

## VIEW OF ISLAMIC LAW AND CIVIL LAW ON THE DIVISION OF JOINT PROPERTY POST-DIVORCE

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**Abstract:** Joint property is property acquired either individually or jointly by the husband and wife during the marriage bond, regardless of the name of the item. The purpose of this research is to find out the distribution of joint assets after divorce according to Islamic law and civil law and the benefits of the research that the results of this research can provide knowledge for academics in studying law, especially marriage law. For the community as information material or input for the process of fostering legal awareness for the community to minimize the occurrence of disputes regarding the distribution of joint assets. The research method used in this writing is library research using descriptive qualitative methods or library research. The results of this study indicate that in civil law and Islamic law it is emphasized that a divorced husband and wife are each entitled to half of the joint property. only in the Civil Code there is a clause namely "without questioning which party the property comes from" this shows that the wife and husband have the same contribution to the existence of property in their marriage. We recommend that the division of joint assets be done fairly, so as not to cause injustice between what is the right of the husband and what is the right of the wife. If there is a dispute between husband and wife regarding joint property, then the settlement of the dispute is submitted to the court. Settlement through court is an option. Provisions regarding the distribution of joint assets are based on conditions accompanying a marriage relationship, such as death, divorce, and so on.

**Keywords :** Distribution, Joint Property, Islamic Law, Civil Law

### A. INTRODUCTION

Marriage or better known as Marriage is a physical and spiritual bond between a man and a woman as husband and wife by forming a happy and eternal family based on Belief in One Almighty God. (Harimurti 2021: 150)

Marriage is a sunatullah that is general and applies to all creatures, both humans, animals and plants. This is the way chosen by Allah SWT for all creatures to reproduce, and sustain their life. (Tihami & Sahrani 2010: 6)

Allah SWT says in the Qur'an:

O Allah وَقَبَابِلَ لِنَعَارِفُوا ۚ إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَىٰكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

*It means: "O people! Indeed, We have created you from a male and a female, then We made you nations and tribes so that you may know one another. Verily the most noble of you in the sight of Allah is the one who is the most pious. Indeed, Allah is All-Knowing, All-Aware." (QS Al Hujurat: 13)*

Islam views marriage as a sacred agreement, meaning worship to Allah, following the Sunnah of the Prophet and carried out on the basis of sincerity, responsibility, and following legal provisions that must be carried out. In the Republic of Indonesia Law Number 16 of 2019 concerning Marriage Chapter I article 1. Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on Belief in One Almighty God. And humans will not develop without marriage. Because, marriage will cause humans to have children.

Marriage or marriage is a physical and spiritual bond between a man and a woman to form an eternal and happy family. Marriage is carried out with the intention that humans have a legitimate family to achieve a happy life in this world and the hereafter, with the pleasure of Allah SWT. (Musyafah 2020: 112)

The purpose of marriage is to form a happy and eternal family. Therefore, a sense of mutual tolerance and complementarity must always be created in the household. Because once this marriage begins, it cannot be damaged by trivial matters, every thing that ends up in the breakdown of the household is something that is hated by God. Therefore, divorce is something that is lawful but is hated by Him. (Azizah 2012: 415)

Divorce is a part of marriage, because there can be no divorce without a previous marriage. Marriage is the beginning of living together between a man and a woman which is regulated in the laws and regulations in a country, while divorce is the end of living together between husband and wife. Everyone wants their marriage to remain intact throughout their life, but not a few of them have painstakingly cultivated marriages that end in divorce.

Divorce is the breaking up of a marriage between husband and wife because there is no harmony in the household or other reasons such as the infertility of the wife or husband, while what is meant by talak according to Sayyid Sabiq is releasing the marriage bond or dissolving the marriage, this is prohibited unless there is a valid reason and it occurs. something really urgent. If divorce is done without a valid reason and is not urgent, then divorce means denying God's favor and doing evil to the wife.

Divorce can only be done if various methods have been taken to reconcile the two parties (husband and wife) to maintain the integrity of the household and it turns out that there is no other way but divorce. This is in accordance with what is outlined in Islam, that divorce is an act that is justified and permissible if it is better than remaining in a marriage bond, but happiness cannot be achieved and is always in suffering. (Yusuf 2014: 74)

If a divorce occurs, it is certain that it will have consequences for people related to one household, in which case the legal consequences will be emphasized. The legal

consequences of divorce are of course also related to children and property while in marriage. (Sugiswati 2014: 201)

Article 126 of the Civil Code stipulates that divorce results in the division of joint assets between husband and wife. Along with the definition of marital joint assets as regulated in Law Number 16 of 2019 and the Civil Code, the Compilation of Islamic Law also regulates the same definition of joint assets as adhered to in Law Number 16 of 2019 and the Civil Code above. Joint assets in the Compilation of Islamic Law are called *syirkah* which means assets acquired either individually or jointly with the husband and wife during the marriage bond, without questioning whether it is registered in someone's name. (Tarigan 2021 : 268)

