

CHAPTER IV

FINDING AND ANALYSIS

A. Joint Property According to Islamic Law and Indonesian Law

1. Joint Property According to Islamic Law

In general, Islamic law does not regulate any joint property. Islamic law is more concerned with the separation between husband and wife property. What the husband produces is the husband's property and what the wife produces, is the wife property. Islamic law is more familiar with the separation between husband and wife property. In the books of fiqh, joint property is defined as the wealth generated by husband and wife during marriage, so there is a mixing of the property from both parties and cannot be differentiated again. Islamic law also assumes that the property the husband acquires during marriage becomes the husband's right, while the wife is only eligible for the maintenance provided by her husband. Then, the wife is directly having the right to the property.¹

Islam does not specifically regulate the distribution of joint property. Islam only provides general guidance in solving the problem

¹ Abdul Manan, Harta Bersama (Gono-Gini) Hukum Perdata, <http://alfarabi1706.blogspot.com/2013/01/harta-bersama-gono-gini-hukum-perdata.html>. Accessed on Wednesday, 22th, march at 09:05 p.m.

of joint property. The distribution of joint property depends on the husband and wife agreement. The concept of joint property is not regulated in detail in Islamic law. The problem of joint property is an untouched or unthinkable legal matter (*ghoir al-mufakkar*) by the earlier fiqh scholars since the problem of a joint property has just emerged in this modern period.² In Islam, issues that are often expressed are the issue of livelihood and inheritance law. These two things are a lot of attention in highlighting the issue of property in marriage.³

Basically in Islam mixing property between husband and wife by marriage is not known, the property of the wife remains the property of the wife and is fully controlled by the wife and the wealth of the husband remains the property of the husband and fully controlled by the husband. Therefore, a woman married is still capable of acting without the help of her husband, including in the take care of the property, so that he can perform legal acts in society.⁴

² Evi Djurniati “Hukum Harta Bersama Ditinjau dari Prespektif Undang-Undang Perkawinan dan KUH Perdata”, *Jurnal Penelitian Hukum*, Vol.17, No.4 (Desember 2017) p.448

³ Besse Sugawati "Konsep Harta Bersama dari Prespektif Hukum Islam, Kitab Undang-Undang Hukum Perdata dan Hukum Adat", *Prespektif*, Volume XIX, No.3 (September 2014) p. 203

⁴ Ety Rochaeti, “Analisi Yuridis Tentang Harta Bersama dalam Perkawinan Menurut Pandangan Hukum Islam dan Hukum Positif” *Wawasan Hukum*, Vol.28 No.1 (Februari 2013) P.655

The thing must be understood, that the husband's property is not as a whole, but reduced with some obligations as a husband. Like giving his wife's dowry, fulfilling the livelihood of his wife and child, and others. While the wife's estate remains intact because the wife has no obligation to providing her husband and children livelihood except for certain condition. In general, the husband is responsible for the livelihood and the family economy.⁵

The joint property of husband and wife who work together in earning a living means that there is no *Syarikah* between husband and wife. SayutiThalib said there are several kinds of husband and wife property that are:

- a. Viewed from the point of the origin of husband and wife property it can be classified as below:
 - 1) The property of each husband and wife had before both derived from inheritance. Grants or their own businesses or can be cited as joint property.
 - 2) The property of each married couple after they have been in a marriage relationship, but acquired not from their efforts either

⁵ Ahmad Sabiq, Harta Gono-Gini Dalam Islam, <https://konsultasisyariah.com/14448-teka-teki-harta-gono-gini.html> Accessed on March, 2018 at 5:30 p.m.

individually or jointly, but is a grant, a will, or an inheritance respectively.

3) The property gained after they are in a marriage for their business or the business from one of them is classified as a livelihood.

b. Viewed from the point of use, then the property is used to:

1) For the financing of households, families, children's education.

