage and family can vary by country as well as by geographical area within a country.³ For a country and nation such as Indonesia, it is absolutely the existence of the National Marriage Law which at the same time accommodates the principles and provides a legal basis for marriage which has been a handle and has been applied to various groups in society. Today there are various marriages for various groups of citizens and various regions such as the following:⁴

- a. for Indonesian Muslims who apply the religious law which has been recited in Customary Law;
- b. for other Indonesians, Customary Law applies;
- c. for Indonesian Christians, *Huwelijks Ordonnantie Christen Indonesia* (S. 1933 Number 74);
- d. for foreign Easterners and Indonesian citizens of Chinese descent the provisions of the Civil Code apply little change;
- e. for other foreign Easterners and other Indonesian citizens of Eastern Foreign descent, their Customary law applies;
- f. for Europeans and Indonesian citizens of European descent and who are likened to them apply the Civil Code.

Starting from this marriage there will be a family consisting of fathers, mothers and children, where a father acts as a family leader and fulfills all the needs of all family members. Mothers act more in their daily monitoring function with their children and help their husbands meet the needs needed to run a small organization called family. Between all members of the family each other has an inseparable reciprocal relationship.

In the family of husband and wife is a core part, their relationship reflects how one human being with another human being united to form a unity to maintain life and create offspring in accordance with the ideals of the Indonesian nation, so that it can be imagined without a family husband or wife not can

¹ Sormiyati, *Hukum Perkawinan Islam dan UU Perkawinan* (UU No. 1 Tahun 1974 tentang Perkawinan), Liberty, Yogyakarta, 1982, p. 79

² R. Subekti and R. Tjitrosubidjo, *Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*, Pradnya Paramita, Jakarta, 2005, p. 537

³ The United Nations Entity for Gender Equality and the Empowerment of Women, *Module 2: Marriage, Family and Property Rights, A Practitioner's Toolkit on Women's Access to Justice Programming*, 2018, p. 7

⁴ General Explanation of the Law of the Republic of Indonesia Number 1 Year 1974 concerning Marriage

be formed and society will never exist to form a greater unity, namely a citizen. This shows us how important marriage is in the order of human life.

All individuals who have entered household life certainly want the creation of a happy household, spiritual and physical well-being and obtain the salvation of the world and the hereafter. Of course from this happy family will create a society that is harmonious and will create a community that is harmonious, peaceful, just, prosperous and prosperous. The principle of marriage is to form a family or household that is peaceful and eternal, and therefore the process of going to divorce is not easy, even complicated. The husband cannot just drop divorce to his wife and vice versa the wife cannot immediately divorce her husband.

Both the husband and wife are given the opportunity to seek a peaceful solution by deliberation, if there is still no agreement and feel they cannot bring this matter to court to find a good and wise solution. The last effort taken if it did not get a way out according to the deliberation was to ask the court to resolve the problem of the husband and wife earlier. The court will reopen the door of peace to the parties by means of deliberation by using enforcers namely judges, for people who are Muslims will bring this matter to the temporary Religious Court for other religions pointing to the District Court where they live.

Divorce is part of marriage, because there will be no divorce without first marriage. If in a divorce there is a dispute regarding the distribution of joint property, the resolution of a dispute regarding joint property can be submitted through the Religious Court, as stipulated in Article 88 of the Compilation of Islamic Law.⁵ Every husband and wife must crave for household harmony, so that it takes a struggle to maintain the integrity of the household until death picks up later, this is because in the family there will always appear small ripples of problems that can really shake the unity that is fostered, even the integrity of a strong family can be threatened and resulting in divorce.

Divorce is the breakup of marriage between husband and wife because there is no harmony in the household or other causes such as the infertility of the wife or husband,⁶ whereas what is meant by talak according to Sayyid Sabiq is to give up the bond of marriage or the dissolution of marriage, this is prohibited unless there is a right reason and a very emergency happens.⁷ Divorce if carried out without any valid reason and no emergency, then divorce means kufr against Allah's favor and is evil towards his wife. Divorce can only be carried out if various ways have been done to reconcile both parties (husband and wife) to maintain the integrity of their household and it turns out that there is no other way except for divorce. In other words, that divorce is only a way out for husband and wife for the sake of happiness that can be expected. This is in accordance with that outlined in the Islamic religion, that divorce is an act that is justified and permitted if it is better than staying in a marriage bond, but happiness cannot be achieved and always in suffering.⁸

