



Granting of Property During Marriage as an Inherited Property in Indonesia

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Abstract

This study aims to discuss the granting of property by parents who are accepted at the time of marriage or are still bound by a valid marriage as inherited property. The problem is whether the property received at the time of marriage is innate property or joint property (*gono gini*). This research is normative research, with a legislative, conceptual and case approach, using primary legal materials, secondary legal materials, tertiary legal materials, research data collection using literature studies and document studies and analyzed qualitatively. The result of this research is that the property obtained from giving (grant) is innate property. Even though the grant is carried out when the husband and wife are still bound by a legal marriage or are still in the marriage period, the property is still innate or original property. The inherited property of each husband and wife, whether the property was obtained before marriage or during the marriage period obtained by each of them as a gift or inheritance as personal property. The position of inherited property belongs to and is under the control of each other, during the marriage as stipulated in Article 35 paragraph (2) of the Marriage Law and Article 86 of the Compilation of Islamic Law. The owner is free to take legal action against the property. The inheritance of the husband or wife and such property cannot be included in the scope of joint property unless the husband and wife have arranged it in the marriage agreement.

Keywords: Congenital property, joint property, marriage, Islamic family law

Abstrak

Penelitian ini bertujuan untuk membahas pemberian harta oleh orang tua yang diterima pada saat perkawinan atau masih terikat dengan perkawinan yang sah sebagai harta warisan. Masalahnya adalah apakah harta yang diterima pada saat perkawinan adalah harta bawaan atau harta bersama (*gono gini*). Penelitian ini merupakan penelitian normatif, dengan pendekatan legislatif, konseptual dan kasus, menggunakan bahan hukum primer, bahan hukum sekunder, bahan hukum tersier, pengumpulan data penelitian menggunakan studi pustaka dan studi dokumen serta dianalisis secara kualitatif. Hasil dari penelitian ini adalah bahwa harta yang diperoleh dari pemberian (hibah) adalah harta bawaan. Meskipun hibah dilakukan ketika suami istri masih terikat dengan perkawinan yang sah atau masih dalam masa perkawinan, harta tersebut tetap merupakan harta bawaan atau asli. Harta warisan masing-masing suami istri, baik harta itu diperoleh sebelum menikah maupun selama masa perkawinan yang diperoleh masing-masing sebagai hadiah atau warisan sebagai harta pribadi. Kedudukan harta warisan dimiliki dan berada di bawah kendali satu sama lain, selama perkawinan sebagaimana diatur dalam Pasal 35 ayat (2) UU Perkawinan dan Pasal 86 Kompilasi Hukum Islam. Pemilik bebas untuk mengambil tindakan hukum terhadap properti. Warisan suami atau istri dan harta tersebut tidak dapat dimasukkan dalam ruang lingkup harta bersama kecuali suami dan istri telah mengaturnya dalam perjanjian perkawinan.

Introduction

Marriage from Arabic, An-nikah means to gather and collect. The fiqh definition of marriage is a contract containing the permissibility of having conjugal relations with the word marriage or its equivalent.¹ Marriage is a physical and mental bond between a man and a woman as husband and wife in order to form a happy family based on God Almighty.² Abdurrahman Ghazali in the book *fiqih munakahat* states the purpose of marriage according to Islam to fulfill religious instructions in order to establish a harmonious, prosperous and happy family.³ Marriage is done just to fulfill lust and pleasure not with the aim of building a family and maintaining the safety of religious life.⁴ Marriage in Islamic Law, a very strong agreement or *mitsaqan ghaliza*. The same meaning in Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (hereinafter referred to as KHI) is a very strong contract or *mitsaqan ghaliza* to obey Allah's commands and carrying it out is

¹ Ichtiar Baru Van Hove, *Ensiklopedi Islam 4*, Jakarta, ctk. 3, 1994, hlm. 32.

² Muflikhatul Khoiroh and Abd Syakur, The flexibility of Islamic law in the Ganjur tradition in Lamongan, Indonesia, *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, Vol. 23, No. 2 (2023), hlm. 150.

³ Abdurrahman Ghazali, *Fiqih Munakahat*, Prenada Media, Jakarta, 2003, hlm. 22.

⁴ KH. Ahmad Azhar Basyir, *Hukum Perkawinan Islam*, UII Press, Yogyakarta, 1999, hlm. 14-16.

an act of worship.⁵ The purpose of marriage is to preserve offspring (*hifdz nasl*) which is one of the main objectives of Islamic law. Marriage results in rights and obligations between husband and wife.⁶

The understanding of marriage can be understood that the inner and outer bond is a formal relationship that can be seen because it is formed according to law, binding the two parties with other parties in society.⁷ The definition of marriage as defined in Article 1 of Law Number 1 of 1974 concerning Marriage (Marriage Law) contains several elements, first, there is a physical and mental relationship (solid), second, a man and a woman as husband and wife, third, the purpose of marriage is to form a happy and lasting family, and fourth, the basis of marriage is belief and practice of religious teachings based on God Almighty.⁸

Islam views marriage as a sacred covenant, meaning worship to Allah, following the Sunnah of the Prophet Muhammad, carried out on the basis of sincerity and responsibility.⁹ The validity of a marriage is a very principle thing, because it is closely related to the consequences of marriage, both with regard to children (offspring) and with regard to property.¹⁰ A marriage that is legally carried out based on the applicable laws and regulations is a legal event that will have legal consequences for both the husband, wife and third parties.¹¹ Marriage is useful for maintaining the harmony of children and grandchildren (descendants), because if not by marriage, children who are born are not known who will take care of them and who will be responsible for protecting and educating them.¹²

The law recognizes that every human being has the same position as a supporter of rights and obligations, because no human being has no rights and

⁵ Hanifah Salma Muhammad, "Analisa Yuridis Pembagian Harta Gono Gini Berdasarkan Kontribusi Suami Istri Selama Perkawinan", *Jurnal Restorasi Hukum*, Volume 5, Nomor 2, 2022, hlm. 143.