2) Other assets.

c. Viewed from the point of the relationship between the property with individuals in society:

1) Husband and wife property.

2) One's possessions but bound to the family.

3) One's possessions are expressly stated by the person concerned. The joint property is the property that a husband and wife acquire during a marriage, not regulated in the Qur'an, as it is entirely regulated to those concerned.

The study of scholars about joint property had risen the opinion that the joint property can be included in *syirkah*. *Syirkah* itself can be defined as mixing, while, according to *syara'* is the existence of the rights between two or more people about something. Joint property can be *qiyaskan* as *syirkah* because it can be understood that the wife also considered as people who work, although not kind of work at the company or institution. The work of the wife is such as taking care of household, cooking, washing, parenting and other domestic purposes.

While husband and wife have no joint property, there is *syirkah* or mixing of husband and wife property. The property that can be in *syirkah* is owned by husband and wife, property acquired during the marriage on the basis of inheritance, testament, or grant. *Syirkah* is a commitment which is born of the agreement.⁶ The mixing (*Syarikah*) of husband and wife wealth can be implemented in the following:

1. *Syirkah* may be made with a written agreement, be said before or after the marriage agreement, whether the property is obtained before or after the marriage but not for the property that been obtain as individuals as from the livelihood property.

⁶ Amelia Rahmaniah "Harta Bersama dalam Perkawinan di Indonesia", *Jurnal Ilmu Hukum*, Vol.15 No.1 (Juni 2015) p.77

2. *Syirkah* can be established by law or legislation, that the property obtained during a marriage from the livelihood work is a joint property or *syirkah* property.
3. *Syirkah* property could be created silently during a marriage if, in reality, a couple works together to earn the property to maintain the family.

According to Syafi'iyah scholars, *Syirkah* divided into 4 namely:

1. *Syirkah inan* is if two people who work together to earn something and divide the profit equally.
2. *Syirkah abdan*, is two people work together when they do something and divide the profit based on the argument they have made.
3. *Syirkah muwafadhah* is when people do the work and divide the profit based on the capital and effort they have spent even though it is unknown to others.⁷
4. *Syirkah wujuh* is *syirkah* without work or property with the basis of trust between others.

⁷ Liky Faizal "Hrta Bersama dalam Perkawinan", *Jurnal Ilmu Hukum*, Vol.15, No.1 (Juni 2015) p.87

According to Shafi'i scholars, only *syirkah 'inan* is allowed to be implemented while the truth from the rest of the *Syirkah* is still questionable. Since Islam is only discussed in broad outline, it raises a different interpretation of joint property. Meanwhile, according to hanafiah scholars *syirkah* divided into two namely:

1. *Syirkah milk* (share ownership of property)

This *syirkah* can be interpreted as a form of an intention between two or more people to something in the absence of contract or agreement. *Syirkah* is divided into two kinds, namely *syirkah* with enforcement and *syirkah* with a choice.

2. *Syirkah 'uqud* (cooperation with contract)

Syirkah 'uqud is a partnership that occurs because through a contract. *Syirkah* is divided into three kinds, namely *Syirkah bil 'Amwal* (with capital), *Syirkah bil Abdan* (with power), and *Syirkah bil Wujuh* (with trust).

Based on this division, *syirkah 'uqud* can be grouped in several kinds as follows:

1. *Syirkah mufawadhah bil 'amwal*, is a cooperation between two or more persons with conditions, that (1) the existence of equality between them in terms of capital, authority, and religion, (2) each person is responsible to his other comrades.

2. *Syirkah 'inan bil 'amwal*, is an engagement between two persons or more in a commercial form but it is not mentioned who take the responsibility.
3. *Syirkah abdan mufawadhah* is a form of cooperation that uses effort as the capital.

According to prof dr Ismail Muhammad Syah joint property is classified into two namely *syirkah abdan* and *muafadhah*. He said that in general, Indonesian people work together to earn property for daily living or just saving for the future. Based on the explanation of *syirkah*, it can be concluded that the joint property with husband and wife can be grouped into the concept of *syirkah abdan* or *syirkah mufawadhah*.

