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**SHARIA-BASED RESOLUTION OF JOINT PROPERTY DISPUTES  
IN THE FAMILY**

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**Abstract**

*This study examines the mechanisms for resolving joint property disputes (gono-gini) after divorce within the family, focusing the analysis on the values and principles of Islamic law (sharia). This research is motivated by the high complexity and emotional conflict in the division of joint property, which often results in losses for one party. Furthermore, this study also analyzes the compatibility between Religious Court/family mediation decisions and Islamic jurisprudence principles regarding justice, welfare, and equality of rights. The results indicate that joint property is the wealth generated and accumulated by a husband and wife during their marriage, known in Indonesian Islamic family law as joint property. This includes gifts of money, a motorcycle, or other items to a husband and wife, or property purchased by the husband and wife using their own money, or savings from the husband's and wife's salaries combined. These can all be categorized as joint property. This joint property can be tangible or intangible; tangible assets can be movable or immovable, such as securities; while intangible assets can be rights and obligations. This joint property cannot be managed or distributed without the consent of both parties. Joint property is only discussed upon divorce. While neither the Qur'an nor the Sunnah explicitly regulates this issue, the Islamic jurisprudence books from various schools of thought (mazhab) do not discuss or address it. However, within Islamic law, the issue of joint property can be viewed through the concepts of Syirkah and Mashlahah al-Mursalah. In the review of positive Indonesian law, the provisions relating to joint property are the result of collective ijtihad of Indonesian jurists and scholars in the form of making a breakthrough in the vacuum of Islamic law in dealing with joint property issues, which in its determination refers to: (1) Law Number 1 of 1974 On Marriage, (2) Indonesian Civil Code, (3) Compilation of Islamic Law (KHI). In Law Number 1 of 1974 concerning Marriage, articles 35, 36, 37, it is explained that if a divorce occurs and there is a dispute regarding joint property, it will be resolved according to Islamic law for married couples who are Muslim and for married couples who are non Muslim, the settlement will be according to the Indonesian Civil Code.*

**Keywords:** *Disputes, Joint Property and Sharia Based.*

**Abstract**

Penelitian ini mengkaji mekanisme penyelesaian sengketa harta bersama (gono-gini) pasca perceraian dalam lingkup keluarga, dengan memfokuskan analisis pada nilai-nilai dan prinsip hukum Islam (syari'ah). Penelitian ini dilatarbelakangi oleh tingginya kompleksitas dan konflik emosional dalam pembagian harta bersama yang sering kali merugikan salah satu pihak. Selain itu, penelitian ini juga menganalisis kesesuaian antara putusan Pengadilan Agama/mediasi keluarga dan kaidah fikih tentang keadilan, kemaslahatan dan kesetaraan hak.



Hasil penelitian menunjukkan bahwa harta bersama adalah harta yang dihasilkan dan dikumpulkan oleh pasangan suami isteri selama masa perkawinan, yang dalam hukum keluarga Islam di Indonesia dikenal dengan istilah harta bersama. Termasuk harta bersama adalah ketika seseorang menghibahkan uang, atau sepeda motor, atau barang lain kepada suami isteri, atau harta benda yang dibeli oleh suami isteri dari uang mereka berdua, atau tabungan dari gaji suami dan gaji isteri yang dijadikan satu, maka itu semuanya dapat dikategorikan sebagai harta bersama. Harta bersama tersebut bisa berupa benda berwujud atau benda tidak berwujud, harta berwujud bisa berupa benda bergerak dan benda tidak bergerak seperti surat-surat berharga, sedangkan harta benda yang tidak berwujud dapat berupa hak dan kewajiban. Harta bersama ini tidak bisa diolah atau didistribusikan tanpa adanya persetujuan dari kedua belah pihak. Harta bersama baru dibicarakan ketika terjadi perceraian antara suami dan isteri. Sementara dalam al-Qur'an maupun Sunnah masalah ini tidak diatur secara eksplisit. Demikian pula, kitab-kitab fikih dari berbagai mazhab yang berkembang tidak ada yang membicarakan atau pun mewacanakannya. Namun demikian, dalam tinjauan hukum Islam hal ihwal harta bersama dapat ditinjau dari konsep Syirkah dan Mashlahah al-Mursalah. Dalam tinjauan hukum positif Indonesia ketentuan-ketentuan berkaitan dengan harta bersama yang merupakan hasil ijtihad kolektif para fuqaha dan ulama Indonesia yang berupa melakukan terobosan terhadap kevakuman hukum Islam dalam menangani masalah harta bersama, yang dalam penetapannya merujuk kepada: (1) Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan, (2) KUHPerdata, (3) Kompilasi Hukum Islam (KHI). Dalam Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan pasal 35, 36, 37, dijelaskan bahwa jika terjadi perceraian dan terdapat sengketa mengenai harta bersama maka, diselesaikan menurut hukum Islam bagi pasangan suami isteri yang beragama Islam dan bagi pasangan suami isteri yang beragama non Islam maka penyelesaiannya menurut Kitab Undang-undang Hukum Perdata.