⁶ Abdurrahman, *Kompilasi Hukum Islam di Indonesia*, Ctk. Pertama, Akademika Pressindo, Jakarta, 1992, hlm. 114.

⁷ Rusli, et.al, "Law Enforcement on the Inheritance of Siri Married in the Judicial Verdict," *Jurnal Islamic Law, Al Bayyinah*, Volume 4 Nomor 2, 2020, hlm. 133

⁸ M. Natsir Asnawi, *Hukum Harta Bersama: Kajian Perbandingan Hukum, Telaah Norma, Yurisprudensi, dan Pembaruan Hukum*, Penerbit Kencana, Jakarta, 2020, hlm. 3. Hafizha Harts, "Perspektif Ulama Kota Langsa Terhadap Pembagian Harta Bersama Bagi Istri yang Tidak Bekerja", *Jurnal El Usrah: Jurnal Hukum Keluarga*, Volume 5 Nomor 2, Juli-Desember 2022, hlm. 374

⁹ Aisyah Ayu Musyafah, "Perkawinan dalam Perspektif Filosofis Hukum Islam", *Jurnal Crepido*, Volume 02, Nomor 02, November 2020, hlm. 111.

¹⁰ Anshary, *Hukum Perkawinan Islam di Indonesia*, Ctk. Pertama, Penerbit Pustaka Pelajar, Yogyakarta, 2010, hlm. 12.

¹¹ Annisa Azria Putri, "Kedudukan Harta Bawaan dalam Putusan Perbuatan Melawan Hukum Berdasarkan Undang-Undang Perkawinan", *Jurnal Kerta Semaya*, Volume 10, Nomor 4 Tahun 2022, hlm. 805.

¹² Beni Ahmad Saebani, *Fiqih Munakahat*, Penerbit Pustaka Setia, Bandung, 2013, hlm, 2013, hlm. 19. Sholeha Fitri, "Pengaruh Perkawinan di Bawah Umur terhadap Pengasuhan Anak", *Jurnal El Usrah: Jurnal Hukum Keluarga*, Volume 4 Nomor 2, Jui-Desember 2021, hlm. 516.

obligations, even in certain circumstances the law can give rights to someone who has not been born as long as his interests require it.¹³ Marriage as a legal action that gives rise to rights and obligations.¹⁴ Rights and obligations not only give rise to legal consequences for husband and wife, but also for other parties with whom the husband or wife or both have legal relations in the future.¹⁵ Marriage as a form of sacred covenant between a man and a woman, which has civil aspects, applies several principles, namely voluntariness, consent of both parties, freedom of choice, husband-wife partnership, forever.¹⁶ The marriage bond automatically has an impact on the merging of the two assets in the form of shirkah as long as the two are still in a marriage bond.¹⁷ So that as a legal consequence, the mixing of assets between husband and wife cannot be differentiated anymore.¹⁸

Marital property is useful to fulfill the needs of family life obtained from husbands and wives, each of whom has the responsibility to achieve prosperity in the family.¹⁹ Property plays an important role in everyday life because it can fulfill the needs of life and gain social status in society.²⁰ It is possible that the existence of joint property in marriage is the property of each husband and wife.²¹

Congenital property is the property owned by each individual husband and wife and the property obtained by each as a gift or inheritance. The position of innate

¹³ Rachmad Baro, *Teori Hukum*, ctk. Kedua, Lephair Unkhair, Jakarta, 2005, hlm. 34.

¹⁴ Anthin Lathifah, State Marriage and Civil Marriage: The Role of State Policy on Interreligious Marriage in Central Java, *Al-Ihkam: Jurnal Hukum dan Pranata Sosial*, 15(1), 2020, hlm. 4.

¹⁵ Eva Dwinopianti Amanda Charissa et.al., “Peran Notaris Terkait Pengesahan Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi No.69/PUU-XIII/2015 Serta Pentingnya Pencatatan Perjanjian Perkawinan Terhadap Pihak Ketiga (Analisa Putusan No. 59/Pdt.G/2018/PN Bgr)”, *Jurnal Indonesian Notary*, Volume 4 Nomor 2, 2022, hlm. 1149

¹⁶ Muhammad Daud Ali, *Hukum Islam: Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia*, Penerbit PT. Raja Grafindo Persada, Jakarta, 2006, hlm. 139

¹⁷ Zaiyad Zubaidi, “Tanggapan Ulama Ddayah Terhadap Pembagian Harta Bersama Menurut Pasal 97 KHI”, *Jurnal Media Syariah: Wahana Hukum Islam dan Pranata Sosial*, Volume 22, Nomor 1, 2020, hlm. 32. Lihat juga Abidin Nurdin, “Pembagian Harta Bersama dan Pemenuhan Hak-Hak perempuan di Aceh Menurut Hukum Islam”, *Jurnal El Usrah: Jurnal Hukum Keluarga*, Volume 2 Nomor 2, Juli-Desember 2019, hlm. 140.

