

## LEGAL IMPACT OF BUSINESS DISPUTES IN MARRIAGE ON OWNERSHIP AND DIVISION OF JOINT PROPERTY

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### Abstract

Marriage is a sacred institution that is not only physically binding, but also affects the legal, social, and moral aspects of human life. One of the important issues in marriage is the division of joint property, especially during a divorce. Joint property refers to all property acquired by a husband and wife during the marriage. However, there are various factors that influence the division of joint property, including the type of property owned, the marriage agreement made previously, and the contribution of each party to the business or property acquired. The division of joint property is regulated by Law Number 1 of 1974 concerning Marriage and the Civil Code, which provide a legal basis for the assessment and resolution of disputes related to joint property. This study aims to examine the definition and scope of joint property in marriage and the mechanism for resolving business disputes that arise due to divorce. The method used is normative juridical with a descriptive analytical approach, through an analysis of relevant laws and regulations and jurisprudence. The results of the study indicate that the division of joint property in the context of divorce involves a process of mediation, litigation, and evaluation of the contribution of each party in obtaining the property. In addition, there are exceptions to joint property, such as personal property or property acquired through a prenuptial agreement.

### Keywords:

Legal Impact, Business Dispute, In Marriage, Joint Ownership of Property

### Introduction

Marriage is a sacred and fundamental institution in human life. It is not just a physical bond between a man and a woman, but a sacred covenant that carries legal, social, and moral consequences. In the religious perspective, marriage is the sunnah of the Prophet which has the value of worship, while in the social context, marriage is the main foundation in forming a family as the smallest unit of society. Through marriage, two individuals build a life together based on commitment, responsibility, and love. This process is not only intended to fulfill biological or emotional needs, but also as a means of fostering a healthy, intelligent, and noble generation.

Every married couple certainly longs for a household life full of peace, love, and affection. One aspect that can support the creation of such harmony is the existence of wealth. In a harmonious and harmonious family, joint wealth plays a role as a complement to happiness. However, if the relationship begins to experience cracks, the potential for conflict and disputes related to wealth will also increase.

Disputes that occur between the parties will trigger a divorce. Where there are both parties who want it, and there are also only one party, but because life cannot be limited by anyone, it can also cause family relationships to be shaken. Article 116 of the KHI states that before a divorce is carried out, it must meet the following reasons: "one party commits adultery, one party commits cruelty or serious abuse that endangers the other party, between husband and wife there are continuous disputes and quarrels and there is no hope of living in harmony again in the household"

In general, every divorce will bring legal consequences for the husband and wife who decide to end their marriage. One of the most crucial legal impacts is related to the division of joint assets acquired during the marriage. Therefore, the issue of joint assets is very important to pay attention to, especially if the marriage ends in divorce. Regarding its regulation, the existence of joint assets has been guaranteed and clearly regulated, both in the laws and regulations regarding marriage and in the *Compilation of Islamic Law (KHI)*.

In accordance with the explanation of "Article 31 of Law No. 1 of 1974 clearly states that if a marriage ends due to divorce, then joint property is regulated according to their respective laws" (Martadi, 1998). This provision can be interpreted as where the parties whose marriage ends due to divorce, then the parties can also take legal steps to file a lawsuit for the division of joint property that has been produced together which is also based on applicable regulations. Joint property is the income of both the wife and the husband during the marriage until the marriage can no longer be continued or in other words a divorce occurs, so that this can also be said to be a mixture of the wife's and husband's property produced during the marriage. The division of joint property is carried out with positive law, namely that the assets brought and acquired are under the control of each (husband and wife) while the joint property is divided into two between the husband and wife (Anshary, 2016)

Provisions regarding joint property in marriage are regulated in Law Number 1 of 1974 concerning Marriage, which is specifically discussed in Chapter VII, namely in Articles 35 to 37. These articles provide an explanation of the ownership, management, and rights and obligations of each husband and wife regarding the property acquired during the marriage. Separation of property will usually be carried out by the husband and wife by making a marriage agreement so that the joint

property obtained during the marriage remains in the control of each. Meanwhile, the unity of property is not carried out by a marriage agreement, in which the joint property is divided fairly (Asnawi, 2016).