According to M. Yahya Harahap, the Islamic law's perspective on a joint property is in line with what Muhammad Shah said that the livelihood of husband and wife should be included in *rubu' mu'amalah*, but it was not specifically discussed. This may be due to the fact that the authors of the fiqh books are Arabs who generally do not know the how husband and wife togetherness to earn the property known as *syirkah*.

Islamic law is more familiar with the property separation between husband and wife except for the existence of the agreement before marriage; joint property is not explained clearly and firmly in Islamic law. The joint property problem is the results of scholars' *ijtihad* which

essentially includes all the treasures that been obtained in a marriage to the category of joint property.

Joint property between husband and wife can be divided if the marriage has been breaking up. The marriage bond is cut off due to death, divorce and court decisions. Basically, the marriage property in Islamic law is separated between the property of the wife and the husband, derived from the inheritance, the grant, or from the husband and wife business both before and after marriage.⁸

Every property brought into marriage does not automatically become unified with the property acquired during the marriage, but each of the property is separated and becomes each husband and wife's rights to be controlled.⁹ Based on the explanation, it can be concluded that the joint property is a form of *syirkah* because of the meaning itself is a form of cooperation or partnership between husband and wife, it's just not *syirkah* in general, that regulated in business activities, *syirkah* in joint property is a form of cooperation between husband and wife to build a family that is *sakinah*, *mawaddah*, and *rahmah*.

⁸ Elfina Tanjung "Dampak Perceraian Terhadap Harta Bersama Menurut Hukum Islam dan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan", *Jurnal Hukum*, Vol.10, No.1 (Januari-Juni 2015) p.52

⁹ Muhammad Nur "Kedudukan Harta Bersama dalam Perkawinan menurut Prespektif Hukum Islam", *Jurnal Hukum*, Vol.10, No.1 (Januari-Juni 2015) p.177

There is no specific rule about the distribution of joint property in Islam. Islam only provides general guidance in solving the problem of joint property. The division of joint property is based on the agreement of the husband and wife, which in the Qur'an is called by the term “*ash Shulhu*” which is a covenant to make peace between the two sides (husband and wife) after the dispute.¹⁰

2. The status of joint property according to Indonesian Law

Joint property is regulated in both Law Number 1 of 1974 and The Compilation of Islamic Law. Thus, all matters regarding joint property are constituted by both sources. Concerning the joint property on the law No. 1 of 1974 in Chapter VII entitled "joint property in marriage" consist of several articles namely articles 35, 36 and 37.

a. Law Number 1 of 1974 on Marriage

- 1) Article 35 of Law no. 1 the Year 1974 about Marriage
 - a) Property acquired during the marriage.
 - b) The property of each husband and wife and property acquired respectively as a gift or inheritance, shall be under their respective control as long as the parties do not specify otherwise.
- 2) Article 36 of Law no. 1 the Year 1974 about Marriage
 - a) Regarding joint property, husband or wife can act upon agreement of both parties.
 - b) Regarding their respective possessions, husbands and wives shall have the full right to do legal acts concerning their property.

¹⁰ Arifah Maspake "Kedudukan Harta Bersama dalam Perkawinan Menurut Fiqh dan Hukum Positif Indonesia Serta Praktek Putusan Pengadilan Agama", *Jurnal Hukum*, Vol.10, No.1 (Januari-Juni 2015) p.68

- 3) Article 37 of Law no. 1 the Year 1974 about Marriage
 - a) When a marriage breaks up due to a divorce, joint property is regulated according to their respective laws.