¹⁸ Abdul Manan, *Masalah Hukum Perdata Islam di Indonesia*, Cetakan Kedua, Kencana, Jakarta, 2006, hlm. 109

¹⁹ Elimartati And Elfia, Kritik Terhadap Kompilasi Hukum Islam Tentang Ketentuan Harta Bersama Dalam Perkawinan, *Juris: Jurnal Ilmiah Syariah*, Vol 19 No.2 Juli-Desember 2020, hlm. 232.

²⁰ Wati Rahmin Ria, “Akibat Hukum Pembagian Harta Bawaan dan Harta Bersama Akibat Meninggalnya Pasangan Dalam Perspektif Hukum Islam”, *Jurnal Sians: Jurnal Ilmu Hukum*, Volume 7 Nomor 2 November 2022, hlm. 262. Lihat juga Lintang Fajarisyia Setiawan, “Pembagian Harta Bersama Pada Saham Pendirian Perseroan Terbatas”, *Jurnal Penegakan Hukum Indonesia*, Volume 3, issue 3, Oktober 2022, hlm. 289

²¹ Tihami & Sobari Sahrani, *Fikih Munakahat Kajian Fikih Lengkap*, Ctk. 3, Rajawali Pers, Jakarta, 2013, hlm. 179

property is under the control of each as long as the parties do not determine otherwise. Joint property (*gono gini*) is wealth in a marriage bond that is obtained by the husband and wife together when the marriage bond is established.²² The basic principle is that joint property (*gono gini*) is property obtained during marriage, while innate property is marital property obtained by each husband and wife before marriage, which during marriage is under their control.

However, there is an interesting case contained in Decision Number 334/Pdt.G/2017/PN.Jkt.Sel., jo. Decision Number 391/PDT/2018/PT.DKI jo. Decision Number 2582 K/ PDT/2019. The subject matter of the case dispute was that the Plaintiff and Defendant were husband and wife married on January 2, 1991. Before marriage, the Plaintiff obtained a grant of land and house from his father on September 10, 1971 as per the grant deed Number 7 of 1971. After the Plaintiff married the Defendant, the Plaintiff received a grant from his mother, September 29, 1995 based on grant deed 40/15/Ciledug/1995.

The two grants from the Plaintiff's parents were sold, and the proceeds of the sale were borrowed by the Defendant to run his business amounting to Rp. 500,000,000.00 (five hundred million rupiah), and part of the proceeds were used to buy land on Suwiryo Street. The Defendant ran a business that had many debts from several creditors. Many of the Defendant's debts were past due, so the Defendant was obliged to pay the debts of several creditors. In order to pay their debts, the Plaintiff and the Defendant made a joint agreement to sell the land and building located on Suwiryo Street. The proceeds from the sale of the house and land on Jalan Suwiryo were not only intended for the three children of the Plaintiff and Defendant, but also to pay the Defendant's debts to creditors totaling Rp. 6,000,000,000.00 (six billion rupiah).

The land and building on Suwiryo Street were purchased by the Plaintiff from the proceeds of the sale of the Plaintiff's land from a grant from the Plaintiff's mother. The grant from his mother to the Plaintiff was made after the Plaintiff and Defendant were married or it can be said that the grant was given or obtained during the marriage of the Plaintiff and Defendant.

The Defendant stated that the land and building on Suwiryo Street were purchased in 2005 or at least when the Plaintiff and Defendant were legally bound together. The Defendant stated that by law the land and building on Suwiryo Street were part of the joint property of the Plaintiff and the Defendant.²³ The sale of the land and building on Suwiryo Street was made by the Plaintiff at a time when the Plaintiff and the Defendant were still legally bound together, so the proceeds of the sale are the joint property of the Plaintiff and the Defendant. This is based on Article

²² Tihami & Sobari Sahrani, *Fikih Munakahat Kajian Fikih Lengkap*, hlm. 262

²³ Putusan Perkara Nomor 334/Pdt.G/2017/PN.Jkt, hlm. 17

35 paragraph (1) of the Marriage Law which expressly states that property acquired during marriage becomes joint property.²⁴

Although the Plaintiff and Defendant's marriage broke up due to divorce in 2017, the Defendant argues that the object in dispute is part of the joint property (*gono gini*) obtained when the Plaintiff and Defendant were still legally married. The Defendant also stated that because the money considered as the Plaintiff's loan was a distribution of the proceeds from the sale of the joint property, the Defendant was entitled to the proceeds from the sale of the joint property.

However, the Plaintiff stated that the land and building on Suwiryo Road were purchased from the proceeds of the sale of land in the Cipulir area which was a grant from the Plaintiff's mother. It is true that the land and building on Suwiryo Street were sold, but it must be remembered that the land and building on Suwiryo Street was a grant from the Plaintiff's mother. The grant from the Plaintiff's mother was made on September 29, 1995, after the Plaintiff and Defendant were legally husband and wife. According to the legal provisions of joint property, the husband or wife can act upon the consent of both parties. Meanwhile, the assets of each husband and wife have the full right to carry out legal actions regarding their property.²⁵ The problem is whether the property received during the marriage is innate property or joint property (*gono gini*)?

