

Legal Resolution of Joint Property Still Pledged As Collateral in Divorce Cases

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ABSTRACT

The purpose of this study is to analyze the status and position of joint property still pledged as collateral in divorce cases and to analyze the basis of judges' considerations in deciding joint property disputes during divorce. This research employs normative legal research methods. The approaches used are the conceptual approach, the statutory approach, and the case approach. The legal materials utilized include primary and secondary legal sources, collected through library research techniques such as legislation, books, and other scientific works. All obtained legal materials were then analyzed using qualitative analysis techniques. The results of the study indicate that joint property used as collateral remains joint property even after a divorce; therefore, the rights and obligations remain attached to both parties and cannot be divided or transferred without the creditor's consent during the term of the credit agreement. The judges' considerations in several decisions essentially emphasize the certainty of the legal status of property acquired during marriage, the application of laws and regulations, including Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law, as well as facts presented in court. Furthermore, judges may ratify settlement agreements between the parties, provided they are entered into voluntarily and do not contravene the law or the principles of justice.

Keywords: Legal Resolution; Joint Property; Collateral; Divorce.

INTRODUCTION

Marriage is a physical and spiritual bond between a man and a woman as husband and wife, aimed at forming a happy and enduring family (household) based on Belief in the One and Only God.¹ In a marriage, the "spiritual bond" refers to the union of perspectives and intentions from both the man and the woman. Thus, both physical and spiritual bonds serve as the primary foundation for establishing a harmonious, prosperous, and eternally happy family as envisioned.

A legal marriage inherently carries consequences, one of which is the union of assets acquired after marriage. In other words, the assets of a married couple automatically merge into one. Consequently, within a family, there exists a single pool of wealth known as "joint property" or *harta bersama*.²

Assets acquired during marriage are interpreted as the result of cooperation between husband and wife. The term "cooperation" should be interpreted broadly. There are two possible forms of cooperation: first, where both husband and wife work to earn a living, leading to a commingling of income. Second, where only the husband works to earn a living. This latter scenario is still regarded as a form of cooperation, even if it is not physically visible, as a husband's work is driven by the spirit, prayers, support, and preparations provided by the wife in her role as a homemaker.³

¹ Khoiruddin Nasution, *Marriage Law I: Equipped with Comparison of Muslim Country Laws*, Academia Tazzafa, 2013.

² Jupriyanto, "Analysis of Religious Court Judges' Decisions on Joint Property Still Under Bank Credit Obligations Post-Divorce," *Lex Stricta Journal of Law*, Vol. 3 (2024), pp. 71-80.

³ "Joint Property in Marriage," accessed from www.legal-community.blogspot, accessed on October 10, 2025, at 21:05 WITA.

Article 119 of the Indonesian Civil Code (*KUH Perdata*) stipulates that from the moment a marriage is solemnized, the law provides for a community of property between husband and wife, unless otherwise specified in a prenuptial agreement. During the marriage, this property cannot be abolished or altered solely by mutual consent.⁴ This is because a marriage agreement can establish a separation of assets or the exclusion of joint property; thus, upon divorce, there would be no assets to be divided, and each party may reclaim their assets according to the terms of the agreement.

The existence of joint property during marriage does not preclude the possibility of separate property belonging to each spouse. This may include movable assets, immovable assets, and securities. Intangible assets may also take the form of rights or obligations. In Indonesia, matrimonial property is regulated in detail under Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 concerning Marriage, specifically Articles 35, 36, and 37. Article 35, paragraph (1) explains that property acquired during marriage becomes joint property. Article 36 governs the status of property acquired individually by each spouse. Article 37 stipulates that if a marriage is dissolved due to divorce, joint property shall be regulated according to their respective laws.⁵

According to the Compilation of Islamic Law (*Kompilasi Hukum Islam*), the division of joint property is regulated in Articles 96 and 97, which state that in the event of dissolution by death or divorce, each party is entitled to one-half of the joint property. Specifically, Article 96 states: 1) In the event of death, half of the joint property becomes the right of the surviving spouse. 2) The division of joint property for a spouse whose partner is missing must be suspended until there is legal certainty regarding the death based on a Religious Court decision. Meanwhile, Article 97 states: A widow or widower whose marriage is dissolved by divorce is entitled to half of the joint property, provided it is not determined otherwise in a marriage agreement.⁶ Thus, the Compilation of Islamic Law aims to create legal uniformity in the equal division of joint property, allowing Religious Court decisions to be more consistent in handling such cases.⁷

In any household, disputes or disagreements are common; they are often likened to the "seasoning" of domestic life. However, family disputes must be resolved wisely to achieve a positive outcome. If domestic issues cannot be resolved properly, they may trigger the dissolution of the marital bond, leading to divorce.