One of the legal consequences arising after the divorce is regarding the distribution of joint assets, because as it is known that in every marriage, each party of the husband or wife has assets that were brought and obtained before they entered into a marriage. Married husband and wife also have assets acquired during marriage which later in Marriage Law No. 16 of 2019 referred to as joint property. Husband and wife have the right to use the joint property they have obtained, while for the benefit of their household, of course with the agreement of both parties. And this property is different from inherited property which both have the right to use it without the consent of both or each has the right to control it as long as the parties do not specify otherwise, as stipulated in the Marriage Law No. 16 of 2019 article 35. If there is a divorce, joint assets are settled according to Islamic law for Muslim husbands and wives and according to the Civil Code for non-Muslim husbands and wives. (Nawawi 2013: 2)

Wealth is an important factor in marriage because it can be said to be the driving force of household life. In marriage, it is the husband who is obliged to provide maintenance for household life, in the sense that wealth in marriage is determined by the circumstances and responsibilities of the husband. But nowadays, where women have almost equal opportunities in social interaction, women also often play a role in household economic life. This of course will have an impact on the assets of a marriage, both during the marriage and if one day there is a divorce.

Assets in marriage are divided into shared assets and original or congenital assets. This is regulated in Article 35 of Law Number 16 of 2019 concerning Marriage, namely as follows:

1. Property acquired during marriage becomes joint property
2. Inheritance of each husband and wife and assets obtained by each as a gift or inheritance, are under the control of each as long as the parties do not specify otherwise.

From the meaning of Article 35 above, it can be understood that joint assets are all assets acquired while in a marriage bond outside of inheritance, grants. Therefore, the assets acquired by the husband or wife since the marriage ceremony are jointly owned by the husband and wife. In contrast to assets acquired before the marriage contract, namely original assets or inherited assets, these assets are the personal assets of each husband and wife. (Maspeke & Khishni 2017:174)

Based on the background that the author stated above, the writer is interested in conducting further research on the application of Islamic law and civil law in marriage which will be presented in the form of a thesis with the title: "THE VIEWS OF ISLAMIC LAW AND CIVIL LAW TOWARD THE DIVISION OF JOINT PROPERTY POST-DIVORCE "

## **B. RESEARCH METHODOLOGY**

This research uses a qualitative research approach, which is systematic research that is used to study or research an object in a natural setting without any manipulation in it and without any hypothesis testing .

The research method used in this writing is library research using descriptive qualitative methods or library research. Descriptive research is research with a method to describe a research result. As the name implies, this type of descriptive research aims to provide an overview, explanation, and validation of the phenomenon under study. (Ramadan 2021: 17).

In this study, researchers used two kinds of data, namely primary data and secondary data.

### **1. Primary data**

Primary data is data obtained directly from research subjects using measuring instruments or data return tools directly on the subject as a source of information sought. The primary data used is the Al-Qur'an, Hadith, Civil Code, Law no. 1 of 1974 and Compilation of Islamic Law.

### **2. Secondary data**

Secondary data is data obtained from other parties, not obtained by researchers from their research subjects. To obtain secondary data, it is done by means of literature study which contains information about primary library materials, especially through literature from library books, scientific papers. The secondary data used are journals, Islamic books and the internet which contain shared assets, and matters that are relevant to the problems that are the object of research study.

The most strategic step in this research is data collection techniques, because the main goal in any writing is how a writer can obtain the data. While the data collection technique used in this writing is the library research method, namely library research

Data analysis is a method used to find out how to describe data, data relations, data semantics and data boundaries in an information system. (Edi & Betshani 2009: 72)

After all the data has been collected and properly processed for writing, the next step is to analyze the data so that specific conclusions can be drawn. This writing uses an analysis with a qualitative approach, namely the research process and also an understanding based on a methodology that investigates social phenomena and problems that occur in human life.

## **A. RESULTS AND DISCUSSION**

### **A. Joint Property**

#### **1) Definition of joint property**

Joint assets in the Big Indonesian Dictionary mean assets that are jointly acquired in marriage. Joint property is a legal concept that is included in the realm of marriage law. Not only in Indonesia, other countries, both those that adhere to customary law and civil law, also recognize common legal institutions. (Asnawi 2022: 33)

Joint assets are assets in marriage that are produced jointly by husband and wife during the marriage period and this is included in the laws and regulations concerning marriage which regulate thoroughly the position of property in marriage. In principle, this law stipulates that property acquired during marriage becomes joint property. Inheritance of each husband and wife obtained before the marriage and respective assets obtained as gifts or inheritance, are under the control of each as long as the parties do not specify otherwise. (Harimurti 2021: 157)