Divorce will occur if the judge has established a decision that has permanent legal force. Judges and decisions are like two sides of a coin that cannot be separated. The ability and quality of judges in deciding cases are reflected in their decisions. So it is not surprising that many parties say that the verdict is the crown of the judge. Very high hopes that judges will be able to produce impartial, argumentative and rational decisions. Philosophically the judge's decision is a decision whose consideration is the same as God's consideration. Judges need to carry out philosophical interrogations whether the mandate carried out as a law enforcer and justice has truly been guarded and carried out professionally, so that the verdict of the product is able to provide justice in accordance with the living and community development laws.⁹

According to Satjipto Rahardjo,¹⁰ that the judge in giving a sense of justice is not solely using prescriptive glasses, namely seeing the law only as a system of rules, the normological copies whose application is removed from its roots. Even though the law is not exact sciences or matrices. This is where the experience of the judge can be honed so that the judge is not just a mouthpiece for the law. If in the divorce process there is a dispute regarding the distribution of joint property, the resolution of

⁵ Radi Yusuf, Pembagian Harta Bersama Akibat Perceraian Berbasis Nilai Keadilan, Jurnal Pembaharuan Hukum, Volume I No.1 January - April 2014, p. 73

⁶ Fuad Said, Perceraian Menurut Hukum Islam, Cetakan pertama, Pustaka Al-Husna, Jakarta, 1994, p. 1-2

⁷ Sayyid Sabiq, Fiqh As-Sunnah, Jilid II, Dar Al- Fikr, Beirut, without years, p. 206

⁸ Radi Yusuf, *Loc.Cit.*, p. 74

⁹ *Ibid.*

¹⁰ Satjipto Rahardjo, in Majalah Peradilan Agama, "Mahkota Hakim Dalam Lensa Pakar", Keluarga Besar Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung RI, Jakarta, p. 7

the dispute regarding the joint property can be submitted to the Religious Court, as stipulated in Article 88 of the Compilation of Islamic Law.¹¹ Divorce is not only due to religious law and legislation, but also results in the extent to which the influence of the culture of shame and control of the community, in a society with very strong kinship divorce is a very difficult word to be issued but in society that has weaknesses in kinship systems, it will easily occur divorce. A divorce will have various legal consequences, one of which is related to joint property. Based on the explanation, the problem that will be discussed in this paper is how is the joint property limit as stipulated in the legislation? and how is the model of sharing joint property due to divorce?

RESEARCH METHOD

The type of research used is the type of normative legal research, using a legal and conceptual approach.¹² Data collection techniques are conducted through library research by studying and reviewing a number of national legal rules, textbooks, research papers, legal journals, legal dictionaries, and then analyzed descriptively

RESULTS AND DISCUSSION

A. Joint Property in Legislation

Community property includes all earnings during marriage and everything acquired with those earnings. All debts incurred during marriage, unless the creditor was specifically looking to the separate property of one spouse for payment, are community property debts.¹³ Divorce not only terminates the legal partnership between two spouses, but can also require that the property previously shared by the couple be divided. While property owned by either spouse prior to the marriage can remain the property of the original owner, most things acquired after the wedding (community or marital property) and before separation are often subject to division upon divorce. This section includes resources to help those going through a divorce determine how property should be divided, what happens to shared debts, how to find hidden assets, what happens to the family home, the effect on insurance policies, and more.¹⁴

The Panel of Judges in determining the distribution of shared assets due to divorce was more guided by *Ijtihad* (legal discovery). The *Ijtihad* carried out by the Panel of Judges is *Ijtihad Tathbiqiy*, namely the effort to apply the law appropriately to a case. The form of *Ijtihad Tathbiqiy* carried out by the Panel of Judges in determining the distribution of joint property due to the divorce was when the Panel of Judges used the Theory of Law in examining the Case by prioritizing the value of justice and benefit. The Justice Theory meant here is Distributive Justice and the Principle Difference justice. However, if during a household life the husband never gives everything needed to live in a household, that is, the husband never provides his wife with the provisions of Article 31 Paragraph (3) and Article 34 Paragraph (1) Law of the Republic of Indonesia Number 1 Year 1974 concerning Marriage and Al-Quran An-Nisa Verse 34, while the wife acts as a housewife and regulates household affairs as well as possible as stipulated in Article 31 Paragraph (3) and Article 34 Paragraph (2) Law of the Republic of Indonesia Number 1 Year 1974 concerning Marriage and also a wife who gives everything needed to live at home ladder, which is a wife who actually provides her husband with a living, in other words, that the wife becomes the backbone of the family and all joint property are obtained from the work of the wife, then they occur divorce and there is a dispute about the distribution of joint property, "the share of joint property for the widowed widow's wife is greater than the share of assets together for a husband who is a divorced widower."¹⁵ Joint property is:¹⁶