Joint Property and Inherited Property

The term that often refers to joint property is marital property or marriage property. Marriage property is property acquired during the course of a marriage (property or wealth acquired during marriage).²⁶ J. Satrio defines marital property law as a legal regulation that regulates the legal consequences of marriage on the property of husband and wife who have entered into marriage. Marital property law is a translation of the word *huwelijksvermogensrecht*, while marital property law is a translation of the word *huwelijksgodereenrecht*.²⁷

Joint property is an Islamic family law practice that is indigenous to Indonesia, because it is not found in classical fiqh and Islamic law practices in other Muslim

²⁴ Putusan Perkara Nomor 334/Pdt.G/2017/PN.Jkt, hlm. 14

²⁵ Hilman Hadikusuma, *Hukum Perkawinan Indonesia, Menurut Perundangan, Hukum Adat, Hukum Agama*, Cetakan 1, Mandar Maju, Bandung, 1990, hlm. 123.

²⁶ Asnawi MN, *Hukum Harta Bersama: Kajian Perbandingan Hukum, Telaah Norma, Yurispruden dan Pembaharuan Hukum*, Penerbit Kencana Jakarta, 2020, hlm. 33. Wiwin Sutini, Putu Eka Trisna Dewi, "Pembagian Harta Bersama Pasca Perceraian Terhadap Kontribusi Isteri Sebagai pencari Nafkah (Studi Komparasi di Australia, Malaysia dan Jepang)", *Jurnal Aktual Justice*, Volume 6, Nomor 2, Desember 2021, hlm. 124.

²⁷ Poltak Siringoringo et. al, "Hasil Dari Harta Bawaan, Hadiah dan Warisan Dalam Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan", *Honeste Vivere Journal*, Volume 33, Issue 2, 2023, hlm. 143.

countries.²⁸ Joint property (gono gini) in classical fiqh books is defined as property produced by husband and wife while they are bound by the rope of marriage.²⁹ Joint property (gono gini) is property that is produced in the path of shirkah (partnership) between husband and wife, so that there is a mixture of assets between one another and can no longer be distinguished.³⁰ Joint property in Islam is more identical to syirkah abdan mufawwadah, which means energy sharing and unlimited sharing.³¹

Joint property is property obtained by husband and wife during marriage. Any asset acquired during marriage, either acquired by the husband or by both husband and wife, becomes joint marital property. The provisions for joint marital property are regulated in the Marriage Law No. 1 of 1974.³² Joint property is property obtained by the husband and wife with their efforts during the marriage period, whether they work together to obtain property or only the husband works.³³ The wife in the acquisition of joint property, is not obliged to collect joint property, but she must carry out her obligations as a wife in household life.³⁴

Islamic law does not recognize the mixing of joint property³⁵ between husband and wife in marriage unless there is a marriage agreement. The Quran and Hadith of the Prophet Muhammad SAW are also not found specifically about the concept of joint property in marriage. Since the joint property is not found in the Al-Quran and Hadits texts, qiyas can be made with existing fiqh concepts, namely the syirkah or

²⁸ Abidin Nurdin, "Tujuan Hukum Islam Untuk Kemaslahatan Manusia: Penerapan Kaidah Fiqhyah dalam Bidang Ekonomi dan Hukum Keluarga", *Jurnal El Usrah: Jurnal Hukum Keluarga*, Volume 5 Nomor 1, Januari-Juni 2022, hlm. 51.

²⁹ Muhammad Ibn Ahmad Isma'il al Muqaddim, *Al-Mar'ah Bayn Al-Takrim Al-Islami Ihanat Al-Jahiliyah*, Kairo, Dar Ibn Al-Jawzi, 2005. Kutbuddin Aibak dan Inama Anusantari, "Pengaturan Harta Bersama Pasca Perceraian: Studi Komparatif Hukum Keluarga Islam Indonesia dan Malaysia", *Jurnal Hukum Islam*, Volume 22, Nomor 2, Desember 2022, hlm. 78-79.

³⁰ Andi Tenri Lukman, Muhammad Ilyas, "Penyelesaian Pembagian Harta Akibat Perceraian di Pengadilan Agama Maros", *Journal of Lex Generalis (JLS)*, Volume 2, Nomor 2, Februari 2021, hlm. 737. Abdul Manan, *Masalah Hukum Perdata Islam di Indonesia*, Penerbit Kencana Jakarta, Cetakan Kedua, 2006, hlm. 109.

³¹ Tihami dan Sobari Sahrani, *Fikih Munakahat Kajian Fikih Lengkap*, Penerbit Rajawali Pers, Cetakan 3, 2013, hlm. 181.

³² Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*, Penerbit Kencana, Jakarta, 2006, hlm. 184. Ermi Suhasti Syafei dan Siti Djazimah, "Mediation in the Sttlement of Joint Marital Property Disputes: a Study at Tanjung Karang Religious Court, Lampung," *Jurnal Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, Volume 5 Nomor 2, July-December 2021, hlm. 876.

³³ Mohammad Idris Ramulyo, *Hukum Perkawinan, Hukum Kewarisan, Hukum Peradilan Agama dan Zakat Menurut Hukum Islam*, Sinar Grafika, Jakarta, 2000, hlm. 34.

³⁴ Mursyid, "Ijtihad Hakim dalam Penyelesaian Perkara Harta Bersama di Mahkamah Syariah Banda Aceh", *Ar-Raniry: International Journal of Islamic Studies*, 2014, hlm. 323.