It should be emphasized that the definition of joint property does not only include assets acquired, but also includes debts incurred during the marriage. This definition is an extension of the meaning of Article 35 paragraph (1) of the UUP which aims to balance the rights and obligations of husband and wife against dependent debts that arise during their marriage. (Asnawi 2022: 34)

#### **2) Basic law of joint property**

Basically there is no mixing of marital assets between husband and wife (joint property). The concept of joint property originally came from customs or traditions that developed in Indonesia. This concept is then supported by Islamic law and the positive laws that apply in our country. Thus it can be said that there is a possibility that there has been a mix-up between the husband's and wife's assets in their marriage. This mix of assets (joint property) applies if the couple does not specify other things in the marriage agreement.

The legal basis for joint assets can be traced through the following laws and regulations.

1. Article 35 paragraph 1 of the Marriage Law, states that what is meant by joint property is "assets acquired during marriage". This means that assets acquired prior to marriage are not referred to as joint assets.
2. Article 119 of the Civil Code states that "since the marriage takes place, according to law there is joint property between husband and wife, as long as there are no other provisions in the marriage agreement regarding this matter. Joint property, as long as the marriage is still ongoing, cannot be abolished or changed by agreement between husband and wife.
3. KHI article 85 It states that "The existence of joint property in a marriage does not rule out the possibility of the existence of the property of each husband or wife". This article already mentions the existence of joint property in marriage. In other words,

KHI supports the existence of a joint property union, although having united does not rule out the existence of a number of assets owned by each partner, both husband and wife.

4. In KHI article 86 paragraphs 1 and 2 it is again stated that "Basically there should be no mixing of husband's assets and wife's assets due to marriage" (paragraph 1). In paragraph 2 it is emphasized that basically the wife's property remains the right of the wife and is fully controlled by her, similarly the husband's property remains the right of the husband and is fully controlled by him. (Susanto 2008: 8)

Marriage Law Number 1 of 1974, the issue of joint property is only briefly and generally regulated in Chapter VII which consists of Articles 35 to 37. Then it is clarified by the Compilation of Islamic Law in Chapter XIII starting from Article 85 to Article 97.

### 3) Types of joint property

From a legal point of view, joint assets owned by husband and wife are regulated in Marriage Law No. 1 of 1974 articles 35, 36 and 37 as follows.

Article 35 :

1. Property acquired during marriage becomes joint property.
2. Inheritance of each husband and wife, assets obtained by each as a grant or inheritance are under the control of each recipient, the parties do not specify otherwise.

Article 36 :

1. Regarding joint property, husband and wife can act with the agreement of both parties.
2. Regarding their respective assets, husband and wife have full rights to take legal actions regarding their property.

Article 37 :

If the marriage is broken up due to divorce, joint property is regulated according to their respective laws.

The types of joint assets in article 91 of the Compilation of Islamic Law are stated as follows:

1. Joint property as referred to in Article 85 above can be in the form of tangible or intangible objects.
2. Tangible shared assets can be in the form of immovable objects, movable objects and securities.
3. Intangible shared assets can be in the form of rights or obligations.
4. Joint assets can be pledged as collateral by one of the parties with the approval of the other party.

Taking into account the articles mentioned above, what is considered as joint property is in the form of objects belonging to husband and wife that have economic

value and legal value, that is, have use value and there are legal rules governing them. Joint assets can be in the form of tangible objects which include movable and immovable objects and joint assets can be in the form of securities and joint assets can be in the form of intangible objects, rights and obligations.

#### 4) The Causes of the Formation of Joint Assets in Marriage

Article 35 paragraph 1 of Law no. 1 of 1974 has confirmed that all assets generated in marriage will be shared property. The formation of joint assets in marriage is from the occurrence of marriage until the termination of the marriage bond. All assets acquired from the time the marriage contract was held until the divorce, whether one of the parties dies or due to a divorce, all assets automatically according to law become joint property.

According to Mohd. Idris Ramulyo, the occurrence of joint property does not need to be accompanied by *syirkah*, because marriage with consent *qabul* and fulfilling other conditions such as: the presence of a guardian, witness, dowry, *walimah* and *illanun* marriage can already be considered *syirkah* between the two parties. husband and wife.