In reality, many households falter, and it is not uncommon for couples to make the regrettable decision to separate or divorce. Divorce can be caused by various factors, including environmental factors, economic issues, incompatibility, and differences in life perceptions or worldviews.⁸

Following a divorce, disputes often arise between husband and wife due to a lack of public understanding regarding the procedures for dividing joint property. Such disputes should be resolved through deliberation (*musyawarah*) first. However, if no amicable settlement is reached, the matter must be settled through a lawsuit. For Muslims, the lawsuit for the division of joint property is filed in the Religious Court (*Pengadilan Agama*), while for non-Muslims, it is filed in the District Court (*Pengadilan Negeri*). This claim can be filed concurrently with the divorce petition or separately after the divorce decree has attained final legal force (*inkracht*).

Joint property is frequently used as collateral by married couples when securing loans from banks. Consequently, a divorce can create new complications regarding the division of these assets. Often, the status of joint property becomes a complex issue that cannot be resolved through mutual agreement. Such conflicts can lead to problems regarding the liability for remaining loan installments and legal disputes over the division of the encumbered assets.

⁴ Subekti and R. Tjipto Sudibyo, *The Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata)*, PT Pradnya Paramita, Jakarta, 1999, p. 45.

⁵ Tihani and Sohari Sahrani, *Fiqh Munakahat (Islamic Marriage Law)*, (Jakarta: Rajawali Pers, 2014), pp. 179-180.

⁶ Presidential Instruction No. 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (*Kompilasi Hukum Islam*).

⁷ M. Beni Kurniawan, "Division of Joint Property Viewed from the Contribution of Husband and Wife in Marriage," *Jurnal Yudisial*, Vol. 11, No. 1 (2018), p. 45.

⁸ F.M. Waha, "Dispute Resolution of Matrimonial Property After Divorce," *Lex Et Socialis Journal*, Vol. 1, No. 1 (2013), pp. 54-64.

In practice, problems regarding the settlement of joint debts after divorce occur frequently. Parties often wish to immediately divide and control the joint property but overlook the fact that the asset still serves as collateral for a credit agreement with a bank. This situation raises further questions regarding how the division of joint property can be executed if the object is still encumbered as collateral. Through this research, the author will analyze several legal cases related to court decisions on joint property that remains pledged as collateral.

Based on the background described above, the research problems are formulated as follows: What is the status and legal standing of joint property that remains pledged as collateral in divorce cases? And what are the legal bases for judges' considerations in deciding cases involving such joint property?

Research Method

In this study, the type of research conducted is normative legal research, also referred to as doctrinal legal research. This type of legal research conceptualizes law as what is written in statutes and regulations (*law in books*) or as rules and norms that serve as benchmarks for appropriate human behavior.⁹

The approach methods used in this research are:

a. Conceptual Approach

This approach is conducted by referring to the views and doctrines developing within legal science.¹⁰

b. Statutory Approach

This approach is carried out by examining all laws and regulations related to the legal issues under discussion.

c. Case Approach

This approach aims to understand the application of legal norms or rules in legal practice.¹¹ It is intended to identify the legal rules or norms applied in cases that have been decided by judges or other authorized institutions.

The processing technique for the collected legal materials is conducted through the following stages: inventory, identification, classification, and systematization.¹²

The gathered and categorized legal materials are then analyzed using the conceptual approach, statutory approach, and other relevant approaches to obtain answers to the problems focused on in this study. In normative research, the processing of legal materials is performed by systematizing the materials—starting with selection, followed by classification according to the categorization of legal materials, and finally organizing them to produce a logical research outcome. This process ensures a coherent relationship and interconnectedness between various legal materials to provide a comprehensive overview of the research findings.¹³

The analysis used in this study employs a qualitative analysis method, specifically by performing an interpretation on the processed legal materials.¹⁴ The use of interpretive methods aims to analyze the law and determine whether the legal materials, particularly primary legal sources, contain legal vacuums (*leemten in het recht*), antinomies of legal norms, or vague (unclear) norms, based on the quality of legal experts' opinions, doctrines, theories, and the formulation of the legal norms themselves.