Regarding the division of marital property, if the marriage is carried out with a union of property, Article 128 of the Civil Code, hereinafter referred to as the Civil Code, regulates that after the dissolution of a marriage, the property of the union between husband and wife is divided in two, or between their respective heirs, regardless of which party the property is from. So it can be concluded that marital property in the Civil Code only recognizes one type of property, namely joint property or joint property which occurs automatically by law where there is a union of property owned by the husband and wife, both property brought or obtained by each partner before marriage and property obtained during the marriage which includes all debts and receivables of the husband and wife. Without a marriage agreement at the time the marriage is carried out, it will have an impact on the union of property. If you want space for each person's property or there is no union of property, then a marriage agreement must be made so that the separation of property and the debts of each partner can be determined in the power and responsibility of each.

Acquisition of joint property, namely since the marriage was formalized until the dissolution of the marriage, the joint property includes the husband's income, the wife's income, and the husband's income, the wife's income, and the results and income from the husband and wife's personal property during the marriage, although the principal property is not included in the joint property. According to the Supreme Court's Jurisprudence, marital property is considered joint property, unless proven otherwise. Property acquired during the marriage is included in joint property. The explanation of joint property according to Civil Law, as well as the Marriage Law, stipulates that property acquired by a husband and wife during the marriage period becomes joint property. If viewed from the period of acquisition of property, namely during the marriage period, in other words, the property existed when the husband and wife's bond had not been severed, it can be concluded that the property is joint property. Abdul Manan said that "Joint property is property acquired during the marriage and without questioning whose name it is registered in (Manan, 2017)

## **Methodology**

The method used in this study is normative juridical. Normative legal research is a method or way of researching library materials. Normative legal research is research aimed at obtaining objective law (legal norms), namely by conducting research on legal problems. The nature of the

research used in this study is descriptive analytical by describing the problems systematically and comprehensively. The purpose of descriptive analytical research is to describe accurately, the nature of an individual, a symptom, a certain condition or group (Koendjorodningrat, 1997).

In this study, the primary legal materials used include primary law, namely Law No. 1 of 1974 concerning Marriage. Secondary legal materials are all legal materials that are unofficial document publications including books, scientific works (Marzuki, 2005). The secondary materials are found in all documents that are relevant readings such as books, seminars, legal journals, magazines, newspapers, scientific papers and several sources from the internet related to the material being studied. Tertiary legal materials are all documents containing concepts and information that support primary legal materials and secondary legal materials, such as dictionaries, encyclopedias and so on. This study was conducted by analyzing data with a qualitative approach using a deductive mindset.

## **Discussion**

As for the Problem Formulation:

1. What is the Legal Impact of Business Disputes?
2. How is joint ownership of property in a marriage?

As for the purpose of:

1. To find out the legal impact of business disputes
2. To find out the ownership of joint property in marriage

## **Definition of Joint Property**

Joint property is property acquired by a husband and wife during the marriage that becomes joint property. In the Indonesian legal system, joint property is regulated in Law Number 1 of 1974 concerning Marriage, specifically in Article 35 paragraph (1), which states that property acquired during a marriage, whether obtained through joint efforts or through the efforts of one party, is joint property. This article confirms that property acquired during a marriage becomes the joint property of the husband and wife, unless there is a marriage agreement that regulates otherwise (separation of property agreement) (Kadir, 1994).

In more detail, joint property includes all forms of assets acquired by husband and wife during their married life, which can be movable property (such as vehicles, household equipment, or cash) and immovable property (such as land, houses, or buildings). The existence of joint property aims to create economic balance in the household and encourage cooperation between husband and wife in achieving mutual prosperity.