³⁵ Shafa Salsabila, "Pembagian Harta Bersama Dalam Perceraian Ditinjau dari Perspektif Teori Keadilan", *Zaaken Journal of Civil and Business Law*, Volume 4 Nomor 2, Juni 2023, hlm. 229. Soemiyati, *Hukum Perkawinan Islam dan UU Perkawinan*, Penerbit Liberty, Yogyakarta, 2004, hlm. 99.

partnership.³⁶ The Al-Quran does not stipulate the concept of joint property between husband and wife. However, in classical fiqh, it is possible to have syirkah on the assets of husband and wife, involving the combination of assets known in trade books.³⁷

The fiqh experts in Indonesia give different opinions regarding joint property. The first view states that Islamic law regulates the issue of joint property, namely the Quran through Surah Al-Baqarah verse 228, Surah An-Nisa verses 21 and 34, and the second view states that Islam has never recognized joint property other than the word shirkah (agreement) between husband and wife which before or during the marriage has made a marriage agreement.³⁸

The difference is due to the understanding of sharia at the time of the formation of the fiqh books and the state of society at that time did not recognize the concept of joint property.³⁹ Joint property in Indonesia is known through customary law which is applied continuously as a living law. Therefore, the institution of joint property is impossible to get rid of because the benefits outweigh the harms.⁴⁰

Islam recognizes the separation of property, the wife's property belongs to and is controlled by the wife, while the husband's property is controlled by the husband.⁴¹ Islamic law gives the husband and wife the right to own property individually, which cannot be contested by other parties. Husbands who receive gifts, inheritances and so on without the participation of the wife, have the right to fully control the property they receive.⁴² Wives who receive gifts, inheritance, dowry and so on without the participation of the husband, is entitled to full control of the property he received it.

³⁶ Robi'atul Adawiyah, "Islamic Family Law Reform and Its Implications for Women's Rights in Indonesian and Malaysian Marriage Law, Cirebon, 2019, dalam Siti Marlina, "Joint Property After Divorce in Polygamous Marriage: Comparative Research in Indonesian and Malaysia," *Jurnal Al-Risalah, Forum Kajian Hukum dan Sosial Kemasyarakatan*, Volume 22 Nomor 2, December 2022, hlm. 276

³⁷ Siti Marlina, "Joint Property After Divorce in Polygamous Marriage: Comparative Research in Indonesian and Malaysia," *Jurnal Al-Risalah, Forum Kajian Hukum dan Sosial Kemasyarakatan*, Volume 22 Nomor 2, December 2022, hlm. 276.

³⁸ Jamaluddin, Nanda A, *Buku Ajar Hukum Perkawinan*, Penerbit Unimal Press, Aceh, 2016, hlm. 127.

³⁹ Evi Djuniarti, "Hukum Harta Bersama ditinjau dari Perspektif Undang-Undang Perkawinan dan KUHPperdata", *Jurnal Penelitian Hukum De Jure*, Volumen 17, Nomor 4, Desember 2017, hlm. 448.

⁴⁰ M. Beni Kurniawan, "Pembagian Harta Bersama ditinjau dari Kontribusi Suami Istri Dalam Perkawinan: Kajian Putusan Nomor 618/Pdt.G/2012/PA.Bkt, *Jurnal Komisi Yudisial*, Volume 11 Nomor 1, 2018, hlm. 43.

⁴¹ Kutbuddin Aibak dan Inama Anusantari, "Pengaturan Harta Bersama Pasca Perceraian: Studi Komparatif Hukum Keluarga Islam Indonesia dan Malaysia", *Jurnal Hukum Islam*, Volume 22, Nomor 2, Desember 2022, hlm. 75.

⁴² Muthmainah, F. Setiawan Santoso, "Akibat Hukum Harta Bersama Perkawinan Dalam Pewarisan di Indonesia Analisa Komparatif Hukum Islam dan Hukum Adat", *Jurnal Ulumuddin: Jurnal Ilmu-Ilmu Keislaman*, Volume 9, Nomor 1, Juni 2019, hlm. 84

Marital property in the Marriage Law is regulated in Articles 35-37. The Marriage Law states that property obtained during marriage becomes joint property. Joint property is acquired by the husband and wife together, provided that their marriage is valid.⁴³ The husband and wife can act under mutual agreement regarding the common property.⁴⁴ Any property acquired during marriage becomes joint property without regard to who gets the joint property.⁴⁵ Livelihood assets obtained while the husband and wife are bound in marriage and the assets are not obtained through inheritance, gifts and grants.⁴⁶

Premarital property is any asset obtained by either husband or wife before being bound by marriage, as gifts or inheritance. Article 35 paragraph (2) explains that each party has the right to use and seek premarital or inherited assets as well as to control their own assets even though the parties are bound as husband and wife in a marriage bond.⁴⁷ The inherited property of each husband and wife and the property obtained by each as a gift or inheritance are under their respective control as long as the parties do not determine otherwise.

KHI also regulates property in Articles 85 to 97. Article 1 letter f KHI states that property in marriage or *syirkah* is property obtained either individually or jointly by husband and wife during the marriage bond, hereinafter referred to as joint property, regardless of whether it is registered in the name of anyone. KHI states joint property as property obtained either individually or jointly by husband and wife during the marriage bond, without questioning registered in the name of anyone.⁴⁸ Another provision is that there is no mixing of property between husband and wife because of marriage, but this provision excludes it because of the agreement of both parties, both husband and wife. The wife's property remains the right of the wife, controlled by the wife, as well as the husband's property remains the right of the

⁴³ Felix M. Muchomba, "Parents' Assets and Child Marriage: Are Mother's Assets More Protective than Father's Assets?," *World Development* 138 (February 2021). Muhammad Subhi Aprintono et.al, "Comparing KHI and KHES in Marital Property Grant Dispute: An Analysis of Judges' Views," *Al-Istinbath, Jurnal Hukum Islam*, Volume 8 Nomor 1, May 2023, hlm. 38.

