

LEGAL REVIEW OF THE DIVISION OF JOINT PROPERTY THE CONSEQUENCES OF DIVORCE ACCORDING TO COMPILATION OF ISLAMIC LAW

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ABSTRACT

Although the Marriage Law generally stipulates equal division, the KHI provides a basis for ijtihadiyah which allows for different divisions based on contributions.. The regulation of divorce according to Islamic law and the Compilation of Islamic Law is makruh (forbidden). Divorce is permitted on the basis that its benefits outweigh its harms. However, divorce is a permissible act that Allah hates, so it is best avoided through various preventative measures, as emphasized in Indonesian legislation. The division of joint assets in the view of Islamic law and positive law is generally divided equally between husband and wife

1. Introduction

Marriage is a significant event in every human life. The goal of marriage is eternal and everlasting happiness for the husband and wife. According to Islamic law, marriage is a very strong contract, or miitsaaqan ghaliizhan, to obey Allah's commands, and its implementation is an act of worship. The purpose of marriage is to create a household life that is peaceful, loving, and compassionate.

From an Islamic perspective, marriage is the only effective way to safeguard the well-being of the community from corruption and moral decline. Furthermore, marriage can safeguard individuals from the damaging effects of society, as sexual desires can be satisfied through legitimate marriage and lawful relationships. Therefore, Islam places special emphasis on marriage for young people, to protect them from moral corruption and other vices, such as adultery and the like.



In accordance with the Sunnatullah, nothing in this world is eternal and has an end, so too what happens to the bonds of marriage will at some point end or break. The breakup of a marriage is due to the provisions (destiny) of Allah SWT with the death of one of the husband and wife and there are also due to the will of one of the husband or wife through the Court, either divorce or court decision due to the occurrence of things that are not liked by one of the parties due to the attitude and actions of the other party in accordance with the reasons for divorce as regulated in Article 19 of Government Regulation Number 9 of 1975 and Article 116 of the Compilation of Islamic Law.

Divorce will certainly have legal consequences for both husband and wife, as well as for children and joint marital assets. Following a divorce, a new issue arises: how to divide the joint marital assets. Divorce is the legal termination of a marriage before a judge in a court of law based on the requirements stipulated by law. Therefore, it is important to understand the regulations regarding divorce and the potential consequences of a dissolution of a marriage.

Marital assets are crucial, as every family needs them to support their family life. These assets include joint assets and acquired assets. Joint assets exist during the marriage, while acquired assets are acquired before the marriage

2. Research Method

This research is descriptive in nature because it will only describe the object being researched, investigated by describing the applicable laws and regulations in relation to legal theories and the practice of implementing laws and regulations concerning the above problems.

The type of research used is normative legal research, where normative legal research is a scientific research procedure to find the truth based on scientific logic viewed from the normative side

3. Results And Discussion

The purpose of marriage as stated in Article 1 Marriage Law is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the belief in the Almighty God. If the goals mentioned above can be realized in the family, of course divorce will not be taken.

Islam expects a married couple who have built a household through a marriage contract to have a lasting relationship. Harmony is established between husband and wife, who love and care for each other, so that both parties feel at peace





within the household. This is the kind of household Islam desires: a sakinah household.

There are three keys to achieving an ideal and happy household life according to Islam, namely sakinah (as-sakinah), mawaddah (al-mawaddah), and mercy (ar-rahmah). As-sakinah is a peaceful atmosphere that surrounds the household in question, each party carries out the commands of Allah SWT diligently, respects each other, and tolerates each other. From this as-sakinah atmosphere, a sense of mutual love and affection (al-mawaddah) will emerge, so that the sense of responsibility of both parties will increase and from this as-sakinah and al-mawaddah will emerge ar-rahmah, namely healthy offspring full of blessings from Allah SWT, as well as an outpouring of love and affection between husband and wife and their children in the future.

Basically, a marriage is carried out forever until the end of life, this is what is desired in the Islamic religion. However, under certain conditions there are things that require the marriage to break up, and if the marriage relationship continues, then harm will occur. In this case, Islam justifies breaking up a marriage as the last step in continuing the household. Breaking up a marriage in this way is a good way out.

Divorce is the breaking of a bond and it can be understood that divorce is the breaking of the marital bond between husband and wife in order to build a complete, eternal and everlasting household, so that it is no longer permissible for the two of them to associate as husband and wife should. Divorce is the termination of a marriage bond for a reason that is validated by a judge's decision at the request of one or both parties.

A husband and wife decide to divorce for a variety of reasons. When resolving a divorce case, the judge first determines the nature of the dispute and arguments between the husband and wife, as alleged by the parties filing the case, based on the following assessments and considerations:

1. The parties cannot be reconciled
2. When the trial is opened for the first time in a divorce case, the judge tries to reconcile the parties by advising them to live in harmony again in their household life.
3. Efforts to reconcile the two parties in a trial open to the public before entering into an examination of the subject matter of the petition for divorce for divorce or contested divorce, can even be carried out intensively at each trial.
4. If the parties do not agree to make peace, the next event will continue, namely reading the lawsuit, hearing the defendant's and plaintiff's responses in court, examining witnesses and reading the verdict.