1. the result of husband's income
2. the results of the wife's income

¹¹ Radi Yusuf, *Loc.Cit.*, p. 75

¹² Peter Mahmud Marzuki, *Penelitian Hukum*, Prenadamedia Group, Jakarta, 2005, p. 35

¹³ *Dividing Property and Debt During Divorce FAQ*, How property and debts are divided when you get divorced. How do we distinguish between community and non-community property?, Nolo, 2017.

¹⁴ FindLaw, *Divorce and Property*, Thompson Reuters, 2019.

¹⁵ Radi Yusuf, *Loc.Cit.*, p. 77-78

¹⁶ J. Satrio, *Hukum Harta Perkawinan*, PT. Citra Aditya Bakti, Bandung, 1991, p. 189

3. the proceeds from the income of the personal property of the husband and wife, even though the basic assets are not included in the joint property, provided that they are obtained throughout the marriage.

Property with husband and wife obtained during marriage, both husband and wife, have the same authority in the utilization to fulfill such household life if a divorce occurs between a husband or wife (divorced), then the joint property have the same rights in the distribution of joint property. The distribution of joint property is regulated according to the law, each of which is stated in Article 37 of the Law of the Republic of Indonesia Number 1 Year 1974, which is as follows "If the marriage is broken because the divorce of joint property is regulated according to their respective laws".¹⁷

From the sound of the article above referred to as "each law" according to the explanation of Article 37 of the Law of the Republic of Indonesia Number 1 Year 1974 is the law of each husband and wife who carry out marriage which refers to religious law, customary law and other laws. This means that the distribution of joint property is regulated in accordance with the laws adopted by the husband and wife. If the husband and wife are subject to religious law, the settlement of the distribution of joint property is divided according to the husband and wife religious law if the husband and wife's religious law does not have rules regarding joint property so that it can be treated using husband and wife customary law but if the husband and wife are of different religions and their customary law can be resolved by other laws such as those regulated in western law or refer to the laws of the civil law. As limited as the provisions contained in the agreement intended in Article 35 paragraph (2), as long as the parties do not determine otherwise in the marriage agreement.

The Law of the Republic of Indonesia Number 1 Year 1974 means to open up other legal possibilities from "religious law" and "customary law" for the regulation of "joint property", for example in western civil law (BW) which later in Indonesia became the Civil Code for the arrangement of "joint property" of foreign Chinese eastern people. European people and people who are equated with those in Indonesia. The opening of other laws rather than religious law and customary law for the regulation of joint property is to avoid the occurrence of legal vacuum in the legal order in Indonesia.¹⁸

The Law of the Republic of Indonesia Number 1 Year 1974 concerning Marriage regulates this joint property, among others, stated that the property obtained during marriage is a joint property. The inheritance of each husband and wife and the property acquired by each of them as a gift or inheritance are under the control of each recipient, the parties do not specify otherwise.¹⁹ Joint property with husband and wife can act on the agreement of both parties. Regarding their respective assets, husbands and wives have the full right to carry out legal actions regarding joint property.²⁰ When marriage breaks out due to divorce, the joint property are regulated according to their respective laws.²¹ In the explanation of this article, it is affirmed that each of these laws is religious law, customary law and other laws concerned with the distribution of the joint property.