In the provisions of Article 35 on Law No. 1 of 1974, it is clear that the property in marriage consists of joint property and innate property. Joint property is the property acquired during the marriage become the right of each party. Therefore, if the couple wants to do something to the joint property it needs mutual consent from one another. While the innate property is the property earned by each husband or wife as a gift or inheritance during the marriage bond and fully controlled by each party.¹¹

According to Wahyono Darmabrata and Surini Ahlan Sjarif marriage property according to the law no 1 the year 1974 is divided into:

1. Joint property is a property earned during marriage until the marriage ends or break-up due to divorce, death and court decision. Joint property includes:
 - a. The property gained during the marriage
 - b. Property gained as gifts or inheritance
 - c. Debts incurred during marriage except for each personal property.

¹¹ Slamet Abidin dan Aminudin, *fiqh munakahat I*, 2009 Bandung Pustaka Setia, p. 182

2. Personal property is the inherent property of a husband and wife which is a permanent property under the control of a husband and wife as long as not specifically determined in the marriage agreement. In other words, personal property is a property owned by a husband and wife before they marry. Personal property includes:
- a. The property that each of the couples brings to a marriage includes unpaid debts before the marriage takes place.
 - b. Property acquired as a gift or gift from another party
 - c. Property earned by husband and wife because of inheritance unless
 - d. The proceeds of the husband and wife's private property throughout the marriage take place including the debt arising from the management of the personal property.

Marriage Law No. 1 of 1974, the matter of joint property is only briefly and generally set out in Chapter VII comprising Articles 35 to 37. It is then clarified by the Compilation of Islamic Laws in Chapter XIII from Articles 85 to 97.¹²

¹² M. Yahya Harahap, 2005, *Kedudukan Kewenangan dan Acara Peradilan Agama*, Jakarta: Rineka Cipta, p 272.

b. Compilation of Islamic Law

- 1) Article 85 of Compilation of Islamic Law stated that "The existence of joint property in the marriage did not rule out the existence of the property of each husband and wife". In this article mentioned the existence of joint property in the marriage, but did not rule out the existence of the property of each husband and wife.
- 2) Article 86 of Compilation of Islamic Law
 - a) There is basically no mixing between the husband's property and the wife's property due to marriage.
 - b) The property of a wife shall remain the wife's right and be fully controlled by him, so the husband's property shall remain the husband's right and shall be full in full possession of him.
- 3) Article 87 of Compilation of Islamic Law
 - a) The property of each husband and wife and the property acquired respectively as a gift or inheritance is under their control, as long as the parties do not determine otherwise in the marriage agreement.
 - b) Husbands and wives have the full right to engage in legal acts of property each in the form of a grant, gift, *sodaqah* or other.
- 4) Article 88 of Compilation of Islamic Law
In the event of a dispute between husband and wife concerning joint property, the settlement of the dispute shall be submitted to the Religious Courts.
- 5) Article 89 of Compilation of Islamic Law
The husband is responsible for maintaining the joint property, the property of his wife and his own property.
- 6) Article 90 of Compilation of Islamic Law
The wife is also responsible for maintaining the common property and the husband's possessions.
- 7) Article 91 The Compilation of Islamic Law affirms that belonging to the scope of joint property is tangible and intangible.
 - a) Tangible objects include:
 - (1) The object does not move. Such as home, land, factory.
 - (2) Moving objects, like furniture, cars.
 - (3) Securities, such as bonds, deposits, checks, bilyet giro, etc.
 - b) The intangible objects can be:
 - (1) Right. Such as the right to collect receivables that have not been repaid, the lease rights are not due.

(2) Obligations. Like the obligation to pay the credit, pay off debt. The Compilation of Islamic Law regulates the criteria of joint property more complete than the provisions of the Marriage Law.

In the Compilation of Islamic Law arranged also the problem of activa and passiva. This can be seen from the provisions of Article 91 paragraph 3, which reads "Intangible joint property can be either rights or obligations". Right here shows to activa, whereas obligation is passiva that is an obligation in the form of pay some amount of debt. The Compilation of Islamic Law has incorporated all passive into joint possessions. Thus, in the event of a divorce between husband and wife, then they share the joint property, then that is divided not only assets that are activa, but all debts and credits made during the marriage agreement on mutual agreement must be entered as a passive joint property.