### **Scope of Joint Property**

The scope of joint property includes various types of property acquired by husband and wife during marriage. Based on Article 35 of Law No. 1 of 1974 and Article 119 of the Civil Code (KUHPerdata), the scope of joint property includes:

1. **Assets Acquired During Marriage** Assets in question are all assets acquired during the marriage, regardless of who was more active in acquiring the assets. This includes income from work, business, or investments made by both parties. Therefore, even if only one party directly manages or earns income, the assets acquired remain joint property.
2. **Property Purchased with Joint Property Proceeds** If a property is purchased with money or assets derived from joint property, then the property is also included in the category of joint property. For example, if a husband and wife buy a house or vehicle with money obtained from their joint income, then the property is joint property, even if only one party draws up the purchase contract or holds the official documents.
3. **Property Obtained by Distribution of Inheritance or Gift** In general, inheritance and gifts received by one party in a marriage are considered personal property, unless otherwise specified in the gift or inheritance, or if the inheritance is used for joint interests. If a gift or inheritance is used for household interests or to purchase joint property, then the asset can be considered joint property.
4. **Assets Obtained from Joint Business** Businesses run by husband and wife together, whether managed by one party or both, are also included in the category of joint assets. For example, if a husband and wife open a shop together and make a profit, then the profit is joint assets. The same goes for assets generated from the business, such as equipment, buildings, or vehicles used to support the business.
5. **Property Acquired as a Replacement for Lost Property** In some cases, property lost or damaged during the marriage, if replaced with new property acquired, then the replacement also becomes joint property. A common example is if a husband and wife replace a vehicle damaged in an accident with a new vehicle, then the replacement vehicle will be considered joint property.

### **Exceptions to Joint Assets**

Although in general all property acquired during a marriage is considered community property, there are some exceptions to consider:

1. Personal Property

Personal property is property owned by one party before marriage, or property acquired during marriage by way of a gift or inheritance clearly intended for one party. This personal property is not included in joint property.

2. Marriage Agreement

In the case of a prenuptial agreement, the husband and wife can agree that some or all of the property acquired during the marriage will be separated and become their personal property. Such an agreement can provide legal protection for the ownership of property by each party in the event of a divorce.

3. Property Obtained by Dividing Personal Property Rights

If a person acquires property using his or her personal property rights (such as personal money or personal property owned before marriage), then that property cannot be considered joint property.

### **Legal Regulations Regarding Business Ownership in Marriage**

Ownership of a business within the scope of marriage is part of the assets which are legally subject to the provisions on joint assets. In Indonesian positive law, this is clearly regulated in Article 35 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which states:

"Property acquired during marriage becomes joint property."

This provision is automatic, unless a marriage agreement has previously been made that has been notarized and recorded at the civil registry office or KUA. This provision is in line with the principle of community property which is also adopted in Article 119 of the Civil Code (KUHPdata), which states that: "Since the marriage took place, legally there is a mixture of all the assets of the husband and wife into one unit, unless otherwise specified in the marriage agreement." This means that even if only one party actively manages or runs a business, as long as the business is built and develops during the marriage, the results of the business are included in the joint assets (*gono-gini*). This also applies even if only one name is listed as the owner or founder of the business formally, such as in the deed of establishment of a business entity or business license (Muhammad, 2019).

One of the main issues that arise in cases of business ownership in marriage is the assessment of each partner's contribution. Contributions to the business are not always direct, such as running

operations or providing initial capital. There are forms of indirect contributions that are also legally and ethically recognized, such as:

1. Providing moral and psychological support that enables the business to continue.
2. Taking care of the household so that the spouse can focus on the business.
3. Playing a role in informal accounting, distribution, or logistics of the business without formal recognition.

In practice, proving contribution becomes a challenge when there is no official documentation. Therefore, the judge will consider indirect evidence, such as:

1. Joint bank accounts or regular transfers between husband and wife that show business funding.
2. Witness statements such as family members, employees, or business partners.
3. Transaction documents such as purchase notes, invoices, or informal financial records.

