

Conference Paper

The Legal Status of Marital Joint Property Sourced from the Wife

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Abstract.

This article aims to determine the position of marital joint property originating from the wife in divorce cases according to the Compilation of Islamic Law, as well as legal protection of the rights of wives who support household life according to the Compilation of Islamic Law. This normative research inventories the applicable regulations concerning joint property in the Islamic concept using the Compilation of Islamic Law. The results of the writing show that there is legal vagueness in the Compilation of Islamic Law because the regulation of the status of joint marital property only regulates general matters where the husband earns a living, while more concrete provisions if the wife earns a living are not regulated. Instead of going to court to divide the joint property, it is better for the husband and wife to divide the property amicably.

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1. INTRODUCTION

In Islamic law, the ratio of the rights of husband and wife to joint property, "In general, there are two shares brought by the husband, namely capital and energy to manage it. While the shares brought by the wife are only one, namely the energy to help the husband in managing the capital"[1]–[3]. The regulation of the division of joint property is regulated in Article 97 of the Compilation of Islamic Law, which reads "A widow or widower of divorced life is each entitled to one-second of the joint property as long as it is not otherwise specified in the marriage". This is considered quite fair considering that there are two shares of the Husband and one share of the Wife, under normal conditions as mandated by the Compilation of Islamic Law where the Husband earns a living and the Wife takes care of domestic affairs, in this case taking care of and managing the Household [4], [5].

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Joint property is Property in marriage produced jointly by a married couple during the marriage period [6]–[8]. This concept is influenced by the rights and obligations between husband and wife which are regulated by the marriage number law as well as the compilation of Islamic law. For example, in Article 31 paragraph (3) of the Marriage Law it is said that “The husband is the head of the household and the wife is the housewife”. In addition, in Article 34 paragraph (1) it is stated that “The husband is obliged to protect his wife and provide all the necessities of married life according to his ability”, and in paragraph (2) “the wife’s obligation is to manage household affairs as well as possible”.

However, when the wife is the economic support of the family, then the condition is reversed, which means the wife is the holder of two shares and the husband is one share [4], [9]–[12]. In this condition, does it still feel fair if in the event of a divorce, this joint property is still divided in half as mandated in Article 97 of the Compilation of Islamic Law? Whereas in the household, referring to what has been mandated in Article 80 paragraph (2) of the Compilation of Islamic Law which reads “The husband is obliged to protect his wife and provide everything necessary for married life according to his ability”, is not implemented in the household.

This paper aims to describe the position of joint property sourced from wives, based on the perspective of the compilation of Islamic law. The contribution of the writing was to provide further understanding, especially to women who were supporters of the household economy about his right to common property.

2. METHOD

The method used in this writing is the normative legal research method[13], [14] as previous legal research conducted by researchers related to the review of laws and regulations [15]–[17]. The approach used is the approach of laws and regulations, by reviewing provisions related to Law number 1 of 1974 concerning marriage and Presidential Decree number 1 of 1999 concerning the Compilation of Islamic Law. The material used in this writing is primary legal material in the form of statutory provisions, secondary legal material in the form of articles, magazines and books related to law, and tertiary legal material in the form of journal articles related to marriage.

3. RESULTS AND DISCUSSIONS

3.1. The position of joint property sourced from the wife in the event of divorce is alive according to the compilation of Islamic law

Basically, there is no mixing of marital property in Islam. This can be seen from the provisions of Article 86 paragraph (1) of the Compilation of Islamic Law states that “Basically there is no mixing between the property of the husband and wife due to marriage”, while Article 86 (2) stipulates that “The property of the wife remains the right of the wife and is fully controlled by her, likewise the property of the husband remains the right of the husband and is fully controlled by him”. However, because of the cultural background of the Indonesian nation where the wife also helps the husband to work to earn a living and run the family economy, it is known then that the term joint property where this is actually a customary law that applies in Indonesian society which is then adopted by the government into a positive law is about joint property [18], [19].

This is then implemented in Article 35 paragraph (1) of the Marriage Law which states “Property acquired during marriage becomes joint property”, and this is the basis for the regulations under it, namely the Compilation of Islamic Law. So, since the marriage took place, all property obtained by the two husbands and wives becomes joint property or joint property, as long as it is not otherwise stipulated in the prenuptial agreement.

However, looking at the current phenomenon, where many wives are moving to make a living to help their husbands run the family economy, plus the dual role of wives who also still have to take care of the household in addition to working in this office is not regulated in laws and regulations at any level. The compilation of Islamic Law only regulates the roles of husband and wife in terms of obligations and positions between them, and that too in ordinary terms and not in such *extraordinary* matters .

The compilation of Islamic Law does not specifically regulate its division (legal vagueness), even though this has happened a lot in society. The compilation of Islamic Law only states to divide the two joint property, without looking at the role between the husband and wife in the acquisition of the joint property. This legal vagueness should be filled, so that when there is another seizure of property along with a similar case *that is brought to litigation*, the judge has a strong foundation to stand on in making decisions, not necessarily dividing in half just because the Compilation of Islamic Law regulates it that way, so that justice for both parties is obtained.