According to Sayuti Talib, assets owned by a husband or wife before marriage or assets acquired during marriage can be mixed into joint assets with an agreement made in a certain way. The occurrence of mixing of husband and wife assets can be done as follows:

1. By entering into a real agreement both in writing and verbally before or after the marriage contract is held in a marriage, both for each other's inherited assets and assets acquired during the marriage, but not for their own business or income.
2. It can also be regulated by laws or regulations, that assets acquired through the husband's or wife's business or both during the course of the marriage relationship, namely living assets are joint property of the husband and wife.
3. In addition to these two ways, the mixing of husband and wife assets can also occur with the reality of husband and wife life. (Rofi'i 2019: 44)

Agreement on special mix of assets acquired during marriage. Secretly, there has been a mix-up of husband and wife assets, when in fact they are united to make a living. Making a living here should not be interpreted as just making a living, but must also be seen from the point of view of the division of labor in the household. Even though the husband is working, if the wife cannot manage the household properly, then the husband's business will not develop. In terms of accumulating wealth in the household much depends on the division of labor between husband and wife.

So it can be concluded that joint property can be caused by two things, namely because of marriage as stipulated in Article 91 of the Compilation of Islamic Law and because of a written agreement made between husband and wife without any coercion from other parties. , whether read before the ceremony or after.

#### 5) Settlement of joint property disputes

Religious justice is one of the executors of judicial power in Indonesia. As one of the executors of judicial power, the existence of the religious court clearly has its own position and function in the midst of the exercise of other judicial powers. This judicial power is based on the provisions of law No. 3 of 1989 concerning the Religious Courts, the provisions in this law state that the authority of the religious courts includes disputes in the fields of Marriage, Inheritance, Wills, Grants, Zakat, Infaq, Shodaqoh and Sharia Economics.

This rule regarding the authority of the religious courts resulted in the addition of areas of authority so that new breakthroughs emerged, namely: firstly the abolition of the law (optional rights) in inheritance disputes, secondly the permitting of the religious courts to decide on property rights disputes and thirdly the enactment of the principle of submission to Islamic law as one of the foundations jurisdiction of the religious courts.

Based on the explanation above, there is a dispute about shared assets, the settlement of which falls under the authority of the religious court. This is also in accordance with Article 88 KHI, namely *"if there is a dispute between husband and wife regarding joint property, then the settlement of the dispute shall be submitted to the Religious Court"*.

These two regulations have emphasized that disputes that occur regarding the distribution of joint assets fall under the authority of the religious court, but if a husband and wife divorce and then the problem of joint property is carried out by deliberation or peace, then the distribution can be determined based on agreement or consent between the two parties and the method this is legal, which is the best way to go.

#### **B. Views of Islamic Law on the Distribution of Joint Assets Post-Divorce**

The Qur'an, hadith and fiqh law do not discuss in detail the issue of joint property in marriage, but only outline it. Islamic law experts when formulating articles 85 to 97 KHI agreed to take the *abdaan syarikah* as the basis for formulating the principles of joint property between husband and wife, also taking the approach of *muwafadhah syarikah* with customary law, so that the formulation of the definition of joint property is obtained as contained in article 1 KHI.

Although Islamic law does not recognize the mixing of individual private property into joint property, except for what is discussed in fiqh law regarding *sharikah*, it is recommended that there be mutual understanding between husband and wife in managing private property so as not to damage the relationship between husband and wife. Islamic law allows entering into marriage agreements before the marriage takes place in the form of merging personal property of each into joint property and if there is an agreement in marriage then the agreement is valid and must be implemented. (Judiasih 2019: 16)

Scholars have long been compiling books in the field of Islamic law which are called the Book of Fiqh. They divided the discussion in the book of fiqh into four parts.

- 1) *Rubu' Ibadah*, in which it specifically discusses worship, such as prayer, fasting, zakat and pilgrimage.



- 2) Rubu' Mu'amalah, which discusses various issues related to property law, contract law and commercial law.
- 3) Rubu' Munakahat, specifically discussed here on issues of marriage, divorce and related matters.
- 4) Ru'bu Jinayah. Here talking specifically about criminal law.

Joint assets of husband and wife should be included in rubu' mu'amalah, but apparently there was no special discussion. Perhaps because in general the authors of these books were Arabs, whereas Arab custom did not recognize the existence of customs regarding joint property between husband and wife. However, there is discussion regarding the issue of partnership which in Arabic is called syarikah or syirkah. (Damanhuri 2012: 38-39)

Joint assets or syirkah (marriage assets) are assets acquired either individually or jointly by the husband and wife during the marriage bond, regardless of being registered in someone's name. Joint property is also called joint property in Java, king's property in Sundanese, communal property in Sumatra. According to A. Hasan in Islam there is one problem like this, namely Syirkatul-Abdan which means body sharing.