#### Business Dispute Resolution Mechanism in Marriage Relating to Division of Joint Property at Divorce from a Civil Law Perspective

Business disputes in marriage often become complex issues in terms of dividing joint assets, especially when a divorce occurs. When a husband and wife run a business together or one of them runs a business using joint capital, then the assets generated from the business will become part of the joint assets and must be divided fairly when a divorce occurs.

##### 1. Principles of Division of Joint Property in Marriage

In principle, joint property includes everything acquired during the marriage, whether in the form of money, goods, or other assets, including the proceeds from a business run. According to **Article 35 paragraph (1) of Law Number 1 of 1974 concerning Marriage**, property acquired during the marriage period is joint property unless there is a marriage agreement that regulates otherwise. Likewise, **Article 119 of the Civil Code (KUHPerdota)** states that property acquired during the marriage is joint property, unless there is a separation of property agreement.

At the time of divorce, the division of joint assets including businesses run during the marriage must be resolved. Business assets that are part of joint assets can include:

- a. Initial capital agreed upon together.
- b. Profits obtained from the business.
- c. Assets related to the business, such as equipment, stocks, or business property.

##### 2. Steps to Resolve Business Disputes in Marriage



The mechanism for resolving business disputes in marriage, especially regarding the division of joint assets, goes through several stages regulated in Indonesian civil law.

a. Mediation or Conciliation

The **mediation** or **conciliation** process is usually the first step in resolving joint property disputes. This mediation is carried out by a neutral third party, such as a court mediator, who tries to help both parties reach an agreement without going through a long litigation process. In this case, the husband and wife who are experiencing a dispute will be invited to have a dialogue about the division of joint property, including the business being run.

**Law Number 1 of 1974 concerning Marriage** requires a mediation process in every divorce case to reduce the potential for further conflict. If mediation is successful, then the agreement between the two parties can be used as a basis for resolving property division disputes.

b. Litigation Process in District Court or Religious Court

If mediation fails or both parties do not reach an agreement, then the case can be continued to court. In this case, both the **District Court** (for non-Muslim couples) and the **Religious Court** (for Muslim couples) have the authority to handle divorce cases and division of joint property.

In the litigation process, both parties can file a civil lawsuit regarding the division of joint assets, including businesses run during the marriage. The court will examine evidence submitted by both parties, such as business ownership documents, financial records, joint accounts, and witness or expert statements related to the business.

The court will consider the contribution of each party to the business. If one party plays a more dominant role in running operations or providing capital, the court will assess the proportional division of the assets based on the principle of justice. However, if the contribution of each party is difficult to prove, the court will rely on the principle of fair and reasonable distribution based on the existing circumstances.

c. Joint Property Division Agreement (Joint Agreement)

After going through the mediation or litigation process, if both parties can reach an agreement, then a **joint property division agreement** will be made that covers all assets owned, including businesses or businesses built during the marriage. In this agreement, both parties must agree on the amount of division that is considered fair, whether in the form of money, stock division, or other asset division.

If there is difficulty in determining the value of the business being run together, then an assessment (valuation) can be carried out by an **independent appraiser** who has competence in



his/her field. This expert will assess the fair value of the business based on financial statements and other aspects.

### 3. Obligations of the Court in the Division of Joint Property

In the context of divorce, the division of joint assets is one of the important issues that need to be resolved by the court. Indonesian law provides regulations regarding the division of joint assets in divorce, which aims to create justice for both parties (Soepomo, 1999). The court plays an important role in determining how joint assets are divided so that the division is fair and proportional.

#### 1. Principle of Justice and Balance

The court is responsible for ensuring that the division of joint property is carried out fairly and proportionally. This means that the division must take into account the contribution of each party in obtaining the property. Not only direct contributions such as working or investing in a business, but also indirect contributions such as moral support, household maintenance, and childcare. This principle of justice aims to prevent any inequality that may occur between the party who is more active in earning a living and the party who plays a role in the domestic sphere.