**Kata Kunci :** Sengketa, Harta Bersama dan Berbasis Syari'ah.

## **I. INTRODUCTION**

One important aspect of marriage is the existence of assets generated and accumulated by a husband and wife during the marriage, which in Islamic family law in Indonesia is known as joint assets. Likewise, when someone gives money, or a motorbike, or other items to a husband and wife, or assets purchased by the husband and wife with their own money, or savings from the husband's and wife's salaries combined, then all of that can be categorized as joint assets. This definition is in line with the definition of joint assets as stated in Law Number 1 of 1974 concerning Marriage, Article 35 paragraph (1) that assets obtained during the marriage become joint assets, and Article 35 paragraph (2) that assets brought by each husband and wife and assets obtained by each as gifts or inheritance are entirely under the control of each husband and wife during the marriage period, both parties do not make any other agreement in determining the assets brought.

In Indonesian Islamic family law, matters of joint property are also regulated in the Compilation of Islamic Law (KHI) Articles 85-97, which explain that joint property is property acquired by a husband and wife during marriage, separate from any property brought in. This

property is managed jointly and, in the event of divorce, is generally divided equally (50:50), reflecting the principles of justice, equality, and tangible contributions, both material and non-material. In other words, joint property is property owned by a husband and wife that has economic and legal value, meaning that the property has utility value and is governed by legal regulations, whether the property is tangible or intangible. It is worth noting that the issue of dividing joint property is only discussed upon divorce. However, neither the Qur'an nor the Sunnah explicitly regulates this issue. Similarly, the Islamic jurisprudence books from various schools of thought do not discuss or address it. However, Indonesian legislation has established provisions regarding joint property, the result of collective *ijtihad* (judicial decision) by Indonesian jurists and scholars, which have clarified the gap in Islamic law in addressing joint property issues. Law Number 1 of 1974 concerning Marriage serves as the positive legal basis for marriage in Indonesia. Articles 35, 36, and 37 stipulate that in the event of a divorce and a dispute over joint property, it shall be resolved according to Islamic law for Muslim married couples; and for non-Muslim married couples, it shall be resolved according to the Civil Code.

This study will discuss in detail the resolution of joint property disputes within families based on Sharia. Sharia refers to Islamic law. Although academically and conceptually, the term Sharia is not entirely identical to Islamic law, but rather constitutes a fundamental part or primary source. However, in practical use in society and Western literature (translations of Islamic Law), the two terms are often considered synonymous and interchangeable.

## **II. THEORITICAL STUDIES**

### **A. Syirkah (Partnership/Cooperation)**

Etymologically, *syirkah* is a mixture, while according to the terminology it is a guarantee of rights to something done by 2 (two) or more people in general, or it could also be said to be a contract that shows rights to something done by two or more people according to the general view. In the book of *Fiqh 'Ala Mazahib al-Arba'ah*, *Shirkah* is a sharing of two assets between one person and another, so that in this partnership the assets cannot be distinguished. According to *fiqh* experts, *syirkah* is an agreement made by two people in an association regarding capital and profit. From this understanding, if it is formulated, *syirkah* is a partnership between two people regarding their property by starting with a certain agreement so that no one is harmed afterwards. According to Sayyid Sabiq, who is in line with the opinion of the Hanafiyah scholars, there are two types of partnership, namely *Amlak Partnership* and *Uqud Partnership*, namely: (1) *Amlak Partnership*. According to Hanafiyah scholars, it is an expression of ownership by two or more people of an object without any contract. According to Sayyid Sabiq,