The distribution of joint assets can refer to the following theories:

a. Islamic Law Compilation Theory

In brief, the principles of joint property law in Chapter XIII of the Compilation of Islamic Law can be described as follows:

1. Shared assets are segregated from individual assets
  - 1) Personal property remains private property and is fully controlled by the owner (husband or wife)
  - 2) Joint property becomes a shared right between husband and wife and is completely separate from personal property.
2. Joint assets are realized from the date the marriage took place
  - 1) Since then, joint property has formed by itself.
  - 2) Without questioning who saw.
  - 3) Without questioning in whose name it is registered.
3. Without mutual consent, husband or wife may not alienate or transfer.
4. Debt for the common interest is charged to shared assets.
5. In series or polygamous marriages, joint property is separated between the husband and each wife.
6. If the marriage is broken (died or divorced)
  - 1) Shared assets are divided in half
  - 2) Each gets half a share;

3) In case of death, the share becomes tirkah. (Nawawi 2018: 12-14)

The existence of joint assets in marriage does not rule out the possibility of personal assets of each husband and wife.

Even in the Compilation of Islamic Law Article 85 it is emphasized as follows.

- 1) Basically there is no mixing of husband and wife assets because of marriage.
- 2) The wife's property remains the right of the wife and is fully controlled by her, as well as the husband's property remains the right of the husband and is fully controlled by the husband.

Assets inherited from one another and obtained by each through inheritance, grants, or awards for themselves in marriage become private property and are under the control of each so that each person can take legal actions against objects as stated in the Compilation. Islam. Law Article 87 .

- 1) Inheritance of each husband and wife and assets obtained by each as a gift or inheritance are under the control of each, as long as the parties do not specify otherwise in the marriage agreement.
- 2) Husband and wife have full rights to carry out legal actions on each other's assets whether in the form of grants, gifts, alms or others.

If the husband and wife are divorced (divorced) or one of them dies, for example the wife dies, then the husband's share of the joint property must be separated before dividing half (1/2) of the joint property. Furthermore, the husband will get a share of the wife's pension in accordance with the provisions of the syara'. Likewise, if the husband dies, the joint property rights of the wife become half (1/2) as regulated in Article 96 of the Compilation of Islamic Law.

- 1) In cases of divorce and death, half of the joint property goes to the longest-living spouse.
- 2) The distribution of joint assets to husbands or wives whose wives or husbands are missing must be postponed until there is certainty of actual death or legal death based on the decision of the Religious Court.

Likewise the distribution of joint assets for divorced married couples, each gets half as stated in Article 97 paragraph (1) "*widows or widowers who are divorced each have the right to half of the joint assets as long as it is not specified otherwise in the marriage agreement.*"

Joint assets are also given to more than one heir wife as stipulated in article 190 which reads "*for heirs who have more than one wife, each wife is entitled to a share of the benefits of the household with her husband, while the entire inheritance is become the rights of his heirs .*

As an example, the case of the distribution of joint assets of a family. The wife who works as a housewife has inherited 1 hectare of rice fields from her parents. The land is cultivated using the maro system (the yield is divided in half by the cultivator), planted with rice with a yield of 8 tons per six months. Husband has 1 truck that can be

rented / used alone for the business of transporting goods every day with an average monthly income of Rp. 3,000,000. besides that, the wife's land is cultivated by the husband with this system, the income in six months:

- a. Wife's share: 4 tons of rice (the result of cultivating paddy fields)
- b. Husband : 4 tons of rice and Rp. 18,000,000 (6 x Rp. 3,000,000).
- c. The cost of living for the family (him, his wife and their children) is used, namely 1 ton of rice and 12,000,000, then the remaining business is 3 tons of rice and Rp. 6,000,000.
- d. Joint property: for the wife if the habit is used (1/3), then 1/3 (3 tons + Rp. 6,000,000) = 1 ton of rice and Rp. 2,000,000, while the husband 2/3 (3 tons of rice + Rp. 6,000,000) = 2 tons of rice and Rp. 4,000,000.
- e. The wife's total wealth in those six months is 1 hectare of land (4+1) tons of rice and Rp. 2,000,000.
- f. The wife's total wealth in those six months is 1 truck plus 2 tons of rice and Rp. 4,000,000.

If the wife's share of 1 hectare of paddy land is cultivated by someone else and she continues to work as a housewife, then the wife's total wealth in those six months is the paddy field with 4 tons of rice and Rp. 2,000,000, while the husband's wealth is a truck and Rp. 4,000,000. Husband and wife are obliged to look after their respective assets and the joint property that they have worked for and should not be jealous of their respective shares. Meditate on the word of God in QS An-Nisa verse 32.

**Amen اِكْتَسِبُوا لِلنِّسَاءِ نَصِيبٌ مِّمَّا اكْتَسَبْنَ وَاسْأَلُوا اللَّهَ مِنْ فَضْلِهِ ۗ إِنَّ اللَّهَ كَانَ بِكُلِّ شَيْءٍ عَلِيمًا**

Meaning: " And do not envy what Allah has bestowed upon some of you more than others, (because) for men there is a share of what they earn and for women (even) there is a share of what they strive and ask Allah for some of His bounty. Indeed, Allah is All-Knower of all things." (QS An-Nisa: 32)

If the calculation of joint assets refers to the Compilation of Islamic Law, then the joint assets are divided in half plus each individual's personal assets. That is the wealth of each that when death has picked him up, it can be calculated from the time the marriage begins until the day of his death.