#### 2. Protection of the Rights of Parties Not Directly Involved in the Business

In many divorce cases, one party, especially the wife, may not be directly involved in the husband's business operations, although both acknowledge that the business being run is a joint venture. In this case, the court needs to consider the contribution of the party not directly involved in the business, for example the wife who takes care of the household and children more. Although the wife does not directly work in the company or business owned by the husband, her moral and emotional contributions are still considered part of the joint effort in building a family.

#### 3. Distribution Based on Contribution

The court must carefully evaluate each party's contribution to the income and formation of joint property. If one party is directly involved in work or business, his or her contribution is easier to measure, both in financial and material terms. However, for parties who are more focused on domestic roles, the court must consider the value of the work that cannot be directly measured, but greatly influences the smooth running of family life and the continuity of the husband or wife's business.

#### 4. Principle of Fairness in Distribution

The court also prioritizes the principle of fairness in the division of joint assets. The division of assets is not always divided equally, but proportionally according to the needs and contributions of each party. This of course takes into account various factors, such as the living needs of each party after the divorce, as well as the impact of the division of assets on their welfare in the future.

#### 5. Protection of Children's Rights

In addition, if there are children in the divorce, the court will consider the needs of the children in determining the division of assets. The joint assets that are divided will also consider the allocation for education costs, care, and other needs for the children. The child's right to receive financial support and proper care will influence the court's decision in the division of assets.

#### 6. Principle of Distribution Based on Economic and Social Value

In some cases, the court also considers social and economic values in determining the amount of the portion received by each party. A fair distribution is not only determined by material value, but also considers its impact on social and economic life after the divorce, so that no party is unfairly disadvantaged.

In the case of Ferry SP Sinamo S.H. M.H as a husband where the husband was declared bankrupt by the commercial court. Hernawaty Saragih as the wife of the bankrupt party wanted to save her personal assets so that they would not be confiscated by the commercial court. so that the wife made a marriage agreement for separation of assets at a notary's office in Langkat. Where the curators Mangatur Ruhut Banuara Sianipar S.H.M.M and Hadi Yanto S.H.M.H sought evidence that the marriage agreement for separation of assets was made at a notary's office in Langkat after the husband was declared bankrupt by the commercial court.

The assets of a couple can be seized if they do not make a separate property marriage agreement or the assets of a couple can be seized if they make a separate property marriage agreement after one of the partners is declared bankrupt. And this often occurs in joint property disputes in society.

## Conclusion

Legal regulations on business ownership in marriage and mechanisms for resolving business disputes related to the division of joint assets, it can be concluded that in the Indonesian legal system, assets acquired during marriage, including businesses, are considered joint assets. This applies even if only one party manages and runs the business, unless there is a separation of assets agreement that

regulates it differently. The court in resolving joint assets disputes will consider the contribution of each party, both direct and indirect, such as capital or operational support.

The mechanism for resolving business disputes in marriage can be done through several channels, namely mediation, civil lawsuits, and written agreements that regulate the rights and obligations in the business run together. Mediation is the first step that is prioritized to reach a peaceful agreement, while a civil lawsuit is filed if mediation fails. In addition, the importance of pre-nuptial or post-nuptial agreements, as well as business cooperation contracts, can prevent future disputes, because these agreements provide legal certainty regarding the rights of each party.

### **Suggestion**

For couples who run a business together to make a pre-nuptial or post-nuptial agreement that clearly regulates the division of assets and business ownership rights. This agreement can avoid disputes and provide legal certainty for each party. Couples involved in business should always maintain clear and detailed documentation, such as financial reports and evidence of business transactions, to facilitate the proof process if a dispute occurs. In addition, it is important to provide legal education to the public, especially for couples who have a joint business, regarding their rights and obligations in marriage, as well as the importance of a written agreement to protect their rights legally.

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