

The Distribution of Joint Assets in the Religious Courts

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ABSTRACT

The distinction under Islamic law is that all inherited assets, both those deriving from original assets and joint assets, can be accounted for to pay for the interests of the successor. Joint assets or joint assets are not included in inheritance. However, according to customary law, only certain types of joint property, known as *gono gini*, can be accounted for in the heir's interests. Normative-sociological legal research is the methodology employed in this study. Legal research on the application or enforcement of normative legal requirements (codification, laws, or contracts) in action in every circumstance is known as applied law research. specific social norms that exist. An important factor in reaching predetermined objectives is implementation in practice, which is a social and factual truth. If normative legal rules are formulated in a clear, firm, and comprehensive manner, faultless implementation in practice is to be anticipated. There are two ways that can be done to do the distribution of joint assets after the divorce, namely:

Drafting the Shared Assets Deed in front of the Notary; File a case in the defendant's district court of domicile for the distribution of joint property. It should be kept in mind that, because each case stands alone and has a different substance, lawsuits for the division of joint assets cannot be filed concurrently or all at once when filing for divorce.

1. INTRODUCTION

In order for two married people to be able to resolve the issues they are facing; divorce or separation is the final option or solution. If a household does not foster a healthy environment, divorce is frequently possible. The absence of domestic violence or other issues that contribute to an unhappy and discordant home is a sign of this healthy environment. Divorce is therefore a last resort since it eliminates the necessity for confrontation between the two people. Following the divorce, there is frequently a new argument over how to divide the couple's assets or shared expenses.

The distinction under Islamic law is that all inherited assets, both those deriving from original assets and joint assets, can be accounted for to pay for the interests of the successor. Joint assets or joint assets are not included in inheritance. However, according to customary law, only certain types of joint property, known as *gono gini*, can be accounted for in the heir's interests.

Article 86 paragraph (1) of Law Number 7 of 1989 concerning the Religious Courts, whose provisions have not been altered by Law Number 3 of 2006

How to cite this paper: Doris Rahmat | Santoso Budi Nu "The Distribution of Joint Assets in the Religious Courts" Published in International Journal of Trend in Scientific Research and Development (ijtsrd), ISSN: 2456-6470, Volume-7 | Issue-1, February 2023, pp.497-500, URL: www.ijtsrd.com/papers/ijtsrd52709.pdf



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KEYWORDS: Law, Marriage, Indonesia

concerning Amendments to Law Number 7 of 1989 concerning the Judiciary Religion, outlines the procedures for filing applications for joint assets and divorce. The division of joint assets/ joint owned property is shared property with former spouses acquired during the marriage, according to statute number 7 of 1989 article 86 paragraph (1). The income of each (husband and wife), unless otherwise stated in the form of a prenuptial agreement, is combined as one and is owned jointly. In this situation, the earnings from the business or work are likewise shared property, even though only one partner works to generate income. Joint owned property is any property held in the name of two or more parties, like husband and wife, or business partners, friends, or family members. The risks of joint owned property are the potential for financial issues with partial ownership of a property, like one party wanting to sell their share.

As noted above, a joint owned property may be held in legal forms, such as joint tenancy. This is when two or more people have equal rights and obligations

to the property they rent or own together until one partner passes away. At this time, the owner's interest passes to the survivors without probate. Tenancy by the entirety, another joint-owned property option, is when the parties are husband and wife. In this case, each spouse has an equal and undivided interest in the property. If one spouse dies, the full title of the property automatically passes to the surviving spouse. Two additional forms of jointly owned property, community property, and trust, also have distinct features. A spouse can acquire community property (marital property) during a marriage. This property, such as a rental unit, legally belongs to both partners.

Problem Formulation

How is the settlement of the distribution of joint assets in the Religious Courts?

2. Research Methods

Normative-sociological legal research is the methodology employed in this study. Legal research on the application or enforcement of normative legal requirements (codification, laws, or contracts) in action in every circumstance is known as applied law research. specific social norms that exist. An important factor in reaching predetermined objectives is implementation in practice, which is a social and factual truth. If normative legal rules are formulated in a clear, firm, and comprehensive manner, faultless implementation in practice is to be anticipated.

3. Literature Review

The legal act of "marriage," which is governed by both Law No. 1 of 1974 about Marriage and marriages governed by Article 26 of the Civil Code, results in the creation of joint property. Marriage refers to an arrangement whereby the marriage agreement is a pact formed by two people (the future husband and wife) before their union is consummated to control the financial, legal, and other ramifications of their union. Saputra mentions a few other crucial factors to consider when navigating the family ark. Assets collected during a marriage, from the moment it begins until it ends, whether it does so by divorce, death, or a court order are referred to as joint assets (Article 38). A family will be able to meet its wants if it has enough money, which is one of the supports for a harmonious and pleasant home life. Joint property is known as "marriage assets" in accordance with Article 1 letter f of the appropriate Compilation of Islamic Law. According to the article's complete text, marital assets are possessions obtained either separately or together during a marriage. "Starting from the marriage taking place legally, unanimous unity applies between the husband and wife's assets, with the exception that the marriage agreement is terminated with other stipulations," states Article 119

of the Civil Code. Property obtained during the marriage becomes joint property, according to Law No. 1 of 1974 Concerning Marriage, which includes: 1) Assets acquired during the marriage.