If the property is registered as the joint property of a soon-to-be-former married couple, the wife would be able to stake a claim at the time of divorce.²² Whether a particular asset can be divided as part of a divorce settlement typically depends on how it is classified - is it considered separate property or marital property? Granted, some states, such as Connecticut, Massachusetts, Michigan and Vermont, do not typically distinguish between marital and separate property, but most states do - even if what the law considers separate property is actually pretty limited.²³ Very much use of the term joint property found in Indonesia.²⁴ Book One of Chapter VI concerning Joint Property according to the law and its Management states that:²⁵

¹⁷ R. Subekti and R. Tjitrosudibio, *Op.Cit.*, p. 548

¹⁸ Rinduan Syahrani, *Hukum Acara Perdata dalam Lingkungan Peradilan Umum*, Pustaka Kartini, Jakarta, 1988, p. 29

¹⁹ Article 35 of the Law of the Republic of Indonesia Number 1 Year 1974 concerning Marriage

²⁰ Article 36 of the Law of the Republic of Indonesia Number 1 Year 1974 concerning Marriage

²¹ Article 37 paragraph (1) of the Law of the Republic of Indonesia Number 1 Year 1974 concerning Marriage

²² Sunita Mishra, *What Happens To Joint Property After Divorce?*, Proptiger, 2018.

²³ Jeffrey Landers, *Property Division in Divorce: Gifts and Inheritance*, Hermoney From Jean Chatzky, 2015.

²⁴ M. Yahya Harahap, *Kedudukan Kewenangan dan Acara Peradilan Agama UU No. 7 Tahun 1989*, Sinar Grafika, Jakarta, 2001, p. 272

²⁵ Article 119 - 120 of Burgerlijk Wetboek

- Since the time the marriage took place, according to the law there is a comprehensive joint property between husband and wife, so far there are no other provisions in the marriage agreement. The joint property, during the marriage, must not be abolished or changed with an agreement between husband and wife.
- With regard to the matter of profit, the joint property includes movable property and immovable property of the husband and wife, both existing, as well as the goods they obtain for free, except in the case of this last which inherits or grants determines the exact opposite.

In section 3 it also regulates the Dissolution of Joint Property and the Right to Release It. Joint property null and void by law:²⁶

1. Because of death;
2. Because marriage is under the permission of a judge after the husband or wife does not exist;
3. Because of divorce;
4. Because of separate tables and beds;
5. Because of the separation of property.

Specific consequences and dissolution in these matters on numbers 2, 3, 4 and 5, are set forth in another chapter in Burgerlijk Wetboek. After one of the husband and wife dies, if there is leaving a child who is still underage, the party who lives the longest is obliged to register the property which is a joint property within four months. Registration of joint property may be carried out under the hands, but must be attended by the trustee.²⁷ If the registration of the joint property is not held, the combined joint property will continue for the benefit of the underage child and may not harm him. The joint property are present at the time of the marriage while the property are obtained before the marriage takes place, but in reality in many families in Indonesia there are many who do not record the joint property they have. In new marriages the separation of property and joint property is still visible, but at the age of marriage that is old, the inheritance or property together is very difficult to separate or explain in detail one by one. The most common thing for Indonesian people who are predominantly Muslim today is that after the divorce, regarding the position or distribution of joint property between the divorced husband and wife, many people choose the Religious Service to help resolve the dispute over the sharing of joint property.

Marriage approval from the beginning has been determined by law.²⁸ Distribution of joint property according to the provisions of Article 37 of the Law of the Republic of Indonesia Number 1 Year 1974 concerning Marriage is not explicitly stipulated how many parts of each husband or wife are divorced either divorced. In addition to the Law of the Republic of Indonesia Number 1 Year 1974 concerning Marriage in Indonesia also Compilation of Islamic Law, relating to the sharing of joint property as stipulated in Article 96 and Article 97. The Compilation of Islamic Law states that the distribution of joint property both divorced each gets half of the joint property. The compilation included in Article 96 is as follows:

- If there is a divorce, then half of the joint property are the right of the couple to live longer.
- Distribution of joint property for a husband or wife whose wife or husband is lost must be suspended until the certainty of an absolute death or the basic legal death of the Religious Court.

Whereas in Article 97 the Compilation of Islamic Law states: "widows or widowers who are divorced each have the right to one-half of the joint property as long as it is not determined otherwise in the marriage agreement". From the description, it can be taken the understanding that the distribution of joint property due to divorce can be done directly between the ex-wife and husband by dividing each half of the part or each getting half of the total joint property.