the form of ownership by many people of an object without any contract, either in the form of a business or directly. Examples of Amlak Partnership which are automatic, ownership by many people obtained from one person automatically, such as inheritance by heirs, and (2) Uqud Partnership. Uqud Partnership is an agreement between two or more people regarding the sharing of property, the purpose of which is profit. Sayyid Sabiq divides it into four parts: Inan Partnership, Muwafadah Partnership, Abdan Partnership, and Wujuh Partnership. In the case of Uqud partnership, Sayyid Sabiq gave several pillars as things that must be present in this partnership transaction, he said that the pillars of Uqud partnership are Ijab and Qabul, he added an example of Ijab and Qabul such as I partner with you in this matter of property, in this way, then the partner says I accept.

In terms of syirkah as the theoretical basis for the legal provisions of joint property partnerships, in the author's opinion, the appropriate one is Syirkah Amlak, namely a partnership of two or more people without any contract, whether the Syirkah is established through effort or without effort, that this syirkah is exemplified as the concept of inheritance, where one heir and another are in partnership with the inheritance of the testator that has not been divided (and two or more people who receive prizes for participating in competitions, where they obtain them through the efforts of all their partners. In Syirkah Amlak and the practice of joint property in marriage, there are several similarities: (1) the form of partnership is not through a contract, and (2) when there is a desire to divide the assets of the partnership, it is divided equally between the people in the partnership. In addition, there is no capital in the combination of assets to be divided, it is appropriate if the partnership of joint assets is analogous to Syirkah Amlak.

### **B. Maslahah al-Mursalah**

According to Amir Syarifuddin, maslahah al-mursalah is what is considered good by reason, in line with the objectives of Sharia' in establishing laws but there are no Sharia' guidelines that reject it. The Madhab, Malikiyah and Hanbaliyah use Maslahah al-Mursaya more. Imam al-Syathibi stated that the existence and quality of Mashlahah al-Mursaya is qath'i, although in its application it is zhanni. Maslahah al-Mursaya is a matter that can bring benefits to humans to maintain the goals of syara', namely maintaining religion, soul, reason, offspring and property, which is then better known as al-kulliyât al-khams, namely: (1) hifzh al-dîn; (protection of religious beliefs), (2) hifzh al-nafs (protection of the safety of the soul, (3) hifzh al-âql (protection of the existence of reason), (4) hifzh al-nasl (protection of offspring), and (5) hifzh al-mâl (protection of property).

In using *Mashlahah al-Mursalah* as the basis for determining the law of joint property, the valid benefits that do not conflict with the spirit of sharia and are not *tahsini*, then in the context of joint property, these benefits are the things that are the purpose of dividing joint property, where the wife is a worker in the husband's house and deserves wages, or the wife is a worker who in her work the wife receives wages from her work. The wages or results of the wife's sweat in the family certainly cannot be separated from the husband's property. When there is an indication of mixing husband and wife's property, it is appropriate if the wife's wages that have been mixed must be separated again by dividing them equally to protect the rights of the divorced wife. Other benefits are, Reducing the burden on the ex-wife so that after the divorce she will not face difficulties in supporting herself or any children who live with her. When divorced, we often find that wives bear the costs themselves and the children they take with them. Therefore, it is appropriate for the wife to receive joint property from her ex-husband.