#### b. Theory of Customary Customs

Customs ('urf) can be used as a reference in the distribution of shared assets that apply in several places in Indonesia. For example, in Java, the custom applies that if a husband dies, before dividing the inheritance according to faraid science, 1/3 of the property is separated first for the wife, then 2/3 is distributed among the heirs, including the wife. get back from that part according to the provisions of syara'. A. Hasan explained that initially this custom was carried out because the wife also worked to earn wealth, but over time, even though the wife was not working, she received 1/3 of the husband's property after marrying him.

Earning a living to support his wife and children is the husband's obligation, including doing household chores, caring for children and even breastfeeding them. The wife is obliged to serve her husband and obey him, including the obligation to remain at home except with the husband's permission. In Indonesia, it is customary for a wife not only to serve her husband's inner needs, but often to help with his work, even the wife's income exceeds her husband's. When entering into a marriage, the two parties do not enter into an agreement on the separation of assets, so that the assets obtained after the marriage contract are joint property even though the wife only works to serve her husband and works every day at home including taking care of it. from the child or vice versa. Therefore, if the husband dies naturally before the division of inheritance, there is a share of the joint property which is taken first for the wife according to custom. For example, taking 1/4 or 1/3 part first, then from the remaining assets that become the deceased's tirkah (joint assets reduced by the wife plus personal assets/personal wealth if any) the wife gets a share in accordance with the provisions of the syara'.

This practice shows that in relation to joint property, the husband's rights are 2 (two) times greater than the wife's, namely husband and wife  $(2+1) = 3$  meaning that the husband is  $2/3$  and the wife is  $1/3$ . The husband's rights can be even greater, for example the husband is  $3/4$  (three quarters) and the wife is  $1/4$  (one quarter). This is in line with the content of QS An-Nisa verse 34.

..... ۞ ??? آ أَنْفَقُوا مِنْ أَمْوَالِهِمْ

It means : "Men are leaders for women, because Allah has exalted some of them (men) over some others (women) and because they (men) have spent some of their wealth ... " )  
QS An-Nisa: 34 .(

Besides that, the good customs of Muslims are a virtue and can be used as a basis for acting as stated in the hadith of the Prophet.

فَمَا رَأَى الْمُسْلِمُونَ حَسَنًا، فَهُوَ عِنْدَ اللَّهِ حَسَنٌ، وَمَا رَأَى الْمُسْلِمُونَ سَيِّئًا فَهُوَ عِنْدَ اللَّهِ سَيِّئٌ

Meaning: " what is seen as good by the Muslims, in the sight of Allah is good, and what is seen as bad by the Muslims, then in the sight of Allah is also bad ."

The rule of law states:

الَّتَابِتُ بِالْعُرْفِ ثَابِتٌ بِالنَّصِّ

Meaning: " which is determined on the basis of 'urf is the same as that determined by nas ."

### C. Views of Civil Law on the Distribution of Joint Assets Post-Divorce

In the Civil Code, regarding joint assets according to law and their arrangements are regulated in Chapter VI Articles 119-138 which consists of three parts. Part One concerning Joint Assets under the Law (Articles 119-123), Part Two concerning

Management of Joint Assets (Articles 124-125) and Part Three concerning Dissolution of Joint Assets and the Right to Release It (Articles 126-138).

According to the Civil Code, since the marriage takes place there is joint property between husband and wife, as long as it is not regulated in the marriage agreement. As long as the marriage is in progress, joint assets cannot be abolished or changed with the consent of the husband and wife, this is regulated in article 119 which states that starting from the time the marriage takes place, by law a unanimous union between the assets of the husband and wife applies. (Judiasih 2019: 16)

Regarding the issue of profit, joint property includes movable and immovable property belonging to the husband and wife themselves, both existing and future, as well as goods that they obtain for free, except in the event that the last party who inherits or grants stipulates otherwise. expressly stated in Article 120 BW).