⁹ Amirudin and Zainal Asikin, *Introduction to Legal Research Methods*, Raja Grafindo, Jakarta, 2014, p. 127.

¹⁰ Peter Mahmud Marzuki, *Legal Research: Revised Edition*, PT Kharisma Putra Utama, Bandung, 2015, p. 133.

¹¹ Soerjono Soekanto, *Introduction to Legal Research*, UI Press, Jakarta, 1981, p. 1.

¹² Suratman and H. Philips Dillah, *Legal Research Methods*, Penerbit Alfabeta, Bandung, 2013, pp. 82-85.

¹³ Muhaimin, *Legal Research Methods*, Mataram University Press, Mataram, 2013, p. 67.

¹⁴ Salim HS and Erlies Septiana Nurbaini, *Application of Legal Theory in Thesis and Dissertation Research*, Raja Grafindo Persada, Jakarta, 2013, p. 19.

DISCUSSION

1. The Status and Legal Standing of Joint Property Pledged as Collateral in Divorce Cases

a. Legal Consequences of Joint Property Division in Divorce Cases

Joint property refers to assets acquired during a marriage, from the time the marriage is solemnized until its dissolution, including dissolution due to divorce. It is property generated through the marital union of husband and wife, which becomes commingled such that it cannot be separated.¹⁵

In Indonesian positive law, joint property (commonly known as *gono-gini*) is regulated under the Marriage Law and the Civil Code (*KUHPerdata*). Consequently, all matters concerning joint property must be based on these two primary legal sources. For instance, if a married couple undergoes a divorce, the division of their joint assets must be clear and grounded in the prevailing provisions of positive law.

Prospective couples often overlook the issue of joint property when entering into marriage, as they view the union as a sacred and lifelong commitment. The possibility of divorce rarely enters their minds. As a result, the management and division of joint property only become a concern during or after the divorce proceedings.

The dissolution of a marriage frequently leads to disputes over joint property. These disputes often arise when one spouse, either the husband or the wife, controls the joint assets without regard for the other spouse's rights. M. Natsir Asnawi, in his work "*Hukum Harta Bersama: Kajian Perbandingan Hukum Telaah Norma Yurisprudensi dan Pembaharuan Hukum*," outlines the general causes of joint property disputes as follows:¹⁶

1. A disagreement between the former spouses regarding which assets constitute joint property versus individual (separate) property. One party may claim all assets are joint, while the other maintains that no joint property exists;
2. One party exerts control over all joint assets without any good faith effort to divide them amicably;
3. One party intentionally obstructs the other's good-faith efforts to divide the assets;
4. One party seeks an immediate division, while the other intentionally delays the process because the object in question is currently pledged as collateral to a third party (creditor).

In social reality, the division of joint property often triggers conflict, particularly when one spouse is unemployed. Based on the provisions of the Marriage Law, the Civil Code, and the Compilation of Islamic Law (KHI), both parties are generally entitled to equal shares. This means that a non-working spouse is still entitled to a portion of the assets; a homemaker is legally considered to have contributed to the accumulation of joint wealth. Although a 50:50 division is the standard, it is not absolute and may be adjusted based on considerations of each party's contribution and earnings.

Regarding the legal consequences of divorce on property, Article 37 of Law Number 1 of 1974 concerning Marriage stipulates: "*If a marriage is dissolved by divorce, joint property shall be regulated according to its respective law.*" The term "respective law" refers to religious law, customary (*Adat*) law, or other relevant legal frameworks. While the Marriage Law does not specifically detail the technicalities of division, it grants the divorced parties the freedom to determine which legal system will govern their settlement. If no agreement is reached, the judge will decide the division based on the principle of justice.¹⁷

¹⁵ Happy Susanto, *Division of Gono-Gini Property After Divorce*, (Jakarta: Visimedia), 2008.