### **C. Al-Shulhu (Peace)**

In a broader sense, *ash-shulh* encompasses efforts to reach a peaceful agreement that aims not only to resolve the conflict formally but also in accordance with the values of justice and welfare according to Islamic law. *Al-shulh* is a contract or agreement made to resolve disputes and restore a good and harmonious relationship. Terminologically, *al-shulh* in *muamalah* jurisprudence means a contract or agreement aimed at resolving or ending a dispute between two disputing parties. Scholars define *ash-shulh* as a peace agreement that ends conflict and hostility through a just and mutually beneficial agreement for both parties. According to Imam Taqy al-Din Abi Bakr Ibn Muhammad al-Husnaini, *al-shulh* is "a contract that resolves dispute between two disputing parties." *Al-Shulhu* (peace) and mediation are the main instruments and the best way (*al-sulhu al-khair*) in resolving joint property disputes. Both focus on deliberation and consensus, avoiding decisions that are detrimental to each other, protecting the value of the welfare of the property (*hifz al-mal*), and maintaining harmonious relationships after the divorce.

### **D. Arbitration**

The meaning of *tahkim* is substantively the same as the general meaning of arbitration as described in the previous chapter. Etymologically, the word *tahkim* comes from the root words - *حكم جعل الأمر إلى الغير ليحكم ويفصل*, meaning "that which is arbitrated." *التفويض* means "that which is arbitrated." *تحكما فيه*, meaning "to appoint someone as a mediator in a dispute." In terms of terminology, each school of thought provides a definition that essentially has the same

meaning, as follows: Hanafiyah scholars define tahkim: *يحكم التحكيم بأنه: تولية الخصمين حاكماً بينهما* (tahkim is the authority given by two disputing parties to a judge to mediate their dispute). Malikiyah scholars define tahkim as: *(الخصمين تولية يرتضيانه ليحكم بينهما حكماً)* (the authority given by two disputing parties to a judge they approve to mediate their dispute).

According to Shafi'iyah scholars, tahkim is: *(صالحاً حكماً خصمين تولية بينهما ليحكم للقضاء)* (the authority given by the disputing parties to a pious judge who has the capacity to be a qadhi). Hanabilah scholars summarize all definitions of the Qur'an and the Sunnah: the previous wording is *تولية شخصين حكماً صالحاً* (the authority given by two disputing parties to a pious judge who has the capacity to be a qadhi whom they approve of to mediate their dispute). According to Abdul Karim Zaidan, tahkim is the voluntary appointment or designation of two disputing parties to someone they trust to resolve their dispute or dispute.

### **E. Wilayat al-Qudhat (Judicial Authority)**

The term qadha literally means "al-faragh" meaning "to break or complete," "al-ada" meaning "to fulfill or pay," and "al-hukm" meaning "to decide, prevent, or hinder." Ali Duraib, for example, refers to the vocabulary of the word "al-qadha" in the Quran, which has several meanings, including: First, "al-hukmu," meaning law or decision, as affirmed in Surah al-Nisa', verse 65. Second, "al-qada" meaning "al-hakim wa al-luzum," making a decision and requiring, in Surah Saba', verse 14. Third, "al-amr," meaning "order," in Surah al-Isra', verse 23.

Dispute resolution through qadha or judicial means a stage that has gone through a process of peace and tahkim (arbitration). The dispute resolution process in court involves the appointment of a qadhi (judge) by the government. The authority held by this institution is to resolve certain cases related to al-ahwal al-syakhsiyah (civil matters, including family law) and jinayat (criminal matters). The area of al-qadha (judicial power or judicial institution) functions as the highest authority in resolving joint property disputes (gono-gini) fairly based on sharia and positive law. This institution has the authority to examine facts, decide on the distribution of rights (such as the principle of al-sa'y or hard work), and carry out legal executions to prevent injustice.

## **III. RESEARCH METHODS**

### **A. Research Type and Approach**

This research is a library research method because the data collected are manuscripts, books, or magazines sourced from the literature. The research is qualitative in nature. The approach used to obtain the data is content analysis.

## **B. Data Sources**

The data sources in this study can be grouped as follows: (1) primary legal materials, namely: Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law, and books on the principles of Islamic law (maqashid al-syar'ah); (2) secondary legal materials, which provide explanations of primary legal materials, research results, works by legal scholars, and so on; and (3) tertiary legal materials or supporting legal materials, namely legal materials that provide guidance and explanations of primary and secondary legal materials, such as encyclopedias, dictionaries, and others.