5. The judge's assessment of whether a dispute has occurred can be made by the judge during the trial process if the parties in the case are still able to reconcile or if it is clear from the parties' attitudes that the disharmony between husband and wife is not too severe, then the Panel of Judges will consider that such conditions cannot be used as grounds for divorce. Therefore, Article 19 letter f of PP No. 9/1975 is considered not to have been fulfilled.

According to Article 38 Marriage Law, that a marriage can end due to three things, namely:

1. Death.
2. Divorce.
3. Upon Court Decision.

Death is an unavoidable cause of marital dissolution for both husband and wife, as it is the will of the Almighty and not influenced by human will. The death of a husband or wife will undoubtedly result in the dissolution of the marriage from the moment of death.

If a marriage ends due to the death of one of the parties, the property acquired during the marriage will be transferred to the surviving family through inheritance. Similarly, children born of the marriage will become the responsibility of the surviving party. However, if a marriage ends due to divorce or a court decision, it usually occurs due to human intervention or the will of the parties involved in the marriage.

Basically, a marriage is intended to last forever, but there are certain reasons that result in the marriage not being able to continue. In reality, the principles of marriage are often not implemented, so that husbands and wives no longer feel calm and peaceful and lose their sense of affection and no longer love each other, the further consequence of which is divorce.

Article 39 paragraph (1) Marriage Law It is determined that divorce can only be carried out in court after the court concerned has tried and failed to reconcile the two parties, where to carry out a divorce there must be sufficient reason that the husband and wife will no longer be able to live together harmoniously as husband and wife.

According to the Elucidation of Article 39 paragraph (2) Marriage Law There are several things that can be used as reasons for filing for divorce, namely:

1. One of the parties commits adultery or becomes a drunkard, addict, gambler and so on which is difficult to cure;
2. One party leaves the other for two consecutive years without a valid reason or for any other reason beyond his/her control.
3. One party is sentenced to 5 (five) years in prison or a heavier sentence during the marriage;



4. One of the parties has a physical disability or illness which results in him being unable to carry out his obligations as husband or wife;
5. One of the parties commits serious cruelty or abuse that endangers the other party;
6. Between husband and wife there are constant disputes and quarrels and there is no hope of living in harmony in the household.

The reasons for continuous disputes and arguments are not the main cause, but are the result of other preceding causes, including:

1. Disputes concerning finances, because the wife is considered wasteful, or because the husband does not give all his income to his wife.
2. Disputes concerning sexual relations.
3. Disputes concerning religious differences can lead to differences in raising and educating children.

Disputes that occur in a household that cause dissolution, usually do not stand alone (are cumulative). One thing and another influence the reasons for divorce of the parties are interrelated between one reason and another, with the understanding that one reason becomes the cause of another reason for divorce. For example, in the case of disharmony between husband and wife because it is triggered by one of the parties, namely the husband being caught cheating with another woman, a drug user of the type of crystal methamphetamine, rarely coming home for unclear reasons and having a child from another woman as a result of the defendant's illicit relationship while the other party does not agree with the situation, then the wife leaves the shared residence.

To assess whether or not there is a breakdown in a marriage, it must be proven that the reason for the divorce filed to the court is an event that disrupts the harmony of the household, causing a breakdown and the situation cannot be restored. For example, there has been an affair committed by one of the husband and wife and this act is one of the reasons that can be used to file for divorce as stated in Article 19 letter a of PP No. 9/1975. However, this act is forgiven by the other party and does not become a problem in the household, thus the marriage cannot be terminated by divorce, because the marriage between husband and wife can be restored.

According to Islam, divorce is only permitted if it is seen as something that is contrary to the principles of Islamic law or as a way out of a family dispute that is no longer possible to resolve. Divorce can occur due to divorce and divorce lawsuits. Regarding divorce, it is regulated in Articles 117-122 KHI which determine that divorce is the husband's vow before a Religious Court session which is one of the reasons for the dissolution of a marriage.



1. A divorce petition is filed by a husband who requests permission to pronounce a divorce against his wife. A divorce petition filed by a husband who has left Islam (riddah) does not result in a ruling granting the husband permission to pronounce a divorce, but rather a divorce being issued by the Religious Court.
2. A petition for divorce is filed by a wife whose petition requests that the Religious Court terminate the Plaintiff's marriage with the Defendant. Claims for hadhanah, child support, wife support, mut'ah, iddah support, and joint property of husband and wife can be filed together with the petition for divorce. During the petition for divorce before the evidentiary hearing, the husband can file a counterclaim regarding control of the children and joint property (Article 156 of the Compilation of Islamic Law).