In Article 122 of the Civil Code or *Burgerlijk Wetboek* "From the moment the marriage takes place according to the law, a unanimous union applies between the husband and wife's assets, for this reason the marriage agreement does not overrule other provisions." The rule is that as long as marriage cannot be abolished or changed by agreement between husband and wife. All debts and losses during the marriage must be accounted for for the good fortune of the union. For those who are subject to Western Civil Law (BW) regarding assets acquired during marriage in Article 119 of the Civil Code it is stated. Starting from the time the marriage takes place, for the sake of law the union between unions applies, not between the assets of the husband and wife, only regarding this matter the marriage agreement does not make other provisions. This mixture in marriage cannot be abolished or changed by agreement between husband and wife. Thus, this article shows that as long as the assets become joint assets or mixed assets, according to the law it becomes a joint relationship, or if a husband and wife before entering into a marriage make a letter of agreement before a notary regarding their assets, then the husband and wife can take deviation according to the agreed agreement . There is. Thus it is clear here for those who are subject to BW regarding joint property that is coercive, meaning that after the marriage takes place, as long as joint property is involved in the marriage as long as no other agreement can be entered into. Here we must be able to distinguish, it does not mean that each party has the right to own half of the joint property, if later one of the parties dies, what we know as joint property in customary law, or mixed assets, this would be more appropriate. if we state that each husband and wife have rights over property, but for them they cannot exercise mastery (*beschekking*) over their respective shares.

Based on the provisions of Article 124 of the Civil Code, it is the husband who has the right to manage joint assets, including the authority to take various actions on the assets he owns. The contents of Article 124 of the Civil Code include:

- 1) Only the husband can take care of the joint property.
- 2) The husband may sell, surrender and encumber him without the help or knowledge of his wife, except in cases regulated in Article 140.

3) He may not give joint property as a gift between those who are both still alive, either immovable property or in whole or in part or a certain amount and movable property, if not to children who are born from their marriage, to be given a position.

4) In fact, the husband may not stipulate provisions by means of a grant regarding a certain item, if he has determined the usufructuary rights over that item for himself.

Based on these provisions, it can be seen that the husband himself manages the collection of assets, only the husband has the authority to take action on the assets that are regulated, and the wife may not interfere in the management. However, there are exceptions, namely husbands may not arrange as stated in Article 140 paragraph 3 of the Civil Code which states, they also have the right to make agreements, that although there is a collection of joint assets, fixed assets, registration certificates in the state loan ledger, securities and other receivables obtained on behalf of the wife, or during the marriage and the wife becomes joint property, may not be transferred or burdened by the husband without the consent of the wife.

Article 140 paragraph 2 of the Civil Code also stipulates that the agreement may not reduce the rights given to the husband as chairman of the husband and wife union, but this does not reduce the authority of the wife to sue herself. managing personal assets, both movable and immovable assets, in addition to enjoying free personal income. The actions referred to in paragraph 2 are decisive in nature, not in the sense of regulating (as in paragraph 1). That is, the husband's actions are limited, that is, he is not entitled to manage assets other than joint assets, such as inherited assets and assets acquired because these two types of assets remain under the authority of each spouse. For example, inheritance in the form of grants can only be taken care of when it comes to the lives of their children.

The right to joint property in marriage is essentially not only in the form of movable and immovable property acquired during the marriage, whether on behalf of or not on behalf of the wife and husband, but also in relation to what is the right of both parties. they brought into the marriage. For example, objects in the name of the wife in the form of bills of exchange and shares or valuable objects that were carried during the marriage, these objects cannot be changed to be in the name of the husband or in the name of the wife. Nevertheless, these objects remain part of the common property. These objects may be sold, transferred, or burdened by the husband without the mediation of the wife.

Based on the explanation above, it can be reiterated that the husband has so much authority or power over the management of joint assets. The husband is not responsible to the wife regarding this arrangement. He is also not obligated by his wife to provide an account for him, including if the joint property is then dissolved. Even so, the enormous power of the husband was limited by two things as follows. First, it is limited by laws and regulations. The husband's power in managing joint assets is limited by law. This is regulated in Article 124 paragraph 3 of the Civil Code. Husbands and wives can also donate together.

Based on the Civil Code, the wife also has the right to relinquish her share in the joint property, as follows: first, the wife is no longer entitled to her share of the joint property, except for the right to clothes, blankets and beds. linen. This is regulated in Article 132 paragraph 1 of the Civil Code. Second, the wife is limited in her obligations in terms of paying joint property debts. This is regulated in Article 132 paragraph 2 of the Civil Code. The time limit specified for the release right is one month after the dissolution of the joint property. especially after a divorce. Within that month, the wife can apply for the right of release to the Registrar of the District Court at the husband and wife's last residence. This provision is regulated in Article 133 paragraph 1 of the Civil Code. If the release occurs due to the death of the husband, the time limit of one month is calculated from the husband's death which is known by the wife. This is regulated in the Civil Code Article 133 paragraph 2.

Article 134 paragraph 1 stipulates that if the wife dies within one month before submitting the deed of release, "then the heirs have the right to relinquish their right to associate according to the method described in the previous article, and within one month after the death of the wife, or after the death known to them. Furthermore, paragraph 2 of the same article stipulates that the wife's right to blankets and bed linen cannot be fought for by her heirs. The loss of this release right is regulated in the Civil Code Articles 136 and Article 137. (Harimurti 2021:164-169)

The Civil Law regulates joint property in not less than 60 articles. Articles in the Civil Code regulate joint property, including the definition, terms of joint property, rights and obligations, exceptions, dissolution of joint property institutions, and marriage agreements regarding the mix of assets.