## **C. Data Collection and Data Analysis Techniques**

All research data was obtained through direct and indirect citations. Then, it was systematically compiled to create a clear explanation of: "Sharia-Based Settlement of Joint Property in the Family." The data analysis techniques used in this study followed the steps of data reduction, data presentation, and conclusions/verification.

## **IV. RESEARCH RESULTS**

### **A. Definition and Scope of Joint Property**

According to M. Yahya Harahap, joint property is the assets generated and accumulated by a husband and wife during the marriage, which in Indonesian Islamic family law is known as joint property. Likewise, when someone donates money, a motorcycle, or other items to a husband and wife, or assets purchased by the husband and wife with their own money, or savings from the husband's and wife's combined salaries, all of these can be categorized as joint property. This joint property can be tangible or intangible. Tangible assets can be movable or immovable assets such as securities, while intangible assets can be rights and obligations. This joint property cannot be managed or distributed without the consent of both parties. According to Idris Ramulyo, joint property is the property acquired by a husband and wife during the marriage after the marriage contract (ijab qabul). Property acquired by a husband and wife before the marriage contract (ijab qabul), whether through their own hard work or as a gift or inheritance from their parents, is referred to as "inherited property" and belongs to each of them.

Article 35, paragraph (1) of Law Number 1 of 1974 concerning Marriage states that property acquired during the marriage becomes joint property. Article 35, paragraph (2) states that the property brought by each husband and wife, and property acquired as gifts or inheritances, is entirely under the control of each husband and wife, provided that during the marriage, both parties have not entered into any other agreements regarding the distribution of

the property. Articles 85-97 of the Compilation of Islamic Law (KHI) define joint property as property acquired by a husband and wife during the marriage, separate from the property added in. This property is managed jointly and, in the event of divorce, is generally divided equally (50:50), reflecting the principles of justice, equality, and real contributions, both material and non-material. In other words, joint property is property owned by a husband and wife that has economic and legal value, meaning that the property has utility value and is governed by legal regulations, whether the property is tangible or intangible.

### **B. Division and Settlement of Joint Property Disputes in the Family**

In Islam, there are no specific rules for dividing joint property. Islam only provides general guidelines for resolving joint property issues. The division of joint property depends on the agreement between husband and wife. This agreement is referred to in the Quran as *al-Shulhu*, which refers to an agreement to achieve reconciliation between the two parties (husband and wife) after a dispute. Likewise, in the division of joint property, one or both parties may sometimes have to give up some of their rights in order to reach an agreement. For example, if a husband and wife both work and purchase household items with their own money, when they divorce, they agree that the wife gets 40% of the assets, the husband 60%, or the wife 55% and the husband 45%, or some other division, all of which is left to their mutual agreement. Article 97 of the Compilation of Islamic Law (KHI) states that divorced widows or widowers are each entitled to half of the joint property, unless otherwise stipulated in the marriage agreement.

The requirement for an equal division, i.e., each receiving 50%, as stated in the Compilation of Islamic Law (KHI) above, is apparently unsubstantiated. Therefore, the correct opinion regarding the division of joint property rests with the agreement between husband and wife. This agreement applies if each spouse contributed to the procurement of the jointly owned goods, typically when both husband and wife work. However, if the wife stays at home and the husband works, there is no joint property. Essentially, everything purchased by the husband belongs to the husband, except for items gifted to the wife, which then belong to the wife.

A legal act that gives rise to joint property is "marriage," whether a marriage regulated by Article 26 of the Indonesian Civil Code and subsequent laws, or a marriage regulated by Law Number 1 of 1974 concerning Marriage, which defines the dissolution of a marriage through divorce as "divorce by lawsuit" and "divorce by talaq," where these terms imply a dispute between husband and wife. In this case, the right to dissolve a marriage through divorce is no longer the husband's monopoly. The wife is given the right to file for divorce. Divorce by

divorce, commonly referred to as "divorce by talaq," applies only to those married according to Islam. Meanwhile, divorce by lawsuit, commonly referred to as "divorce by lawsuit," applies to those married according to both Islam and non-Islamic religions.