⁴⁴ Natalie KLEIN, "Dispute Settlement - Islamic Law and International Law: Peaceful Resolution of Disputes by Emilia Justyna POWELL. New York: Oxford University Press, 2020. EBook.,," *Asian Journal of International Law* 11, no. 1 (January 25, 2021): 207-8, Muhammad Subhi Aprintono et.al, "Comparing KHI and KHES in Marital Property Grant Dispute: An Analysis of Judges' Views," *Al-Istinbath, Jurnal Hukum Islam*, Volume 8 Nomor 1, May 2023, hlm. 38.

⁴⁵ Winarno, "Pembagian Harta Bersama Dalam Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 dan Hukum Islam", *Jurnal Asy Syar'iyah: Jurnal Ilmu Syariah dan Perbankan Islam*, Volume 5, Nomor 1, Juni 2020, hlm. 86.

⁴⁶ Lintang Fajarisyta Setiawan, "Pembagian Harta Bersama Pada Saham Pendirian Perseroan Terbatas", *Jurnal Penegakan Hukum Indonesia*, Volume 3 Issue 3, Oktober 2022, hlm. 286.

⁴⁷ Ermi Suhasti Syafei dan Siti Djazimah, "Mediation in the Settlement of Joint Marital Property Disputes: a Study at Tanjung Karang Religious Court, Lampung," *Jurnal Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, Volume 5 Nomor 2, July-December 2021, hlm. 876.

⁴⁸ Yurisprudensi Mahkamah Agung, Nomor 808 K/Sip/1974

husband and has full power over the property. The concept of joint property is recognized in KHI.⁴⁹

The Civil Code (KUHPperdata) regulates joint property, definitions, qualifications, rights and responsibilities, exceptions to joint property and marital agreements related to mixing property.⁵⁰ The management of marital property in the Civil Code is based on *Maritale Macht*, as stipulated in Article 105 of the Civil Code, that the husband is the head of the husband and wife partnership (*de man is het hoofd der echtvereeniging*), while the wife must obey and obey the husband as stipulated in Article 106 of the Civil Code.⁵¹ Article 108 of the Civil Code in principle explains that if a woman who is bound in marriage wants to take legal action, she must obtain permission from her husband (not legally capable / *nonbekwaamheid*).

any property obtained from When the marriage contract is held until the breakup of the marriage, both because of divorce or death, then all of these assets by itself becomes a common property without looking at anyone The property was acquired. Exclusion of joint property, when The property is in the form of inheritance, will or grant received by one of the parties. The property is counted as the personal property of each each party and is fully controlled by him.⁵²

Pitlo argues that the principles of *maritale macht* and *onbekwaamheid* are two different principles and have legal consequences. The legal effect of the *maritale macht* principle is that the husband is authorized to manage most of the property, while the *onbekwaamheid* principle results in the wife taking legal actions, must obtain permission from the husband.⁵³

Legal Analysis of Property Received at the Time of Marriage as Inherited Property

Marriage, which aims to form a happy and eternal family, means that marriage must last a lifetime and cannot be terminated.⁵⁴ After the marriage contract,

⁴⁹ Wiwin Sutini, Putu Eka Trisna Dewi, "Pembagian Harta Bersama Pasca Perceraian Terhadap Kontribusi Istri Sebagai Pencari Nafkah (Studi Komparasi di Australia, Malaysia dan Jepang)", *Jurnal Aktual Justice; Jurnal Ilmiah Magister Hukum*, Volume 6 Nomor 2, Desember 2021, hlm. 128.

⁵⁰ Hanafi Arief, Implementasi Yuridis Perjanjian Kawin Dalam Sistem Hukum Positif, *Yariah Jurnal Ilmu Hukum*, Volume 15, Nomor 2, Desember 2015, hlm. 143.

⁵¹ Wiwin Sutini, Putu Eka Trisna Dewi, "Pembagian Harta Bersama Pasca Perceraian Terhadap Kontribusi Istri Sebagai Pencari Nafkah (Studi Komparasi di Australia, Malaysia dan Jepang)", hlm. 126

⁵² M. Beni Kurniawan, "Pembagian Harta Bersama Berdasarkan Kontribusi dalam Perkawinan", *Jurnal Ahkam: Jurnal Ilmu Syariah*, Volume 17 Number 2, 2017, hlm. 358

⁵³ Evi Djuniarti, "Hukum Harta Bersama Ditinjau Dari Perspektif Undang-Undang dan KUHPperdata", *Jurnal Penelitian Hukum De Jure*, Volume 17, Nomor 4, Desember 2017, hlm. 460

⁵⁴ K. Wantjik Saleh, *Hukum Perkawinan Indonesia*, Ctk. Keempat, Penerbit Ghalia Indonesia, Jakarta, 1976. hlm. 15.

the husband and wife have directly bound themselves in a marriage bond.⁵⁵ The legal effect of the existence of a legal marriage bond between husband and wife is on the property intended to fulfill the daily life of the household built by husband and wife.⁵⁶

Married couples are required to understand the regulation of marital property, both inherited and joint property. The goal is that married couples can distinguish which assets are included in the congenital and joint assets.⁵⁷ Not understanding the meaning of inherited property and joint property can lead to disputes between husband and wife. Especially if the husband and wife cannot maintain their household so that a divorce occurs. Disputes over inherited property and joint property will indirectly be affected by the divorce.

