

CHAPTER I

INTRODUCTION

A. Background

As a legal state, Indonesia is regulating every single aspect under law and regulations. Originated from the general one up to the detail and private ones, such as our marriage, divorce, and its consequences. Discussing marriage, Indonesia also provides the regulation which concerns it, namely Law No 1 of 1974 about Marriage. According to the law, Marriage is an inner bond between a man and a woman as a husband and a wife in order to form a happy and eternal family (*household*) based on the One Godhead.¹ Nevertheless, there will be some issue might appear in a marriage even ended up to the divorce.

Divorce can occur due to various factors, such as economic, biological, psychological aspect and different views of life and so on that comes into the marriage to conflicts. Actually, in Islam, divorce is strongly not recommended but is legalized. It means, divorce should be as much as possible to be avoided.

¹ Article 1, Law No 1 of 1974 on Marriage

To avoid the conflict on the property during the marriage or after divorce, prescribing the status of joint property during marriage is important to determine on how the status of a property if there is a death of one between husband and wife, to determine which property that will be inherited by the heirs. Likewise, if a divorce happens there must be a clarity of which property is the right of the wife and which belong to the husband. Joint property is a property earned by husband and wife together during a marriage.

The marriage property is also regulated under Islamic law, which gives the husband and wife the right to own a property on their own, and cannot be disturbed by others. A husband who receives gifts or inheritance without the wife contribution is allowed to fully control the inheritance by him shelves and vice versa. The property they had owned before the marriage also became their own respective rights.²

The property acquired during the marriage becomes a joint property. The property of each husband and wife as a gift or inheritance is under their respective control. Marital property in marriage law is a separate property. Meaning, all of the property that been brought into

² Ahmad Azhar Basyir, 2014, *Hukum Perkawinan Islam*, Yogyakarta, UII press Yogyakarta, p.65

the marriage, remain controlled and owned by each party before married.³

Based on the Islamic law about the rights of the wife on a marriage that must be fulfilled by her husband, as mentioned in the Qur'an and in hadith, the wife's property during a marriage is the ones who received from the husband as the obligation, unless the husband gives something to the wife in the form of property that according to tradition to be wife's rights.

As stated under Marriage law, Moslem can tackle their marriage's issue, including the divorce to the Religious courts, which is one of the judicial authorities to seek justice in certain civil cases that have been regulated in law. The duties and authorities of religious courts are to accept, examine, hear, settle cases, provides legal services and justice of family law and marital property for those who are Muslim, based on the Islamic law.⁴

³ Simanjuntak, 2016, *Hukum Perdata Indonesia*, Jakarta, Prenada Media Group, p.60

⁴ Mukti Arto, 2017, *Praktek Perkara Perdata pada Pengadilan Agama*, Yogyakarta, Pustaka Pelajar. p.1

The authority of religious courts is expanded into some matters, including the field of Islamic economics with the affirmation of the authority of religious courts in solving sharia economic case. Shariah economics is deeds or business activities conducted according to sharia principles, including Shariah bank, sharia insurance, sharia reassertion, Shariah bonds, and so on.⁵

In marriage cases, the examination of a case in a religious court is done generally as the civil law does except for examining marital disputes it is specifically regulated. Specific procedural laws include arrangements on case forms and proceedings, relative authority of religious courts, summoning parties, examination, verification, peace efforts, court fees, judges' verdicts, and issuance of divorce certificates.⁶

⁵ Abdul Ghofur Anshori and Yulkarnaian Harahab, 2008, *Hukum Islam Dinamika dan Perkembangannya di Indonesia*, Yogyakarta, Kreasi Total Media. p.67

⁶ Mukti Arto, *Op. Cit*, p.206

B. Research Problem

Based on the background above then the research problem is formulated as:

1. What is the status of joint property in Islamic Law and Indonesian law?
2. How is a joint property dispute in the Bantul Religious Court being settled?

C. Objective of Research

Based on the research problem above so the objective of the research is:

1. To know the status of joint property in Islamic Law
2. To know the dispute settlement of a joint property in the Bantul Religious Court

D. The Benefit of Research

The benefits of the research are:

1. Theoretical benefit

This research would give benefit in order to understand more about how the status of joint property in Islamic law and Indonesian law and to know how the dispute settlement of joint property in the Bantul Religious Court.

2. Practical benefit

This research would give a better understanding of the status of the property and how the dispute settlement of joint property in the Bantul Religious Court.