In a divorce case, the wife can file a provisional lawsuit in her lawsuit, and the husband who files a counterclaim can also file a provisional lawsuit regarding matters regulated in Article 24 of PP No. 9/1975. The trial process, including the court hearing process concerning divorce, also goes through several stages. The stages of this trial are regulated in Articles 15 to 18 of PP No. 9/1975, namely:

1. After the Court received the notification letter, the Court studied the letter.
2. No later than 30 (thirty) days after receiving the letter, the Court will summon the husband and wife who are going to divorce to ask for an explanation.
3. After the Court received an explanation from the husband and wife, it turned out that there were indeed reasons for divorce and the Court was also of the opinion that it was no longer possible for the husband and wife in question to be reconciled and live in harmony in their household, so the Court decided to hold a hearing to witness the divorce.
4. The Court, after examining and finding that there were grounds for divorce and after attempting to reconcile the two parties without success, then witnessed the divorce carried out by the husband in the hearing.
5. Shortly after witnessing the divorce, the Chief Justice issued a certificate stating that the divorce had occurred.
6. The certificate is sent to the Registrar at the place where the divorce occurred to register the divorce.
7. The divorce takes place from the time the divorce is declared in court.

The stages of the trial examination can be seen in the following description:

1. Filing a lawsuit:
 - a. In order for a lawsuit to be heard, the lawsuit must be submitted to the competent court.
 - b. In filing a lawsuit, the plaintiff must register it and the lawsuit can only be registered if the court fees have been paid in full.



- c. Once registered, the lawsuit is given a case number and then submitted to the Chief Justice.

2. Preparation for trial:

- a. After the chief justice receives the lawsuit, he or she appoints a judge to handle the case. In principle, the hearing is conducted by the panel of judges.
- b. The judge concerned determines the day of the trial by the decree and summons the parties to appear at the court hearing on the appointed day, bringing the necessary witnesses and evidence.
- c. The summons is issued by a bailiff. This summons is called an exploit. The exploit, along with a copy of the lawsuit, is delivered to the private defendant at their residence.
- d. If the defendant cannot be found, the summons will be handed over to the relevant Village Head to be forwarded to the defendant.
- e. If the defendant has died, the summons is sent to his heirs and if the heirs are not known, it is sent to the Village Head at the last place of residence.
- f. If the place of residence is unknown, the summons letter is submitted to the Regent and then the summons letter is posted on the notice board at the relevant District Court.
- g. After issuing a summons, the bailiff must submit a release (minutes) of the summons to the judge who will be examining the case. The release serves as proof that the defendant has been summoned.
- h. Then on the appointed day, the trial of the case began.

The dissolution of a marriage through divorce, divorce by petition, or death of one of the parties results in the dissolution of the marriage, which is the division of the husband and wife's joint assets. The authority of the Religious Court in resolving joint assets is explained in Article 88 of the Compilation of Islamic Law (KHI), which states: If a dispute arises between husband and wife regarding joint assets, the dispute shall be resolved in court.

There are 2 (two) alternative solutions for joint property proposed by the husband or wife, namely:

1. Joint problems or disputes are resolved after a divorce occurs between a husband and wife.
2. When the divorce settlement process is underway in the Religious Court, the issue of joint property is also resolved.

The first alternative is a separate or separate settlement, specifically for settlement of joint assets. The second alternative is called combination or cumulation. Settlement of joint assets can be carried out in conjunction with the



divorce process, either divorce, talak or divorce, and can also be carried out in conjunction with lawsuits regarding hadhanah, inheritance and other matters

4. Conclusion

According to Islamic law and the Compilation of Islamic Law, divorce is prohibited. Divorce is permitted on the basis that its benefits outweigh its harms. However, divorce is a permissible act that Allah hates, so it is best avoided through various preventative measures, as emphasized in Indonesian legislation.

The division of joint assets, according to Islamic law and positive law, is generally divided equally between husband and wife. From an Islamic legal perspective, the division of joint assets in the event of a divorce prioritizes amicable means (deliberation). This is stated in Article 97 of the Indonesian Islamic Law Compilation of Islamic Law, which states that "Widows or widowers who are divorced are each entitled to half of the joint assets, unless otherwise specified in the marriage agreement." Based on this view, joint assets can be traced in Islamic law, both through the concept of syirkah and based on the will of Islamic law itself.

The similarities and differences between the division of joint assets in marriage between the Marriage Law and the Compilation of Islamic Law are the existence of joint assets arising from the marriage, as well as the obligation of husband and wife to agree on transactions regarding these joint assets. The main difference lies in the basic concept of the formation of joint assets; the Marriage Law recognizes the existence of a mixture of assets since marriage, while the Compilation of Islamic Law (based on the most common view) does not recognize a mixture of assets, but rather maintains a separation of inherited assets and joint assets arising from joint work

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