8) Article 92 of Compilation of Islamic Law

The husband or wife without the consent of the other party is not allowed to sell or transfer the joint property.

9) Article 93 of Compilation of Islamic Law

- a) Responsibility to the husband or wife's debt is charged to his/her property.
- b) Responsibility for debt carried out for the benefit of the family shall be borne by the common property.
- c) If the joint property is not sufficient, charged to the husband's property.
- d) If the husband's property is not there or sufficient is charged to the wife's property

10) Article 94 of Compilation of Islamic Law

- a) Joint treasure of marriage of a husband who has more than one wife, each separated and independent.
- b) The ownership of joint property of marriage of a husband who has more than one wife as mentioned in paragraph (1) shall be counted at the time of the second, third or fourth marriage contract.

11) Article 95 of Compilation of Islamic Law

- a) Without prejudice to the provisions of Article 24 Paragraph (2) Sub-Paragraph c of Government Regulation No.9 of 1975 and Article 136 to lay the confiscation of collective property without the application of a divorce suit, if one commits a harmful act and

endangers such joint property as gambling, drunk, wasteful, and so on.

- b) During the confiscation, a period may be subject to the sale of mutual property for family purposes with the permission of the Religious Courts.

12) Article 96 of Compilation of Islamic Law

- a. If a divorce dies, then half the joint property becomes the right of a couple who live longer.
- b. The sharing of joint property of a husband or wife whose wife or husband owes the debt shall be suspended until there is an essential death or legal death on the basis of the decision of the Religious Courts.

13) Article 97 of Compilation of Islamic Law

The divorced widow or divorcees are each entitled to one half of the common property as long as no other is specified in the marriage agreement.

Joint property is generally divided equally between husband and wife. This is based on the provision of Article 128 of the Civil Code of Law which states that "after the dissolution of the unity, the property of unity is divided between husband and wife, or between their heirs respectively, regardless of which side of the goods they get". Meanwhile, the possessions and the acquisition property automatically remain the rights of each person without being shared.

The joint property can be shared if the marriage is broken, it may be broken by death, divorce and court decision. The broken marriage due to death has a certain legal standing since the death of one party. In the formal law the property is allowed to be shared after the death, but in reality, the property only is shared after the funeral. In this case, if the

judge's verdict does not have a certain legal decision then the property is not allowed to be shared yet.¹³

B. The Procedures of Settlement of Joint Property in Bantul Religious Court

1. The Procedures of Settlement of Joint Property

The marital property disputes after a divorce would generally make the joint property divided into two equally.¹⁴ Based on Article 128 of the Civil Code which states that "After the dissolution of marriage, then the entire estate is divided between husband and wife, or between heirs respectively, with no regard to the question of which side the goods he obtained". Meanwhile, the possessions and the acquisition property automatically remain the rights of each person without being shared.

Based on the interviews with the judges of Bantul religious court Yuniati Faizah, she said in Bantul Religious Court the lawsuit of joint property is applied in a separated file. Although there is a lawsuit about the joint property and a divorce that applied at the same time the judge would give advise to separate the file. The step of dispute settlement of joint property in the Bantul religious court is as follows:

¹³ M Idris Ramulyo, 2006, "*Hukum Perkawinan, Kewarisan, Acara Pengadilan Agama dan Zakat Menurut Hukum Islam*" Sinar Grafika, Tebing Tinggi. P 85

¹⁴ Felicitas Marcelina Waha, "Penyelesaian Sengketa Atas Harta Perkawinan Setelah Bercerai", *Lex et Societatis*, Vol.1, No.1 (Januari-Maret 2013) p.59