If not specified, assets received as a gift, present, or inheritance. Debts incurred during the marriage, except those that are the personal property of each husband and wife; therefore, joint assets include the results and income of the husband and wife's earnings. Marriage has significant legal consequences, both in terms of family law and property law, based on all of the husband's and wife's income, as determined by the provisions of the Act and the Civil Code (wealth).

Definition of Divorce

Divorce is the act of severing the link between a husband and wife, which entails disobeying the marital contract and ending the couple's status as husband and wife in the eyes of the law. According to the Indonesian Dictionary (*Kamus Besar Bahasa Indonesia*), divorce refers to separation, dissolution of the marriage, or the releasing of marital connections. This is how the term "divorce" is often understood. Since divorce is not an agreement, it should not be the basis for a divorce in a marriage. Divorce is a last resort or an emergency escape for couples who are having marital problems. Only one of the various legal grounds listed in Article 39 paragraph (2) of Law No. 1 of 1974, as stated in Article 19 PP No. 9 of 1975, may be used to get a divorce.

Legally speaking, there are multiple grounds for divorce, but a husband and wife can only use one of them to apply for divorce. Additionally, the authority of the judge in court is enumerative, in the sense of interpreting, expanding, and implementing the law in a more concrete manner on each legal grounds for divorce. Unless the plaintiff purposefully vacates the joint residence without the defendant's consent, the wife or her counsel files the divorce petition with the court whose jurisdiction includes the plaintiff's place of residence. If the plaintiff is domiciled abroad, the divorce action must be filed with the court that has jurisdiction over the defendant's abode. If the plaintiff and defendant are both citizens of another nation, the lawsuit must be submitted to the Central Jakarta Religious Court or the court that has jurisdiction over their marriage. There are a few items that require attention based on the contents of the aforementioned article. The first is the shift in the Court's relative power. If a husband files an application with a court that includes his own residence under a government regulation while his wife files a lawsuit with the court where the husband resides, the matter is transferred to the court that includes agreed-upon shared living

quarters under the Law on Religious Courts Articles 66 and 73, respectively. Second, the distinction between contentious divorce and talak divorce is upheld and further highlighted as a difference in divorce proceedings.

4. Discussion

Everyone who is married may experience divorce at some point in their lives for a variety of reasons. A husband or wife will petition for divorce in court if they believe they can no longer support the family. The division of joint assets is one of the matters that must be handled once the divorce judgment is handed down by the court and given permanent legal effect.

Before entering into the matter of sharing joint assets, it should be noted that in marriage, there are two types of ownership of assets, namely:

A. No matrimonial agreement

If a husband and wife have never entered into a marriage contract, then a collection of assets known as joint property exists between the two of them. Regarding the idea of shared property, there are two distinct ideas in civil law. For couples who were wed prior to 1974, joint property is defined in line with Article 119 of the Civil Code, specifically:

“From the time the marriage took place, according to the law there is a comprehensive joint property between husband and wife”. Marital property includes real estate and other property a couple buys together during their marriage, such as a home or investment property, cars, boats, furniture, or artwork, when not acquired by either as separate property.

That is, when the marriage took place, there was a mixture of assets between the husband and wife, both assets obtained before the marriage and assets obtained during the marriage.

Contrary to the Civil Code, Article 35 of Law No. 1 of 1974 Concerning Marriage distinguishes between joint and congenital assets. In contrast to inherited assets, which are assets gained before marriage, joint assets are assets acquired at the time of marriage. This law applies to unions that took place after 1974. The legal repercussion of not having a marriage agreement is that, in the event of a divorce, the ex-husband and ex-wife must divide the joint assets.

B. By marriage agreement

In a divorce, dividing up property can easily become a major bone of contention. Many couples are surprised that, more often than not, the name on the title to the property doesn't control which spouse gets to keep that asset. Instead, ownership of the spouses' property after the divorce will depend on whether the assets are considered one spouse's separate property

or the couple's marital property, and whether the couple lives in an "equitable distribution" state or a "community property" state.

The marriage contract specifies a clause regarding the division of assets from before or at the time of marriage between husband and wife. The legal repercussion is that there is no division of joint assets in the event of divorce. The property will be purchased by each party and registered in their name.

After the divorce judgment has been legally binding permanently, the parties who did not enter into a marriage agreement at the time of the marriage and divorce must divide the marital assets. This is so because the division of marital assets during divorce is not automatic. If no division is established, there are implications that must be accepted, including the requirement that the ex-wife or ex-husband acquire consent before taking legal action against property registered in one of the parties' names, whether in the name of a husband or wife. Naturally, this will make it more challenging for the parties to pursue legal action against shared assets.

There are two ways that can be done to do the distribution of joint assets after the divorce, namely:

Drafting the Shared Assets Deed in front of the Notary; File a case in the defendant's district court of domicile for the distribution of joint property. It should be kept in mind that, because each case stands alone and has a different substance, lawsuits for the division of joint assets cannot be filed concurrently or all at once when filing for divorce. As stated in Supreme Court Jurisprudence No. 913 K/Sip/1982, dated May 21, 1983, “Lawsuits regarding divorce cannot be combined with lawsuits for marital property,” and Supreme Court Jurisprudence No. 1020 K/Pdt/1986, dated September 29, 1987, “... similarly a claim for sharing joint assets cannot be filed together with a divorce suit.” Consequently, a lawsuit for the division of marital property may only be brought after the divorce has been decided and given permanent legal effect.

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