¹⁶ M. Natsir Asnawi, *Joint Property Law: A Comparative Study of Jurisprudence Norms and Legal Reform*, (Jakarta: Kencana), 2020, p. 247.

¹⁷ M. Beni Kurniawan, "Division of Joint Property Viewed from the Contribution of Husband and Wife in Marriage," *Jurnal Yudisial*, Vol. 11, No. 1, 2018, p. 45.

Furthermore, according to Article 126 of the Civil Code, the community of property is dissolved by law upon divorce. Following this dissolution, the joint wealth is divided equally between the husband and wife (or their heirs), regardless of the origin of the assets.¹⁸

The Compilation of Islamic Law (KHI) provides more detailed regulations in Article 97, stating: "A widow or widower whose marriage is dissolved by divorce is each entitled to half of the joint property, unless determined otherwise in a marriage agreement." This implies that all assets acquired during the marriage must be divided equally between the former spouses. Joint property includes assets earned during the marriage, even if the wife does not work or have an income, as she is categorized as having contributed to the family while fulfilling her duties. Upon dissolution, whether by divorce or death, each spouse receives half of the joint property. In the case of death, the distribution to heirs is performed only after the joint property has been equally divided between the spouses.

The division of marital joint property requires clear legal title and ownership rights for both husband and wife. Therefore, a court decision regarding joint property must explicitly state the legal rights and the status of possession over the assets in question.¹⁹ This clarity is essential to ensure that each party's specific portion is legally protected for future ownership.

b. Liability of the Parties for Joint Debts upon Dissolution of Marriage due to Divorce

The emergence of debt within a marriage is often inseparable from efforts to acquire assets and fulfill marital needs. Consequently, it becomes a legal issue when there is a default or negligence in its settlement. Furthermore, marriage is closely linked to both assets and liabilities because household life directly involves income and expenditures, which frequently become a source of dispute.

The dissolution of marriage through divorce carries legal consequences not only for the personal status of the parties but also for property-related legal relationships, particularly concerning debts incurred during the marriage. Debts contracted for the benefit of the household and acquired during the marital union are, in principle, classified as joint debts (*utang bersama*). Therefore, the liability for such debts is attached to both parties, both the husband and the wife.

Debts within a marriage can be categorized as follows:²⁰

1. Community Debts (*Hutang Persatuan*): These include all debts and expenditures incurred by either the husband, the wife, or both jointly for the household, including daily living expenses. These expenditures are charged against the community property.
2. Personal Debts (*Hutang Pribadi*): These are debts attached to the individual property of each party and are not included in the community of property.

Although the status of joint property is clearly defined by law, it frequently triggers disputes between the litigating parties. One primary issue arising from joint property is the responsibility for joint debts incurred during the marriage. It is essential to understand that a divorce does not automatically extinguish debts incurred during the marriage.

1) Liability of Husband and Wife for Joint Debts

In the perspective of Indonesian marriage law, joint property encompasses the burdens and obligations arising during the marriage. Therefore, divorce does not absolve the parties of their legal obligations toward unsettled joint debts. The husband and wife remain jointly liable for the repayment of such debts, unless it can be proven

¹⁸ Indra Cahyaning Widhi Siswoyo and Arikha Saputra, "Analysis of Legal Consequences of Divorce on Joint Property in the Semarang Religious Court," *THE JURIS Law Journal*, Vol. V, No. 2, December 2022, p. 425.

¹⁹ Gede Arya Agus Pratama, Ni Luh Made Mahendrawati, and Luh Putu Suryani, *Journal Analog Hukum*, Volume 2, 2020.

²⁰ Julius Martin Saragih, Yunanto, and Herni Widinarti, "Liability for Community Debts After the Dissolution of Marriage," *Diponegoro Law Journal*, Volume 6, No. 1 (2017), pp. 2-3.

that the debt in question was a personal debt of one party, unrelated to household interests, or obtained without the other party's consent.

The allocation of responsibility for joint debts post-divorce is generally conducted proportionally, in line with the principles of joint property division. However, this internal allocation of liability between the former spouses does not automatically bind the creditor. From the creditor's perspective, the parties are still viewed as **joint debtors** until the debt is fully repaid or there is an express contractual amendment.