According to article 119 of the Civil Code, joint property is property acquired by husband and wife during their marriage. In other words, because a man and a woman are legally married, then at that time the unity (mixing) of husband and wife's assets legally applies if they want to make and carry out other provisions regarding the mixture of assets between them.

Article 128 paragraph (1) states: "after the dissolution of the union, the assets of the union are divided in half between the husband and wife, or between their respective heirs, regardless of which party the goods were obtained from." This article confirms that between husband and wife who are divorced each is entitled to half of the joint property. The verse "without questioning which party the assets come from" shows that the Civil Code places wives and husbands having an equal share in the existence of assets in their marriage. This means that the wife's role in managing the household is equivalent to the husband's role in earning a living in the family. (Asnawi 2022 :39-42)

Regarding the distribution of joint assets in marriage after divorce, in general, joint assets are divided equally between husband and wife. This is based on the provisions of Article 128 of the Civil Code above. We recommend that the division of joint assets be done fairly, so as not to cause injustice between what is the right of the husband and what is the right of the wife. If there is a dispute between husband and wife regarding joint property, then the settlement of the dispute is submitted to the court.

Settlement through court is an option. Provisions regarding the distribution of joint assets are based on conditions accompanying a marriage relationship, such as death, divorce, and so on. (Sugiswati 2014: 209).

### **Similarities and Differences in the Views of Islamic Law and Civil Law on the Distribution of Joint Assets after Divorce**

The similarity when filing a lawsuit for joint assets from the Religious Courts and the District Court is that the distribution of joint assets in marriage is carried out after there is a divorce guardian. Thus it can be understood that there are similarities in filing lawsuits for joint assets according to KHI and the Civil Code.

The difference between inherited property and joint property. Articles 86, 87 and 91 KHI do not distinguish between inherited assets and joint assets. Meanwhile, Article 150 of the Civil Code distinguishes innate property and joint property. Differences in the definition of inherited property and joint property affect the distribution of joint assets after the husband and wife divorce.

Differences in the distribution of joint assets according to KHI based on Article 97 Joint assets after divorce are divided equally, each half of which is the same between husband and wife. Meanwhile, according to the Civil Code, the division can be made based on the evidence submitted by the plaintiff and the defendant. Submission of weak evidence obtains a greater distribution of shared assets, in the case of submission of strong evidence belonging to the plaintiff, the plaintiff gets  $\frac{3}{4}$  of the share and the defendant gets  $\frac{1}{4}$  of the share. Thus the distribution of joint assets according to Article 128 of the Civil Code that after the dissolution of joint assets, joint assets are divided in half between husband and wife, but changes to the distribution can occur according to valid evidence in the judicial process. (Pradoto 2014: 88)

## **D. CONCLUSIONS AND SUGGESTIONS**

### **A. Conclusion**

From the discussion that has been described regarding the Views of Islamic Law and Civil Law on the Distribution of Joint Assets Post-Divorce, it can be concluded as follows:

1. The view of Islamic law regarding the distribution of joint assets after divorce, namely the distribution of joint assets for divorced married couples, each gets half as referred to in the Compilation of Islamic Law Article 97 paragraph (1).
2. The view of Civil Law regarding the distribution of joint assets after divorce is regarding the distribution of joint assets in marriage after divorce, in general joint assets are divided equally between husband and wife. This is based on the provisions of the Civil Code Article 128 paragraph (1). This article emphasizes that a husband and wife who are divorced are each entitled to half of the joint property, regardless of which party the assets come from.



This shows that the Civil Code places the wife and husband having an equal share in the existence of assets in their marriage. This means that the wife's role in managing the household is equivalent to the husband's role in earning a living in the family.

### **B. Suggestion**

1. If there is a divorce, then there is a dispute over joint property, it should be resolved in an amicable way or in a good way, so that problems can be resolved quickly and avoid hostility. For those who divide joint assets, it is better if they are divorced or not, they must first understand the concept of inheritance in Islam, to find out the parts that are obtained by the husband or wife who is divorced.
2. In the distribution of joint assets in Islamic law and civil law, it should be balanced so that the implementation of joint assets runs smoothly and does not harm interested parties, and before dividing it is better if all families know the distribution plan so that there is no chaos that occurs after the assets are divided. divided because after all if one of the parties dies then the property will automatically be transferred to the deceased's family, especially to those who do not have children.
3. It is better if you want to share joint assets at the local Religious Court so that the distribution process runs safely and the results of the distribution also contain an element of justice.

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