The division of two joint property when there is a divorce is not a compulsory division, because there is no nash sharia that requires such a division[20], and considering that even the common treasure was not known in classical Islam (the time of His Holiness the Prophet (peace be upon him). “So, as long as it has not been regulated regarding *this*

extraordinary matter in the Compilation of Islamic Law, the best thing that a husband and wife should do in resolving the problem of division of property when divorce occurs is by way of peace or agreement.” This agreement in the *Qur’an* is called “*Ash Shulhu*” i.e. the agreement to make peace between the two parties (husband and wife) after they have a disagreement”. As Allah says in Surah *An-nisa* verse 148 which reads “And if a woman is worried about nusyuz or indifference from her husband, then it is okay for both of them to make true peace and that peace is better (for them)“. The above verse describes the peace taken by a husband and wife after they had a disagreement. Surely a dispute resolved by peaceful means will give a fair result to both.

Returning to the issue of division, this legal blur should be resolved immediately. The division of joint property when there is a divorce should not be divided in half, but rather seen from the role between husband and wife in the acquisition of joint property. That way, justice can be achieved for both parties. It does not burden one party and benefits the other.

3.2. Legal Protection for Wives Who Support the Family Economy According to the Compilation of Islamic Law

The wife may release the husband from his obligation to provide for the wife, provide proper housing, *kiswa*, treatment costs, and medical expenses for herself and her child, as stipulated in Article 80 paragraph (6) of the Compilation of Islamic Law. But not for the cost of his child’s education, and the living expenses of the husband and wife of the husband himself.

When the husband and wife of the wife discharge the husband’s obligations towards him, the Compilation of Islamic Law does not regulate the rights and obligations of the husband and wife thereafter. For example, does it mean that their roles switch roles? or the rights and duties become different, and most importantly, whether there is joint property in the marriage, given the role of the wife in the income of the joint property. This legal vagueness must be addressed and complemented. So that the legal rights and protections for the Wife become clear in these unusual circumstances.

The wife’s choice when the husband does not fulfill his obligations as a husband is ultimately only one way, namely divorce. As per Article 77 paragraph (5) of the Compilation of Islamic Law “If a husband or wife neglects his or her own *wjiban*, each may file a lawsuit with the Religious Court”. However, is it possible to file a divorce lawsuit with the religious court? Of course not, considering that there are many other aspects such as post-divorce child development [21]–[23].

The absence of legal protection for the wife who is the economic supporter of the exit to joint property after divorce, and this lazy husband can be prevented by one way, namely the marriage agreement [24]–[26]. General provisions regarding marriage agreements are regulated in Article 47 of the Compilation of Islamic Law, namely:

(1) At or before the marriage takes place, the bride and groom can make a written agreement certified by the Marriage Registrar regarding the position of property in the marriage.

(2) The agreement mentioned in subsection (1) may include the mixing of personal property and the separation of each other's livelihood property as long as it is not contrary to Islam.

(3) In addition to the provisions in paragraphs (1) and (2) above, the content of the agreement may also stipulate their respective powers to enter into mortgage bonds on personal property and joint property or company property.

Based on the provisions in paragraph (2) above, the content of the marriage agreement can include two possibilities, namely the mixture of personal property (joint property) and separation of livelihood property (no joint property). In addition, the content of the agreement is also allowed to establish their respective authority to enter into mortgage bonds on personal property and joint property or company property (as stated in paragraph 3).

However, even making this marriage agreement should not be at will. Husband and wife must consider aspects of propriety and conformity in law, religion and decency as stated in Article 29 paragraph (2) of the Marriage Law” The agreement cannot be ratified if it violates the limits of law, religion and decency.”, and if the provision is not observed, “the marriage agreement that has been made must be canceled”.

When the prospective husband and wife agree to make a marriage agreement, they must pay attention to 2 things that are required for the marriage agreement to be valid, namely:

1. Made by notarial deed
2. Made before the mating took place.

Both of the above conditions must be met. If either of the two conditions is not met, the status of the marital agreement is void. This resulted in the continued status of togetherness of the wealth of the husband and wife. The marriage agreement is valid from the moment the marriage takes place. As stated in Article 50 paragraph (1) of the Compilation of Islamic Law which reads “The marriage agreement regarding property,

is binding on the parties and third parties starting from the date of marriage before the Marriage Registration Officer". That is, when the marriage takes place, the agreement is legally binding on the relationship between the two parties.

4. CONCLUSION AND RECOMMENDATION

The position of joint property sourced from the wife in the event of divorce in the Compilation of Islamic Law has not been regulated (there is a legal vagueness). The Compilation of Islamic Law only deals with general matters concerning the position of joint property in the event of divorce as stipulated in article 97 of the Compilation of Islamic Law. The legal protection that exists is only limited to the wife filing for divorce because the husband does not carry out his obligation to provide for the household. In addition, prevention can be done by making a prenuptial agreement before the marriage with a note that must be made before a notary and carried out before the marriage. The suggestions that the author can put forward in this thesis are: 1) revision to the Compilation of Islamic Law 2) The best thing that a husband and wife should do in solving the problem of the division of property when a divorce occurs is peace (*Ash Shulhu*), so that the division can be divided fairly according to the portion and role of each husband and wife in the acquisition of this joint property.

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