B. Joint Property Distribution Model Due to Divorce

The share of joint property for divorced wives is two-thirds of the joint property, while for husbands who are widowers, the life gets one-third of the joint property or it can be "the share of joint property for a divorced wife lives for three-quarters part of the joint property, while the share of joint property for husbands who become divorced widowers is equal to a quarter of the share of the joint property". Giving part of the joint property due to a greater divorce to a wife who is a divorced widow compared to the part of a husband who is a divorced widower as mentioned above is solely to give an award to those who have achievements (strong parties), namely wives with intentions and purpose for good and for

²⁶ Article 126 of Burgerlijk Wetboek

²⁷ Article 127 of Burgerlijk Wetboek

²⁸ Prodjudikoro R. wirjono, Hukum Perkawinan di Indonesia, Sumur Bandung, Sixth print, 1994, p. 8

the benefit of a wife who is a divorcee, while giving a share of joint property due to a smaller divorce to a husband who is a divorced widower compared to the share of joint property due to divorce to a wife who is a life divorcee as mentioned above is to protect those who are not achievers (weak parties), namely husbands become divorced widower life with the intent and purpose for good and for the benefit of a husband who is a divorced widower.²⁹

Marriage not only has the element of birth or body, but the spiritual element also has a very important role.³⁰ The achievers (strong parties) in the case of sharing the joint property are divorced widows, namely the Panel of Judges determines that the divorcee has the right to obtain more shares of the joint property than the share of the joint property for those who are not achievers (weak parties), namely widower divorced life because it has indeed turned out, that during the divorcee divorced living with divorced widows while still being husband and wife, divorced widower has never provided all the necessities of married life, namely widower divorced people have never provided a divorcee live as stipulated in Article 31 Paragraph (3) and Article 34 Paragraph (1) of the Law of the Republic of Indonesia Number 1 Year 1974 concerning Marriage and the Quran Al-Nisa Verse 34, while the divorcee lives as a housewife and manages household affairs as best as possible in the provisions of Article 31 Paragraph (3) and Article 34 Paragraph (2) of the Law of the Republic of Indonesia Number 1 Year 1974 concerning Marriage and also the life divorcee that gives everything needed for a household life, namely a divorced widow who actually provides a living for divorced widows in other words, that a divorced widow becomes the backbone of the family and all joint property are obtained from the work of a living divorcee.³¹

In accordance with the foundation of the philosophy of Pancasila and the 1945 Constitution, this law on the one hand must be able to realize the principles contained in Pancasila and the 1945 Constitution, while on the other hand it must also be able to accommodate all the facts that live in society nowadays. This Marriage Law has contained in it the elements and provisions of the Law of Religion and its Trust from those concerned. In this law the principles or principles concerning marriage of all things related to marriage are determined according to the developments and demands of the era. The principles stated in this law are as follows:³²

- a. The purpose of marriage is to form a happy and eternal family. For this reason, husband and wife need to help and complement each other so that each can develop his personality to help and achieve spiritual and material well-being.
- b. In this Law it is stated that a marriage is legal if carried out according to the laws of each religion and its beliefs. and besides that, each marriage must be recorded according to the applicable laws and regulations. Recording of each marriage is the same as important events in a person's life, such as birth, death which are stated in Certificates, an official certificate which is also included in the recording.
- c. This law adheres to the principle of monogamy. Only if desired by the person concerned, because the law and religion of the person concerned permit, a husband can have more than one wife. However, the marriage of a husband with more than one wife, even though it is desired by the parties concerned, can only be done if it is fulfilled by certain conditions and decided by the Court.
- d. This law adheres to the principle, that the prospective husband and wife must have cooked their souls to be able to get married, so that they can realize the purpose of marriage well without ending in divorce and getting good and healthy offspring. For this reason, marriage must be prevented among prospective underage husband and wife. Besides that, marriage has a relationship with population problems. It is evident that a low age limit for a woman to mate results in a higher birth rate. In connection with that, this law sets the age limit for marriage for both men and women, is 19 (nineteen) years for men and 16 (sixteen) years for women.
- e. Because the purpose of marriage is to form a family that is eternal and prosperous, this law adheres to the principle of exchanging divorce, there must be certain reasons and must be carried out in front of the Court of Appeal.

