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Joint Property Disputes and the Alternative Resolution

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ABSTRAK

Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God. If any problems in the marriage can be resolved properly, then the household can be maintained. However, on the other hand, if the problems cannot be resolved, then divorce will arise as the last way out that will be taken. Divorce according to Islamic law is prohibited to be done principally. This can be seen in the signs of the words of the Prophet Muhammad SAW that talaq or divorce is a permissible act but hated by Allah. Divorce, one of the worst household disputes that may happen to anyone, needs to be anticipated and learned beforehand so that married couples feel ready to face conflicts that may occur in the future, including the problem of dividing joint properties when a divorce occurs.

This study aims to determine the kinship relationships that exist in Indonesia. This study is library-research with a descriptive method. The results of the study obtained the division of joint properties in marriage (*gono-gini*) needs to be based on aspects of justice for all parties involved. The justice in question includes the understanding that the division does not discriminate against one party. The interests of each party need to be accommodated as long as they are in accordance with the actual reality. The benefit of making a marriage agreement for the personal lives of each party is that the parties, those who make the agreement, both husband and wife, have the power and freedom to act which is to take legal action and utilize it.

1. Introduction

Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God (Surojo 1982). However, reality proves that maintaining the sustainability and continuity of a marriage is not easy. Various temptations and obstacles are ready to block the ship of marriage, so at any time, the marriage can break up in the middle of the road The breakup of a marriage may occur due to various things, either due to death or other factors, such as biological, psychological, and economic factors as well as differences in outlook on life and so on which often trigger conflict in marriage.

If any problems in the marriage can be resolved properly, then the household can be maintained. However, on the other hand, if the problems cannot be resolved, then divorce will arise as the last way out that will be taken. Divorce according to

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Islamic law is prohibited to be done principally. This can be seen in the signs of the words of the Prophet Muhammad SAW that *talaq* or divorce is a permissible act but hated by Allah.

Therefore, the sign shows that *talaq* or divorce is the last alternative as an "emergency door" that can be taken, when the ship of the household can no longer be maintained in its integrity and continuity. After a divorce, it does not mean that household problems immediately end, in fact with the divorce, there are many problems that must be resolved by the husband and wife, one of which is the issue of joint properties and their arrangement (Ahmad Rofiq 1995).

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2. Literature Review

2.1 Definition of Joint Properties

Joint properties, etymologically, are properties owned jointly by husband and wife. Meanwhile, in terms of terminology, it is very clear in Law No. 1 of 1974 in article 35 paragraph 1 which states that, "joint properties are properties obtained during marriage to become joint properties (Abdul Manan 2001). The definition above provides an illustration that what is meant by joint properties are properties obtained after a legal bond between husband and wife. Therefore, properties under each party cannot be called joint properties because they are not obtained after the marriage period.

According to Fatchur Rohman, joint properties are properties obtained by a husband and wife during a marriage where both work for the benefit of the household. This work should be interpreted broadly, so that a wife whose work does not actually produce wealth, such as caring for her child, is considered to have worked, and properties obtained concretely by the husband becomes joint properties (Fathur Rahman 1994). From several definitions of joint properties above, the author can take an understanding that what is meant by joint properties are properties obtained during the marriage bond, as a result of the efforts of one of the husband or the wife, or which are obtained together to meet the daily needs of the family.

2.2 Legal Basis for Joint Properties

Basically, there is no mixing of properties in a marriage between husband and wife. The concept of joint properties originally comes from customs or traditions that have developed in Indonesia. This concept is then supported by Islamic law and positive law in force in our country (Happy Susanto 2003).

The legal basis for joint properties can be traced through the following laws and regulations.

1. Marriage Law No. 1 of 1974, Article 35 paragraph (1), states that what is meant by joint properties is "Properties acquired during the marriage". This means that properties acquired before the marriage are not referred to as joint properties.
2. Article 119 of the Civil Law states that "Since the marriage is carried out, according to the law, there are joint properties between husband and wife, as long as there are no other provisions in the marriage agreement. The joint properties, during the marriage, may not be eliminated or changed by an agreement between husband and wife."
3. Compilation of Islamic Law article 85, states that "The existence of joint properties in a marriage does not preclude the possibility of properties belonging to each husband and wife." This article states that there are joint properties in a marriage, but it does not preclude the possibility of properties belonging to each husband and wife.

Islamic law recognizes the existence of properties which are the properties of every person, both regarding the management and use as well as to perform legal acts on the properties as long as it does not conflict with Islamic law. In addition to that, there is also the possibility of a union between husband and wife in search of wealth. Therefore, when a divorce occurs between husband and wife, the properties are divided according to Islamic law with the rule of law "There is no harm and does not harm". From this legal rule, the best way to settle joint properties is to divide the properties fairly (UUD No. 1 Year 1974).

3. Methodology

This study uses library research, which is a method of collecting data by understanding and studying theories from various literatures related to this study. There are four stages of library study in this study, namely preparing the necessary tools, preparing a working bibliography, organizing time and reading or taking notes. The data collection uses a method of finding sources and constructing from various sources, for example books, journals and research that has been done. Library materials obtained from various references are analyzed critically and must be in-depth in order to support ideas.