- a. Mediation
- b. The reading of the lawsuit
- c. Defendant's response
- d. Counter-response (*Replik*)
- e. Rebuttal (*Duplik*)
- f. Evidence
- g. Conclusions
- h. Deliberation of the panel judges
- i. Decision reading

As for the execution, it has been written that both parties would divide the property as equal directly or by auction. The auction will occur if one of the parties submits the execution of the joint property.¹⁵

- a. Mediation

Based on Supreme Court Regulations No 1 of 2016, mediation is a way of dispute resolution through negotiation process to get an agreement of the parties assisted by a mediator.¹⁶ The mediator is a neutral party who helps the parties in the negotiation process to seek possible dispute resolution without forcing the settlement.

¹⁵ Interview with Yuniati Faizah on 6 July 2018 in Bantul Religious Court.

¹⁶ Article 1, Supreme Court Regulations No 1 of 2016

According to Priatna Abdurrasyid, mediation is a peace process in which the disputing parties hand over the settlement to a mediator to achieve a fair outcome, effective and fully accepted by both parties. The third party (mediator) acts as a companion and advisor. Mediation is used in many societies to solve conflict cases.

In the mediation process, the presence and participation of the parties play an important role and determines whether or not the mediation process proceeds. Before the first trial starts, the judge needs to persuade the parties so they are willing to make peace reconciliation. It is not only in divorce and joint property cases, but mediation must be done in every case that been applied to the court. After the mediation effort is done the result is given to the panel judges. This peace effort was made in the first trial before entering the main examination stage of the case, this peace effort must also be done and attempted in every session before the decision readings.

In this meditation session both parties must attend and the judges will provide the parties with a chance to deliberate the decision. However, if there is no result from the mediation then it would proceed to the next process that is the reading of the lawsuit.

b. The reading of the lawsuit

In this process, mostly focusing on how the movable and immovable property should become the joint property and discussing that the plaintiff feels severely disadvantaged by the Defendant's attitude, therefore, the Plaintiff would ask the joint property to be divided equally.

c. Defendant's response

At this stage, the defendant is given the opportunity to defend himself and submit all his interests to the plaintiff. In general, the substance of the letter Answers from Defendants Consist of:

1) Exception

An exception can be interpreted as reappearance which is an indirect Defendant's response to the subject matter. Typically, the lawsuit answers on the formal side of the suit. Explicitly the exception must be examined along with the principal matter of the case, except for the unfair authority of the District Court decided by the Selection of Sela. The exception can be divided into 2 (two), namely:

- a) Exception Process which an exception related to the process
- b) Material Exception is the exception of the Defendant based on the applicable laws of material law.

2) Under the Principal Issues (Convention) and Reverse Action
(Reconvention)

In the principal of the case means a direct objection aimed at disabling the argument of a lawsuit in the form of facts of a legal event/event relating to *posita*, removing the evidentiary power of lawsuit argument with other valid evidence in accordance with the minimum limit of proof and so on. The reconciliation or counter-claim filed by the Defendant against the Plaintiff in an ongoing dispute

3) Claims (*Petium*)

The right of the Defendant's claim is the core of the Defendant's reply. *Petium* may either refuse or deny the Plaintiff's claims and may either justify or acknowledge the arguments of the Plaintiff or submit new facts. The preparation of the *petium* is quite simple by dividing the answer into a primer which states reject the entire contents of the Plaintiff's claim and the secondary appeal to the Panel of Justices to decide justly as Recognition

Recognition is the answer that justifies all or part of the argument of the lawsuit. If the Defendant in his/her response acknowledges the argument of the lawsuit, the argument of the lawsuit is deemed proved and the claim may be granted.

d. Counter-Response and Rebuttal

The next agenda after the Defendant's answer is counter-response. Plaintiffs are given a first chance to respond to the Defendant's exception by filing a counter-response. Counter-response can be interpreted to give a response from the Defendant. In this case, the Plaintiff filed a counter-response which essentially stated that the Plaintiff remained to the original claim.