²⁹ Radi Yusuf, *Loc.Cit.*, p. 78

³⁰ R. Soetojo Prawiro Hamidjojo and R. Soebijono Tjirowinoto, *Pluralisme dalam Perundang-Undangan Perkawinan Indonesia*, Airlangga University, Surabaya, 1994, p. 43

³¹ Radi Yusuf, *Loc.Cit.*, p. 78-79

³² General Explanation of the Law of the Republic of Indonesia Number 1 Year 1974 concerning Marriage

- f. The rights and position of the wife are balanced with the rights and position of the husband both in household life and in community relations, so that everything in the family can be negotiated and decided jointly by the husband and wife.

Al-Qur'an Surah Al Ruum verse 21 which means "and among his signs of power is He created for you wives of your own kind, so that you tend and feel at ease with him (*sakinah*) and make it among you compassion (*mawaddah*) and polite (*warahmah*). Indeed, this condition is truly a sign for you who think".³³ According to Radi Yusuf, there are 2 (two) models in the implementation of sharing joint property due to justice-based divorce, namely:³⁴

- Joint property are divided according to the provisions of Article 97 Compilation of Islamic Law, namely During marriage, the husband gives everything he needs to live in a household, that is, the husband provides his wife and children, and the wife acts as a housewife and manages household affairs as well, the joint property are divided into two parts of the joint property for the husband (widowed divorcee) and one-half of the joint property for the wife (the divorced widower).
- Joint property are not in accordance with the provisions of Article 97 Compilation of Islamic Law, namely during marriage, the husband does not provide all the necessities of living in a household, that is the husband does not provide for his wife and child, but the wife gives everything to live, namely the wife who actually provides her husband and child with livelihood, then the joint property are divided not in accordance with the provisions of Article 97 Compilation of Islamic Law. The share of joint property for the wife (life divorcee) must be greater than the share for the husband (widower divorced). It could be three-quarters of the joint property for the wife (divorcee) and a quarter of the joint property for the husband (widowed divorcee) or it could be two-thirds of the joint property for the wife (divorced widow) and one third of the joint property for husband (widower divorced).

In the compilation of Islamic law in Article 85 states that: The existence of joint property in the marriage does not rule out the possibility of the property of each husband or wife.³⁵

CONCLUSION

Joint property as stipulated in the laws and regulations, namely joint property are (1) the result of husband's income, (2) the result of from wife's income, and (3) the proceeds from the income of the personal property of the husband and wife, even though the basic assets are not included in the joint property, provided that they are obtained throughout the marriage. With respect to property with husband and wife obtained during marriage, both husband and wife have the same authority in the utilization to fulfill household life, likewise, if a divorce occurs between a husband and wife either because of the death of one of the husband or wife (divorced) or because of divorce then the joint property have the same rights in the distribution of joint property. The distribution of joint property is regulated according to the law, each of which is stated in Article 37 of the Law of the Republic of Indonesia Number 1 Year 1974, which is as follows "If the marriage is broken because the divorce of joint property is regulated according to their respective laws".

The model of sharing joint property due to divorce is two, i.e. (1) Joint property are divided according to the provisions of Article 97 Compilation of Islamic Law, namely During marriage, the husband gives everything he needs to live in a household, that is, the husband provides his wife and children, and the wife acts as a housewife and manages household affairs as well, the joint property are divided into two parts of the joint property for the husband (widowed divorcee) and one-half of the joint property for the wife (the divorced widower). (2) Joint property are not in accordance with the provisions of Article 97 Compilation of Islamic Law, namely during marriage, the husband does not provide all the necessities of living in a household, that is the husband does not provide for his wife and child, but the wife gives everything to live, namely the wife who actually provides her husband and child with livelihood, then the joint property are divided not in accordance with the provisions of Article 97 Compilation of Islamic Law. The share of joint property for the wife (life divorcee) must be greater than the share for the husband (widower divorced). It could be three-quarters of the joint property for the wife (divorcee) and a quarter of the joint property for the husband (widowed divorcee) or it could be two-

³³ M. Idris Ramulyo, *Tinjauan Beberapa Pasal UU No. 1 Tahun 1974 dari Segi Hukum Perkawinan Islam*, Ind Hillco, Jakarta, 1988, p. 11

³⁴ Radi Yusuf, *Loc.Cit.*, p. 79-80

³⁵ Wildan Suyuthi, *Kompilasi Hukum Islam, Mahkamah Agung Republik Indonesia*, Jakarta, 2001, hlm. 26

thirds of the joint property for the wife (divorced widow) and one third of the joint property for husband (widower divorced).

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