This dispute over inherited and shared property occurred in case register number 334/Pdt.G/2017/PN.Jkt.Sel jo Decision Number 391/Pdt/2018/PT.DKI jo Decision Number 2582 K/Pdt/2019. The Plaintiff and Defendant are husband and wife who were married in 1991. However, on March 23, 2017 the Plaintiff and Defendant divorced at the Central Jakarta Religious Court.

Before the Plaintiff was married, the Plaintiff received a grant from the Plaintiff's father in 1971. After the Plaintiff married the Defendant, the Plaintiff received a grant from the Plaintiff's mother in 1995. Both assets obtained from the grants of the Plaintiff's parents were sold. Some of the proceeds from the sale were borrowed by the Defendant to run his business and some of the proceeds were used to buy a residential property on Suwiryo Road.

Over time, the Defendant in conducting its business became indebted to several creditors. In order to repay their debts, the Defendant asked the Plaintiff to sell their residential land on Suwiryo Road. The Plaintiff agreed to the Defendant's request, but on the condition that the proceeds from the sale of the residential land on Jalan Suwiryo would be used to buy land for the children of the Plaintiff and Defendant and partly to pay the Defendant's debts.

Eventually, the Plaintiff and Defendant agreed and drafted a joint agreement in 2012. The letter of agreement stated that the money given to the Defendant was an interest-free loan from the Plaintiff to the Defendant with a maturity date of July 28, 2022. In addition, the contents of the mutual agreement stated that the Plaintiff could collect the loan money before maturity for any reason.

The Plaintiff and the Defendant divorced in 2017, due to domestic disharmony. The breakup of the Plaintiff's marriage with the Defendant was a strong reason for the Plaintiff to collect the money loaned to the Defendant. This was agreed

⁵⁵ Yusuf, Dynamics of Marriage Age Limits in Indonesia: A Study of Psychology and Islamic Law, *Journal of Islamic Law (JIL)*, Vol. 1, No. 2, 2020, hlm. 210.

⁵⁶ Abd. Rouf, Jurimetrics in the Reconstruction of the Joint Property Division Model for Wage-Earner Wives in Indonesia, *Al-Ahkam*, Vol. 34 No. 1 (2024), hlm. 5.

⁵⁷ Asman And Resali Bin Muda, Marriage Agreement Controversy In Indonesia-Malaysia Border Communities In Sambas Regency, *El-Mashlahah*, Volume 13 No. 1, June 2023, hlm. 7.

by both parties in the letter of agreement. The Plaintiff issued a summons to the Defendant, requesting the Defendant to pay the debt. The Plaintiff gave a grace period of 7 (seven) days from May 6, 2017 for the Defendant to settle the debt. However, the Plaintiff's summons did not receive a response from the Defendant. The Defendant still did not pay the debt to the Plaintiff, so the Plaintiff filed a lawsuit for default to the local District Court.

The Defendant during the trial made several arguments, namely that the sale of the residential land on Jalan Suwiryo was one of the joint assets acquired when the Plaintiff and Defendant were still married. The Defendant argued that Article 35 paragraph (1) of the Marriage Law states that property acquired during marriage becomes joint property. Because the residential land on Jalan Suwiryo was joint property acquired by the Plaintiff and the Defendant while they were still married, the Plaintiff and the Defendant had economic rights over the joint property.⁵⁸

The understanding of Article 35 paragraphs (1) and (2) of the Marriage Law distinguishes property in marriage into property obtained during marriage which becomes joint property and inherited property of each husband and wife, whether the property was obtained before marriage or in marriage which was obtained by each (as a gift or inheritance) as personal property. Article 85 KHI is in line with the norms of Article 35 paragraphs (1) and (2) of the Marriage Law which explain that joint property in marriage does not rule out the possibility of the existence of property owned by each husband and wife.

Article 86 paragraphs (1) and (2) KHI emphasizes the innate property which states that basically there is no mixing between the husband's property and the wife's property due to marriage. The wife's property remains the right of the wife and is fully controlled by her, the husband's property remains the right of the husband and is fully controlled by him. This property can be a gift or inheritance obtained by each husband or wife after or before marriage. This property is the innate property of the husband or wife and such property cannot be included in the scope of joint property unless the wife has arranged it in a marriage agreement.

Article 87 paragraphs (1) and (2) KHI states that the innate property of each husband and wife and the property obtained by each as a gift or inheritance is under their respective control as long as the parties do not determine otherwise in the marriage agreement. Husbands and wives have the full right to carry out legal actions on their respective assets in the form of grants, gifts, alms or others. The status of control is fully in the owner. The owner is free to give gifts, alms or other legal actions with the property for others.

Judge examining the case Decision Number 334/Pdt.G/2017/PN.Jkt.Sel., jo. Decision Number 391/PDT/2018/PT.DKI jo. Decision Number 2582 K/ PDT/2019 is correct in providing legal considerations. The money given by the Plaintiff (husband) to the Defendant (wife) is the Plaintiff's (husband's) inherited property

⁵⁸ Putusan Perkara Nomor 334/Pdt.G/2017/PN.Jkt, hlm. 13-14.

obtained from a grant from the Plaintiff's (husband's) parents and not joint property (gono gini). The property was obtained by the Plaintiff (husband) before marriage or during marriage which was obtained by each (as a gift or inheritance) as personal property.