2) The Legal Standing of Creditors Regarding Joint Debts Post-Divorce

As a third party acting in good faith (*bona fide*), the creditor maintains the right to demand repayment from either or both former spouses, in accordance with the provisions of the credit agreement. Divorce, as a legal event, cannot be used as a justification to extinguish or diminish the creditor's rights to the fulfillment of the debtor's performance.

If the joint debt is secured by joint property, the creditor retains preferential rights over the collateral. The division of joint property due to divorce cannot override the creditor's right to execute the collateral in the event of a default (*wanprestasi*). Thus, the creditor's interests remain legally protected even though the debtors' marital status has ended.

3) Implications of Joint Debt Liability in Court Decisions

In judicial practice, judges generally consider the existence of joint debt as an inseparable part of the division of joint property. A judge may determine the mechanism for joint debt liability, either by assigning the repayment obligation to one party accompanied by compensation in the property division or by dividing the obligation equally between both parties.

Nevertheless, such a determination is binding only internally between the former husband and wife and does not waive the creditor's right to collect the debt based on the prevailing agreement. Therefore, caution is required in formulating the *dictum* (legal ruling) of the decision to avoid legal uncertainty or prejudice against third-party rights.

c. The Legal Standing of Joint Property Pledged as Collateral in Divorce Cases

Etymologically, according to the *Kamus Umum Bahasa Indonesia*, "joint property" (*harta bersama*) consists of two words: property (*harta*) and joint (*bersama*).²¹ Property refers to goods, money, and other items that constitute wealth.²² Meanwhile, "joint" implies shared ownership. Terminologically, joint property is defined as goods, money, and other assets that constitute wealth acquired collectively by a husband and wife during their marriage.²³

In Indonesian positive law, the issue of joint property is regulated under Law Number 1 of 1974 concerning Marriage (Marriage Law), Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (KHI), and the Indonesian Civil Code (*KUHPerdota*).

Article 35, paragraph (1) of the Marriage Law defines joint property as property acquired during the marriage.²⁴ This implies that joint property is formed from the date of the wedding until the marriage is dissolved due to divorce or death. Consequently, besides joint property, each spouse can possess "separate property" (*harta bawaan*) assets brought into the marriage or acquired during the marriage that are not categorized as joint property.

²¹ W.J.S. Poerwadarminta, *Management of the Sakinah Family*, (Yogyakarta: Pro-U Media, 2007), p. 359.

²² Kholil Nawawi, "Joint Property According to Islamic Law and Legislation in Indonesia," *Mizan Journal of Sharia Science*, Volume 1, No. 1, June 2013, p. 3.

²³ Department of Education and Culture, *Great Dictionary of the Indonesian Language (KBBI)*, (Jakarta: PT. Gramedia Pustaka Utama, 2008), 4th ed., p. 52.

²⁴ Law No. 1 of 1974 concerning Marriage, (Jakarta: Armas Duta Jaya, 1990), p. 276.

The Compilation of Islamic Law (KHI) provides more detailed regulations. Article 1, Letter (f) of the KHI states: "*Marital property or syirkah is property acquired either individually or collectively by the husband and wife during the marriage bond, hereinafter referred to as joint property, regardless of whose name it is registered under.*" Furthermore, Article 85 stipulates: "*The existence of joint property in a marriage does not preclude the existence of property owned individually by the husband or wife.*" Article 86 further clarifies: "(1) *In principle, there is no commingling of the husband's and wife's property due to marriage; (2) The wife's property remains her right and is fully controlled by her, and similarly, the husband's property remains his right and is fully controlled by him.*"

The KHI serves as a middle ground between the absence of strict regulations on joint property and the necessity for such an institution in marriage. It legitimizes the commingling of assets resulting from the collective efforts or acquisitions of the husband and wife. However, the KHI maintains the fundamental norm regarding the separation of personal property, specifically assets acquired before marriage, as well as inheritances or gifts received during the marriage. This is affirmed in Article 87: "(1) *Separate property of each spouse and property acquired as a gift or inheritance are under the control of each respective party, provided the parties do not determine otherwise in a marriage agreement; (2) The husband and wife have the full right to perform legal acts over their respective property, such as grants (hibah), gifts, alms (shodaqah), or others.*"²⁵

Based on Articles 85–87, it can be concluded that joint property is property "jointly acquired" through "joint effort" or "spousal cooperation." This signifies that the generated wealth stems from their mutual hard work and cooperation in a comprehensive sense. When a couple shares roles—where the husband earns a living while the wife manages domestic needs—this constitutes spousal cooperation. A husband cannot perform his work effectively without the support and service of his wife, which provides the energy and morale necessary to be productive and creative in seeking a livelihood.