After the Plaintiff filed a counter-response, the Defendant also had the opportunity to respond by filing a rebuttal to the Plaintiff. The rebuttal is the Defendant's reply to the counter-response.

The rebuttal is the response from the defendant on the counter-response that has given to the plaintiff. In this case, the defendant filed a rebuttal which is essentially fixed on the original answer. After the process of counter-response and rebuttal completed, then the trial continued with the process of evidentiary.

e. Evidentiary

The next agenda is evidentiary the purpose of evidentiary is to provide certainty to the judge about the truth of the disputed.¹⁷ In this process, each party has to know the evidence that must be submitted to strengthen their arguments. The evidence can be in a written form such as letters or notarial deeds or it may present the witnesses. Where there is no written evidence, the party required to prove something by seeking the persons who have seen, hearing and experiencing the events that must be proven. Such persons have the capacity before the judge as a witness.

f. Conclusion

After the evidentiary process has completed, the next agenda is the conclusion The parties are given an opportunity to give a conclusion from all the previous process. The best conclusion is would give benefit to themselves. The conclusions must be systematic, and clear. Making conclusions is not necessary but it is useful for judges in making a decision.

¹⁷ Elisabeth Nurhaini Butarbutar, “Arti Pentingnya Pembuktian dalam Proses Penemuan HUKUM di Peradilan Perdata”, *Mimbar Hukum*. Volume 22 (juni,2010), p 351

g. Discussion of the panel of judges

The judge's discussion is where the judges negotiate or to exchange opinions, in seeking a decision on a case. They will unify their perceptions and understanding of the cases and the solutions. The process would be led by the Chairman of the Panel of Judges. The first opportunity to express an opinion was given to Judge II, next is the Judge I, and lastly the Chairman. If there is a disagreement between the panels, the differences are resolved by voting.

h. Decision reading

According to Sudikno Mertokusumo, the judge's decision is a statement by the judge, as a state official authorized to do so, read out at the hearing to end the case or dispute between the parties. Furthermore, it is said, that a judge's decision consists of 4 parts, namely:

- 1) the head of the verdict
- 2) the identity of the parties
- 3) considerations
- 4) *amar* decision

Meanwhile, according to Mukti Arto, the decision is the statement of the judge which is expressed in written form and pronounced by the judge in a court session open to the public, as a result of the examination of a lawsuit.

2. The Procedure of Settlement of Joint Property Case No 0176//Pdt.G/2015/PA.Btl.

Based on the Law no 1 of 1974 Joint property is property obtained during a marriage. Whereas, based on the compilation of Islamic law, widows or widowers each of them entitled to one-half of the joint property as long as they did not determine otherwise in the marriage agreement. The plaintiff in decision No. 0176/Pdt.G/PA.Btl did not get his right to joint property.

The Bantul Religious Court on 5 February 2015 received a Joint Property claim from the plaintiff named Ngatiyem. Ngatiyem, 40 years, Islam, an entrepreneur, residing in Cempluk, Mangunan, Dlingo, was the plaintiff. The Plaintiff claimed that the joint property until now has not been distributed to the plaintiff and the property now is controlled by the Defendant. In this case, Sugiman, 42 years, a civil servant, residing in Cempluk, Mangunan, Dlingo, was a defendant.

The Compilation of Islamic Law has explained that the wife has the right to half of the joint property. The Plaintiff has attempted to settle the joint property with the Defendant in a family manner, assisted by local residents but not succeeded. The plaintiff also said that she has not gets given a living during the marriage, the plaintiff feels very disadvantaged about this. Therefore, the plaintiff filed this case to the religious court.

Based on article 88 of the Compilation of Islamic Law in the event of a dispute between the husband and wife concerning joint property, the settlement of the dispute is submitted to the Religious Court. Because the plaintiff was domiciled in Bantul district, the plaintiff filed the case in the Bantul religious court.