4. Results and Discussion

Joint properties between husband and wife can only be divided if the marriage relationship has been terminated. The marriage relationship can be terminated due to death, divorce, and also a court decision.[7] Law Number 1 of 1974 concerning Marriage, article 37 states "If the marriage is terminated due to divorce, joint properties are regulated according to their respective laws" what is meant by each law is emphasized in the explanation of article 37, namely religious law, customary law and other laws.[8] In article 37 of Law Number 1 of 1974, it does not state how much each portion is between husband or wife, whether divorced by death or divorced by life, but in the Compilation of Islamic Law, articles 96 and 97 regulate the division of this partnership, both divorced and divorced by death, namely each gets half of the joint properties as long as it is not specified in the marriage agreement. In full, article 96 of the Compilation of Islamic Law reads: "If a divorce occurs by death, half of the joint properties becomes the right of the spouse who survives longer. The division of joint properties for a husband or wife whose wife or husband is missing must be postponed until there is certainty of his or her actual death or legal death based on a decision of the Religious Court." Meanwhile, Article 97 of the Compilation of Islamic Law states, "Widows or widowers who are divorced are each entitled to half of the joint properties as long as it is not determined otherwise in the marriage agreement."[9] From the two articles above, it can be concluded that joint properties or *syirkah* will be divided equally or half between husband and wife, this can be done directly or with the assistance of the court.

Joint property lawsuits can be filed together with a divorce application or lawsuit and can also be filed after the divorce has permanent legal force (*inkracht*). In joint property disputes that have been filed with the Religious Court, most are cumulative (*samenvoeging van vordering*).[10] Joint property lawsuits are filed together with divorce applications/lawsuits. This is permitted as stated in Article 86 paragraph (1) of Law Number 7 of 1989 as follows: "Lawsuits regarding control of children, child support, wife support, and joint properties of husband and wife can be filed together with a divorce lawsuit or after the divorce decision has permanent legal force."

Therefore, lawsuits reviewed in terms of quantity are divided into two, namely conventional lawsuit and cumulative lawsuit.

1. Conventional lawsuit is a lawsuit that contains one claim, one plaintiff and one defendant. For example, a divorce lawsuit between a husband and wife (one on one), then what is requested of the judge is to issue a divorce to both of them.
2. Cumulative lawsuit (*samenvoeging*) is a lawsuit that contains several claims or several plaintiffs or several defendants. Cumulative lawsuit (*commulatie*) is divided into two, namely subjective accumulation (more than one plaintiff or defendant) and objective accumulation (more than one claim). Examples of subjective accumulation often occur in inheritance problems; several plaintiffs against one defendant or vice versa.

An example of objective accumulation is a divorce case, but what is requested in the lawsuit is to include the division of joint properties (www.lawiindonesia.wordpress.com).

There are six strategic tips regarding the division of joint properties, as follows:

a. As a first step, all family properties need to be inventoried and separated into joint properties (*gono-gini*), properties brought in, and properties acquired. To separate these properties, the issue of how a husband and a wife store valuable documents becomes very important. With official documents, such as property sale and purchase letters, it will be easy to know when the properties are owned, whether before or after the marriage contract. Once it is known which are acquired properties and properties brought in, then these two types of properties are simply set aside because they are the properties of each partner. Only joint properties will then be divided and calculated.

b. Once it is known which properties are joint properties, then all of the properties need to be recorded in full, which includes movable properties, such as cars, motorbikes, or other vehicles, to immovable properties, such as land, buildings, rice fields, gardens, business premises, or other properties in the form of jewelry, paintings, antique collections, household furniture, and so on.
c. Inventorying insurance and investment properties owned, especially those in the form of financial portfolios, which include savings, deposits, foreign currency accounts in banks, bonds, mutual funds, or other investments. Why are investments or bank accounts so important to pay attention to? Because, these investments are very vulnerable to being embezzled by one of the partners. A husband or wife can open an account or invest with their own identity without their partner knowing. Because of the high level of confidentiality, the bank will have difficulty tracing the account. In this investment matter, it is also necessary to determine when the disbursement and distribution will be because the investment value can go up or down. After all properties in the marital properties are determined, then the calculation steps are taken.
d. After the properties are calculated, then the activity of registering and calculating all family debts is carried out. In this registration process, do not rush to choose a house or car into the list that is expected to be part of the marital properties. Because, if the house credit has not been paid off when the divorce process occurs, the financial condition after the divorce will be in disarray. Do not let it happen that after the divorce, the existing income is not enough to pay the installments and meet other living needs. Actually, the determination of the credit installments is usually calculated based on the combined income of the husband and wife (joint income).
e. If it turns out that one of the spouses insists on controlling the credit assets, the other spouse should go to the bank or company that provides the credit. This is because, in general, before disbursing the loan, the creditor asks the husband or wife to guarantee the credit given to their spouse. Therefore, one of the spouses who feels disadvantaged can ask the bank to remove the personal guarantee for the credit. If this is not done, each spouse remains responsible for the credit.
f. After all properties are reduced by debts, then it remains to be divided in two, with the portions agreed upon by each party. That way, the marital properties have been calculated and divided (www.kontan-online.com).

Those methods help us to determine and calculate which is each person's share in the joint properties. These steps will be easier to do if the husband and wife who are or have divorced have proof of a marriage agreement that determines which are joint properties, which are brought properties, and which are acquired properties. It would be better if all written evidence of the sale and purchase of goods that they have done during the marriage is still neatly stored, so that when the properties must be divided it will be clear which is the share for each partner.

5. Conclusion

The division of joint properties in marriage (*gono-gini*) needs to be based on the aspect of justice for all parties involved. The justice in question includes the understanding that the division does not discriminate against one party. The interests of each party need to be accommodated as long as they are in accordance with the actual reality. The benefit of making a marriage agreement for the personal lives of each party is that the parties, those who make the agreement, both husband and wife, have the power and freedom to act which is to take legal action and utilize it.

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