Conversely, assets obtained through inheritance or gifts remain separate property because they are acquired without specific effort from either spouse. For instance, inheritance is received automatically due to the death of a relative, whereas a gift from a third party is similarly acquired without specific professional effort, thus not categorized as joint property.

In the Indonesian Civil Code (*KUHPerdata*), Article 119 states: "*From the moment the marriage is solemnized, by law, a comprehensive community of property occurs between the husband and wife, insofar as no other provisions are made in a marriage agreement.*"

It is often found that public perception limits joint property solely to "assets" (*aktiva*). In reality, joint property also encompasses "liabilities" (*pasiva*)—debts incurred for the benefit and with the mutual consent of the spouses during the marriage. This interpretation is an expansion of Article 35, paragraph (1) of the Marriage Law, aimed at balancing the rights and obligations of the spouses regarding joint debts. This concept is a universal standard in many jurisdictions: joint property includes both assets and liabilities. This expansion is a consequence of the fact that in a marital relationship, couples almost certainly incur debt or loans to meet shared needs, especially when increasing family requirements are not matched by a significant increase in income.

Security Law, also known as *zekerheidsrecht*, refers to the legal regulations governing the security of a creditor's claims against a debtor. According to J. Satrio, security law regulates the guarantees for a creditor's receivables. In short, it is the law governing debt security.²⁶

The object of a security interest (collateral) is anything of value, easily liquidated, and bound by a promise to serve as a guarantee for the debtor's debt payment. Banks seek collateral that is "efficient and effective,"

²⁵ Ahmad Syaerozi and Siti Maesuroh MHS, "Dispute Resolution of Joint Property with Collateral Status," *Al-Rasyad Journal*, Vol. 1, January 2022, p. 10.

²⁶ I Gede Arya Agus Pratama, Ni Luh Made Mahendrawati, and Luh Putu Suryani, "Dispute Resolution for Division of Joint Property Used as Debt Security through a Settlement Deed," *Journal of Law Analogi Hukum*, Vol. 2, No. 2, 2020, p. 167.

meaning it must provide certainty to the lender and be easily sold or converted into cash to cover a loan in the event of default. The types of guarantees requested by banks include:

- a. Material Guarantees (*Jaminan Kebendaan*)
- b. Personal Guarantees or Suretyship (*Borgtocht*)
- c. Preferential Status, giving the creditor priority to recover the debt over other creditors.²⁷

In divorce cases, joint property that is still pledged as collateral, such as a house secured through a bank credit facility, remains classified as joint property, provided it was acquired during the marriage and not excluded by a prenuptial agreement. Its status as collateral does not eliminate its nature as joint property, but it means the ownership rights are not yet fully unencumbered as the creditor's rights still attach to it. Therefore, the division of such property is generally calculated based on its "net value" after deducting the remaining debt obligations. The court may order the sale of the object to settle the debt first and then divide the remainder, or award possession to one party with the obligation to continue installments and compensate the other party. Even after a divorce, the liability for the credit remains with the party named in the credit agreement, as the bank is not bound by the divorce decree. Thus, until the credit is fully repaid, the legal risks and obligations over the collateralized property persist for the parties.