Some conditions that must be fulfilled by the plaintiff to submitted a lawsuit in the religious court, namely;

- a. Photocopy of the Plaintiff's Identity card, on A4 size paper, sealed with a stamp of IDR 6000.
- b. Photocopy of Divorced Deed 1 sheet, on A4 size paper, sealed with a stamp of IDR 6000.
- c. Pay down the court fees through the nearest BNI.
- d. The claim letter is made in duplicate 7, on A4 size paper addressed to the Chairperson of the Bantul Religious Court.

- e. If the Plaintiff uses an Attorney, he must submit:
 - 1) Special Power of Attorney.
 - 2) Photocopy of Minutes of Swearing.
 - 3) Photocopy of valid Member of Advocate Card.
 - 4) Soft copy of the claim
- f. If the Plaintiff uses a substitution lawyer, he must include a permit from the Chairperson of the Bantul Religious Court.
- g. All documentary evidence is photocopied using A4-size paper. For the purpose of proof in court all documentary evidence must be photocopied and sealed with a stamp of IDR 6000, - then stamped at the Post Office.

When the plaintiffs met all the conditions, then the Religious Court will try the lawsuit. According to the data obtained by the researcher from the results of an interview with one of the religious court judges in Bantul, there were steps that had to be passed during the proceedings:

a. Mediation

In this case, the panel of judges tried to reconcile the plaintiff and the defendant to deliberate on the property and share it in a family manner, and give both parties the opportunity to make peace through mediation but not successful.

b. Reading of a lawsuit

After the peaceful effort carried out by the panel of judges was unsuccessful then the plaintiff's claim was read out. In this lawsuit, the plaintiff requested to state legally that movable or immovable property was a joint asset, and he requested this joint property to be divided into 2 between the Plaintiff and the Defendant.

c. Defendant's response

After reading the plaintiff's lawsuit, the defendant has submitted an answer, then accompanied by an estimated price on the hearing on May 21, 2015. As stated in decision No. 0176/Pdt.G/PA.Btl

d. Counter-response (*Replik*)

The Plaintiff filed a counter-response which basically the plaintiff remained in the original lawsuit. The complete counter-response is contained in the minutes on March 26, 2015

e. Rebuttal (*Duplik*)

The Defendant filed a rebuttal which essentially remained the original answer. The complete rebuttal is noted in the court's minutes' data on 9 April 2015

f. Evidence

The Plaintiff has submitted written evidence and brought witnesses, and the Defendant confirmed all written evidence and statements of witnesses submitted by the Plaintiff. The Defendant stated that he did not submit written evidence or submit witnesses.

g. Conclusion

In this case, the Plaintiff submitted a conclusion in writing requesting that the Plaintiff and the Defendant's property of a female cow and its baby are set as joint property and divided into two for the Plaintiff and Defendant. Meanwhile, the Defendant verbally concludes that the joint property between plaintiff and Defendant are requested to be divided as fairly as possible.

h. Discussion of the panel of judges

In deciding this case the judges have several considerations, that Plaintiff and Defendant have been proven during the marriage period they have joint property. The Plaintiff and the Defendant each is entitled to receive a half of the joint property. Joint property is under the control of the Defendant, then he gets the punishment to give of twenty million rupiahs plus two motorbikes to the Plaintiff. Based on article 35 paragraph (1) of the Law No 1 of 1974 and article 97 of the Compilation of Islamic Law, the Assembly shall determine joint property with the

Plaintiff and each of them has the right to get one-half of the joint property.

i. Decision reading

In this decision, the panel of judges was determined that the plaintiff's claim was partially granted and stipulates that both parties get half of the joint property.

Based on the case no: 0176/Pdt.G/2015/PA.Btl, it can be concluded that for resolving this case is in accordance with the dispute settlement procedure in the Bantul Religious Court. The settlement of this joint property dispute can be used to resolve other cases of joint property.