Normatively, when examining the regulations governing marital property, we can examine several articles in the Indonesian Civil Code and Law Number 1 of 1974 concerning Marriage. Joint property according to Article 119 of the Civil Code is essentially stated that starting from the time the marriage takes place, by law there is a complete unity of the assets of the husband and wife as long as no marriage agreement is made regarding this matter. Based on this provision, it can be interpreted that what is meant by joint property is "The unity of all assets in full, including assets brought in real terms (assets) or in the form of receivables (liabilities), as well as assets that will be acquired during the marriage."

Based on the positive law in force in Indonesia, joint assets are divided equally between the ex-husband and ex-wife. This is of course if there is no marriage agreement regarding the separation of assets made by the husband and wife before and after the marriage contract takes place. The legal basis for joint assets: (1) Marriage Law Article 35 paragraph (1), that what is meant by joint assets is assets acquired during the marriage period. This means that assets acquired before the marriage takes place are not referred to as joint assets, (2) Civil Code Article 119, that from the time the marriage takes place, then according to the law there is joint assets entirely between the husband and wife, as long as there are no other provisions regarding this in the marriage agreement. The joint assets, during the marriage may not be eliminated or changed by an agreement between the husband and wife, (3) Compilation of Islamic Law (KHI) Article 85, that the existence of joint assets in a marriage does not preclude the possibility of the existence of assets belonging to each husband or wife. This article already mentions the existence of joint assets in a marriage. Even though they are united, it is possible that each spouse may have some assets belonging to each partner, both husband and wife. (4) Article 86 paragraphs (1) and (2) of the Indonesian Criminal Code (KHI) reiterates that there is no mixing of husband and wife assets due to marriage (paragraph (1)). Paragraph (2) further emphasizes that the wife's assets remain the wife's property and are fully controlled by her, and vice versa.

Joint assets include: (1) assets acquired during the marriage, (2) debts incurred during the marriage, except those that constitute the personal assets of each spouse, (3) assets obtained as gifts or inheritance, if so determined. Therefore, all matters relating to joint assets must be based on these three sources of positive law. Article 37 of Law Number 1 of 1974 concerning

Marriage explains that if a marriage ends due to divorce, joint assets are regulated according to their respective laws. These respective laws include religious law, customary law, and other laws. For Muslims, the provisions for the division of joint assets are regulated in Article 97 of the Indonesian Criminal Code (KHI), which states that each widow or widower who is divorced is entitled to half of the joint assets unless otherwise specified in the marriage agreement. For adherents of other religions, Article 128 of the Indonesian Civil Code states that upon the dissolution of the marriage, the assets of the union are divided equally between the husband and wife or between their respective heirs, regardless of which party the assets were obtained from.

Article 95 paragraph (1) of the Indonesian Criminal Code stipulates that, without prejudice to the provisions of Article 24 paragraph (2) letter c, Government Regulation Number 9 of 1975, and Article 136 paragraph (2), a husband or wife may request a Religious Court to place a security deposit on joint assets without a divorce petition, if one party commits an act that is detrimental to or endangers the joint assets, such as gambling, drunkenness, wastefulness, and so on. Paragraph (2) further stipulates that during the confiscation period, joint assets may be sold for the benefit of the family with the permission of the Religious Court. According to the Civil Code and the Compilation of Islamic Law (KHI), in the event of a divorce, the division of joint assets can be filed simultaneously with the divorce petition, without having to wait for the divorce decree.

Khoiruddin Nasution stated that Islamic law regulates the separation of marital assets as long as the parties do not specify otherwise (not stipulated in the marriage agreement). Islamic law allows couples the flexibility to enter into a legally binding marriage agreement. According to Ahmad Azhar Basyir, Islamic law allows each partner, both husband and wife, to own their own property individually, which cannot be discriminated against. A husband who receives gifts, inheritances, and so on has the right to fully control the assets he receives without interference from his wife. The same applies vice versa. Any assets they owned before the marriage become the property of each spouse.