A similar case was decided by the Yogyakarta Religious Court in registrar Number 194/Pdt.G/2013/PA.Yk. In that case, the Petitioner before marrying the Respondent already had inherited property in the form of a plot of land with building rights. After the marriage, the land was sold and the proceeds were used to buy land and buildings elsewhere. The Applicant in this case requested the Panel of Judges to determine the land and building as the Applicant's inherited property. The Panel of Judges in its legal reasoning stated that the request was valid and not against the law. The Panel of Judges in its verdict stated that the applicant was the owner and the property of the land and building.⁵⁹

In the case a quo, the Plaintiff asserted that he could prove that his land ownership was a grant from his parents which was then sold to purchase land on Suwiryo Street. The Plaintiff stated that the grant from his parents as outlined in the Notarial Grant Deed included a clause that the grant was not included in the mixed assets of the Grantee, in this case the Plaintiff.⁶⁰

The purchase of the land at Jalan Suwiryo was obtained from the proceeds of the sale of the Plaintiff's land which originated from the Plaintiff's inherited assets obtained from the grant of the Plaintiff's parents. The land on Suwiryo Street was sold and the proceeds were distributed to her 3 (three) children and the other portion of Rp. 6,000,000,000.00 (six billion rupiah) was loaned to the Defendant to pay the Defendant's debt with another party. During the trial, the Defendant was unable to prove that the disputed property was the joint property of the Plaintiff and the Defendant during their legal marriage.

At the appellate level, the panel of judges examining case number 391/PDT/2018/PT.DKI agreed with the considerations and decisions delivered by the panel of judges examining the first level case. The panel of judges examining the appeal level gave legal considerations that the panel of judges of the first level had considered the matters submitted by the Appellant (originally the Defendant) and the Appellant (originally the Plaintiff). The panel of appellate judges stated that there was nothing new that could change the decision of the first instance panel, so the appellate panel decided that the first instance decision must be maintained and upheld.⁶¹

Decision Number 391/PDT/2018/PT.DKI was requested for a decision at the Cassation level by the Defendant (Appellant), with Case Number 2582 K/

⁵⁹<https://www.hukumonline.com/klinik/a/status-rumah-yang-dibeli-dengan-uang-hasil-menjual-harta-bawaan-lt611e167d75b96>, di akses 1 Maret 2024, pukul 16,00

⁶⁰ Putusan Perkara Nomor 334/Pdt.G/2017/PN.Jkt, hlm. 2.

⁶¹ Putusan Nomor 391/PDT/2018/PT.DKI, hlm. 51.

PDT/2019. The Cassation Level Panel (judex juris) provides legal considerations that the judex factie in providing legal considerations is not wrong in applying the law. The Panel of Examining Judges in Case Number 2582 K/ PDT/2019 was of the opinion that the Plaintiff was proven to own the land given (grant) by his parents. The land was sold to buy land on Suwiryo Street. The Plaintiff sold the land on Suwiryo Street, the proceeds were distributed to his 3 (three) children and the other part of Rp. 6,000,000,000, 00 (six billion rupiah) was borrowed by the Defendant. It was proven that the Defendant did not return the borrowed money, until the agreed time limit even though a summons had been given. The Defendant was declared in default and ordered the Defendant to return the money borrowed by the Plaintiff.⁶²

Decisions that can be executed are condemnatory decisions, which contain a punishment. Decisions whose rulings or dictums are declaratory or constitutive do not need to be executed or implemented, because once such decisions are pronounced, the situation declared valid by the declaratory decision comes into effect at that time, or in the case of a constitutive decision, a new situation has been created at that moment. The gift (grant) of the Plaintiff's parents to the Plaintiff is the Plaintiff's inherited property. Although the grant was made during the marriage of the Plaintiff and the Defendant, the property was still the Plaintiff's inherited or original property. The position of inherited property belongs to and is under the control of each of them, during marriage as stipulated in Article 35 paragraph (2) of the Marriage Law and Article 86 KHI.

In addition, the Plaintiff and the Defendant were not followed by a Marriage Agreement stating that the inherited property became joint property (gono gini). The panel of judges examining the case at the judex factie and judec juris levels also stated that the Defendant could not prove that the money was the proceeds from the sale of the land of the joint property (gono gini) which was made the right of the Defendant. On the other hand, the Plaintiff was able to prove that the purchase of the land on Suwiryo Street was obtained from the proceeds of the sale of the Plaintiff's land which originated from the Plaintiff's inheritance given by the Plaintiff's parents.

Conclusion

The property obtained from giving (grant) is innate property. Even though the grant is carried out when the husband and wife are still bound by a legal marriage or are still in the marriage period, the property is still innate or original property. The inherited property of each husband and wife, whether the property was obtained before marriage or during the marriage period obtained by each of them as a gift or inheritance as personal property. The position of inherited property belongs to and is under the control of each other, during the marriage as stipulated in Article 35 paragraph (2) of the Marriage Law and Article 86 of the Compilation of Islamic Law. The owner is free to take legal action against the property. The inheritance of the

⁶² Putusan Nomor 2582 K/ PDT/2019, hlm. 5-6.

husband or wife and such property cannot be included in the scope of joint property unless the husband and wife have arranged it in the marriage agreement.

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