The definition of divorce is not explicitly found in the Civil Code or the Marriage Law. Consequently, legal experts in Indonesia have sought to clarify its meaning. Prof. Subekti stated that divorce is the dissolution of marriage based on a judge's decision, following a lawsuit filed by either the husband or the wife.²⁸

Upon divorce, joint property must be divided. However, it must first be separated from separate property (*harta bawaaan*). Although separate property may be used jointly during the marriage, once the marriage ends, it rightfully returns to the exclusive control of the original owner. Thus, before dividing joint property, it is advisable for the spouses to determine and prove which assets are joint and which are separate.²⁹

Article 31, paragraphs (1) and (2) of the Marriage Law regulate the standing of spouses and wealth, stating that a wife's rights and position are equal to those of her husband in the household and in performing legal acts, even though the husband remains the head of the family and the wife the homemaker. Based on this balanced standing, both are considered legally competent to perform legal acts, including those related to joint property. In managing or performing legal acts regarding joint property, mutual consent is required. If consent is absent, the non-consenting party has the right to seek the annulment of the legal act performed.

Legal acts concerning joint property are often implemented in credit agreements made between the spouses and a third party, such as a bank. Generally, an agreement is a situation where parties bind themselves to perform a certain obligation.³⁰

Regarding the consequences of divorce on property division, Article 128 of the Civil Code stipulates that assets shall be divided equally. Therefore, each party obtains a one-half share, regardless of who originally acquired the property.³¹ This equal division is intended to prevent discrimination. However, in practice, equal division is not an absolute rule, as it may result in injustice for one party. Consequently, the provision for equal division may be set aside based on specific considerations.³²

²⁷ Ahmad Syaerozi and Siti Maesuroh MHS, *Op. Cit.*

²⁸ Sonia Regita Irawan, Lauddita Humaira, and Surini Ahlan Sjarif, "Legal Consequences of Joint Property Still Serving as Collateral in Credit Agreements on the Division of Joint Property Post-Divorce," *Lex Patrimonium*, Vol. 3, Iss. 1, Article 11, 2024, p. 11.

²⁹ Anshary, *Marital Joint Property and Its Problems*, 1st ed. (Bandung: CV. Mandar Maju, 2016), pp. 158-160.

³⁰ E. Fernando M. Manullang, *An Overview of the Legal System in Indonesia*, 1st ed., 3rd print (Depok: Kencana), 2016, p. 160.

³¹ Wahyu Darmabrata, *Civil Marriage Law (Conditions for Valid Marriage, Rights and Obligations of Spouses, Marital Property)* Vol. 1, 2nd ed. (Jakarta: Rizkita), 2009, p. 152.

³² Happy Susanto, *Division of Gono-Gini Property During Divorce*, 1st ed. (Jakarta: Transmedia Pustaka), 2008, pp. 42-43.

In certain circumstances, the Panel of Judges may divide joint property "proportionately" (*berimbang*). This means the property is not divided equally, but rather based on the contribution of each party.³³ Proportionate division is grounded in the understanding that a rigid application of statutory division may hinder the ultimate goals of law: justice, certainty, and utility for the parties involved.³⁴ Therefore, the ratio of joint property division is not always absolute according to statutes, but may be left to the judge's judicial discretion.

2. Analysis of Judicial Legal Considerations in Deciding Joint Property Disputes in Divorce Cases

The following section presents two case studies relevant to the previous discussion regarding joint property used as loan collateral:

a. Case Position: Number 956/Pdt.G/2019/PA.Sel (Selong Religious Court)

The Parties:

The dispute involved HJ. MARLINA Binti SIDI RUSLI (approx. 42 years old, Muslim, entrepreneur, residing in East Lombok) as the Plaintiff, represented by H. Anwar, S.H., et al., from the Indonesian Advocate Legal Aid Post (POSBKUMADIN). The Defendant was PAHRUR ROZI, S. Sos. Bin H. ABDUL KADIR JAELANI (approx. 45 years old, Muslim, entrepreneur, residing in East Lombok), represented by Achmad Syaifulah, S.H. and Saddam Husain, S.H.

Subject Matter:

The lawsuit concerned joint property (*harta bersama*) acquired during the marriage, including land, permanent buildings, and other assets. The Plaintiff requested the court to establish the legal status, determine possession, and order a proportional distribution based on applicable regulations and the principles of justice.

Judicial Decision:

- Interlocutory Provision: The Court rejected the Defendant's exceptions.
- On the Merits: 1. Partially granted the Plaintiff's claims.
2. Declared specific assets—including a 625 \$m² plot with a permanent building and a 400 \$m² plot with a swimming pool in East Lombok—as joint property.
3. Ordered the parties to divide the assets. If division in kind (*natura*) is not feasible, the assets must be sold at public auction (*lelang*), with the proceeds split equally (50:50).
4. Ordered both parties to bear the joint debt associated with the property equally.