Based on Article 126 of the Indonesian Civil Code, joint assets are dissolved by law, one of which is due to divorce. Then, after the dissolution of joint assets, their joint wealth is divided in half between husband and wife, or between their heirs, without questioning the origin of the goods. This provision usually applies to marriages that are not based on Islam. Meanwhile, for marriages conducted based on Islam, the consequences or legal consequences of divorce can be seen specifically in Article (97) of the Compilation of Islamic Law (KHI)

that divorced widows or widowers are each entitled to half of the joint assets as long as it is not stipulated otherwise in the marriage agreement. Law Number 1 of 1974 provides more flexible rules by giving freedom to former husbands and former wives to arrange the division of joint assets according to their legal beliefs. As stated in Article (37) that "if the marriage is dissolved due to divorce, joint assets are regulated according to their respective laws." Furthermore, the explanation of Article (37) states that "What is meant by "their respective laws" is religious law, customary law, and other laws."

The legal consequences of joint property based on Article 37 of Law Number 1 of 1974 concerning Marriage are left to the divorcing parties regarding which law and which laws will apply, and if there is no agreement between the former husband and wife, the judge can consider it according to a reasonable sense of justice. Therefore, the consequences of a divorce on joint property for each person can vary, depending on the law and which one will be used to regulate the joint property. If one party to the marriage is a foreign citizen, the marriage is a mixed marriage. A mixed marriage is a marriage between two people who in Indonesia are subject to different laws, due to differences in citizenship and one party is an Indonesian citizen (Article 57 of Law Number 1 of 1974 concerning Marriage). If the marriage takes place in Indonesia and is subject to Indonesian law, the provisions of Article 37 of the Marriage Law, as explained above, apply, namely, determining which law applies regarding joint property is left to the agreement of the divorcing parties. If there is no agreement between the former spouses, the judge may consider a reasonable sense of justice. Therefore, if there is no agreement between the parties regarding the consequences of the divorce on joint property, the judge will determine which law will apply.

The basic principles of joint property law as regulated in Chapter XIII of the Compilation of Islamic Law can be briefly explained as follows: (1) joint property is separate from each person's personal property: (1) personal property remains personal property and is fully controlled by its owner (husband and wife), and (2) joint property becomes the joint right of husband and wife and is completely separate from personal property, (2) joint property is realized from the date the marriage takes place: (1) since then joint property is automatically formed, (2) without questioning who seeks it, (3) also without questioning in whose name it is registered, (3) without mutual agreement, the husband or wife may not alienate or transfer it, (4) debts for family interests are charged to joint property, (5) in serial or polygamous marriages, the form of joint property is separate between the husband and each wife, (6) if the marriage breaks up (death, divorce): (1) joint property is divided in two, (2) each person

receives half a share, and (3) if a divorce occurs due to death, the share becomes a tirkah, and (7) marital confiscation of joint property Apart from filing for divorce (article 95), husband and wife can ask for marital confiscation from the Religious Court if one of the parties is wasteful or a gambler.

## **V. CONCLUSION**

Joint property is the wealth generated and accumulated by a husband and wife during their marriage, known in Indonesian Islamic family law as joint property. This includes gifts of money, a motorcycle, or other items to a husband and wife, or property purchased by the husband and wife using their own money, or savings from the husband's and wife's salaries combined. These can all be categorized as joint property. This joint property can be tangible or intangible; tangible assets can be movable or immovable, such as securities; while intangible assets can be rights and obligations. This joint property cannot be managed or distributed without the consent of both parties. Joint property is only discussed upon divorce. While neither the Qur'an nor the Sunnah explicitly regulates this issue, the Islamic jurisprudence books from various schools of thought (mazhab) do not discuss or address it. However, within Islamic law, the issue of joint property can be viewed through the concepts of Syirkah and Mashlahah al-Mursalah. In the review of positive Indonesian law, the provisions relating to joint property are the result of collective ijtiḥad of Indonesian jurists and scholars in the form of making a breakthrough in the vacuum of Islamic law in dealing with joint property issues, which in its determination refers to: (1) Law Number 1 of 1974 concerning Marriage, (2) Civil Code, (3) Compilation of Islamic Law (KHI). In Law Number 1 of 1974 concerning Marriage, articles 35, 36, 37, it is explained that if a divorce occurs and there is a dispute regarding joint property, it will be resolved according to Islamic law for married couples who are Muslim and for married couples who are non-Muslim, the settlement will be according to the Civil Code.

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