Legal Reasoning and Breakthroughs:

Pursuant to Article 88 of the Compilation of Islamic Law (KHI), joint property disputes are resolved through the Religious Court. In this case, the Panel of Judges conducted a comprehensive examination, including pleadings (*jawab-menjawab*) and evidence evaluation.

Notably, the judges performed a legal breakthrough known as *contra legem*. They prioritized substantive justice over the rigid application of Supreme Court Circular Letters (SEMA). The court argued that since SEMA functions as internal technical guidance rather than higher-level legislation, judges have the discretion to interpret or even deviate from it when it fails to address the complexity of social facts or risks neglecting the rights of a contributing spouse or third-party creditors. By applying the *ushul fiqh* maxim "*fahkum bi dawahir*"

³³ Anshary, *Op. Cit.*, p. 115.

³⁴ *Ibid.*, p. 131.

and Law No. 48 of 2009, the judges fulfilled their obligation to explore unwritten law to ensure a fair and humanistic outcome.

b. Case Position: Number 227/Pdt.G/2022/PA.Plg (Palembang Religious Court)

The Parties:

The dispute involved NOVIA KWIRINDARI, A.Md binti SYUKRI, S.E., represented by "Heriyanto & Partners" Legal Shelter, against IVAN KURNIAWAN, S.Ip, M.Si bin BW HAMID.

Subject Matter:

The object of the dispute was immovable property, specifically a house and land (approx. 96 \$m²) located in the Le Grand 3 Housing Complex, Palembang.

Judicial Decision (Settlement):

On March 10, 2022, the parties reached a Settlement Agreement through a court-annexed mediation process. The court issued a Settlement Deed (*Akta Perdamaian*), which:

1. Validated the settlement agreement reached by both parties.
2. Ordered both parties to comply with the terms of the settlement.
3. Imposed court costs to be borne jointly (*tanggung renteng*).

Analysis of Mediation:

This case highlights the effectiveness of mediation as a dispute resolution mechanism. In the Indonesian context, mediation aligns with the constitutional principle of *Musyawarah untuk Mufakat* (deliberation to reach a consensus), as enshrined in the Fourth Precept of Pancasila.

The settlement established that joint property includes not only tangible assets but also intangible rights and obligations. While Indonesian family law does not explicitly detail the division of joint debts, the court treated debt as an integral part of the marital estate essentially defining "property" as a combination of assets and liabilities. Consequently, when a marriage ends, the parties must share not only the gains but also the financial burdens (losses) incurred during the union.

CONCLUSION

1. Legal Status of Collateralized Joint Property. Joint property (*harta bersama*) encompasses all assets and liabilities (debts) acquired during marriage. When such property is pledged as bank collateral, its legal status as joint property remains intact post-divorce. However, ownership rights are not fully unencumbered because the creditor (bank) retains a preferential right over the asset. Consequently, the property cannot be divided or transferred without the creditor's consent until the debt is settled. Legally, the liability for the remaining debt remains a shared responsibility of both former spouses unless specified otherwise.

2. Judicial Considerations and Legal Breakthroughs, In resolving disputes over collateralized property, judges prioritize substantive justice over formal procedural rigidities. Key judicial trends identified include:

- Proportional Division: While the standard division is 50:50 (as per the Compilation of Islamic Law/KHI), judges may use their discretion to divide property proportionally based on the actual contributions of each party.

- The *Contra Legem* Approach: Judges may perform legal breakthroughs by deviating from Supreme Court Circular Letters (SEMA) if those guidelines hinder the fulfillment of justice or ignore the rights of third-party creditors.
- Net Value Principle: Division is often based on the "net value" of the asset calculated after deducting outstanding debts. If the asset cannot be divided in kind (*natura*), the court may order a public auction.

The study concludes that a divorce does not extinguish the legal obligations toward joint debts or the status of collateral. The court serves as the final arbiter to ensure that the division of property provides legal certainty while simultaneously protecting the interests of both the former spouses and the bona fide creditors.

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