

## Legal Analysis Of Business Disputes In Marriage On The Ownership And Distribution Of Common Property

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### ABSTRACT

Marriage is a sacred institution that is not only outwardly 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 when divorce occurs. Joint property refers to all property acquired by a husband and wife during the marriage period. However, there are various factors that affect the division of joint property, including the type of property owned, the marriage agreement made previously, and each party's contribution 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 provides a legal basis for the assessment and settlement of disputes related to joint property. This study aims to examine the definition and scope of joint property in marriage as well as the mechanism for resolving business disputes arising from divorce. The method used is normative juridical with an analytical descriptive approach, through analysis of relevant laws and regulations and jurisprudence. The results of the study show that the division of joint property in the context of divorce involves a process of mediation, litigation, and evaluation of each party's contribution in obtaining the property. In addition, there are exceptions for common property, such as personal property or acquired through a marriage agreement

**Keywords:** *Marriage, Joint Property, Property Division, Business Disputes, Divorce*

### 1. Introduction

Marriage is a sacred and fundamental institution in human life. It is not merely an outward bond between a man and a woman, but a sacred covenant with legal, social, and moral consequences. In a religious view, 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 the family as the smallest unit of society. Through marriage, two individuals build a life together based on commitment, responsibility, and love. This process not only aims to meet biological or emotional needs, but also as a forum for fostering a healthy, intelligent, and noble generation.

Every married couple certainly craves a home life full of peace, love, and affection. One of the aspects that can support the creation of harmony is the existence of wealth. In a harmonious and harmonious family, common property plays a role as a complement to happiness. However, if the relationship begins to experience a rift, the potential for conflicts and disputes related to wealth will also be greater.

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 shake. Article 116 of the KHI states that before divorce is carried out, it must meet the reasons, namely: "one of the parties commits adultery, one of the parties commits cruelty or severe persecution 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, any divorce will bring legal consequences for married couples who decide to end their marriage bond. One of the most crucial legal impacts is related to the division of joint property acquired during the marital period. Therefore, the issue of joint property is very important to pay attention to, especially if the marriage ends in divorce. Regarding the regulation, the existence of joint property has been guaranteed and regulated clearly, both in the laws and regulations regarding marriage and in the *Compilation of Islamic Law* (KHI).

In accordance with the explanation "Article 31 of Law No. 1 of 1974 clearly states that if the marriage is broken up due to divorce, the joint property is regulated according to its respective laws" (Martadi, 1998). This provision can be interpreted as where the parties whose marriage is broken due to a divorce, then the parties can also take a legal step to file a lawsuit for the division of the joint property that they have produced together which is based on the applicable rules. Joint property is the income property of both the wife and the husband during the marriage until the marriage can no longer be continued or in other words a divorce arises, so it can also be said to be a mixture of the property of the wife and husband produced during the marriage. The distribution of joint property is carried out with positive law, namely inherited property and acquired property are under the control of each (husband and wife) while joint property is divided in two between husband and wife (Anshary, 2016)

The 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 married couple towards the property obtained during the course of the marriage. The separation of property will usually be carried out by a married couple by entering into a marriage agreement so that the joint property obtained during the marriage bond remains in their respective jurisdictions. Meanwhile, the union of property is not carried out by a marriage agreement, where the joint property is divided fairly (Asnawi, 2016).

Regarding the division of marital property, if the marriage is carried out by the union of property, Article 128 of the Civil Code, hereinafter referred to as the Civil Code, stipulates that after the dissolution of a marriage, the unitary property is divided between husband and wife, or between their respective heirs, regardless of which party the property belongs to. So it can be concluded that

marital property in the Civil Code is only known as one type of property, namely unanimous property or joint property which occurs automatically for the sake of the law where there is a union of property belonging to the husband and wife, both property brought or obtained by each spouse before marriage and obtained during marriage which includes all debts and receivables of husband and wife. Without a marriage agreement at the time the marriage takes place, it will result in the union of property. If there is room for each other's property or the absence of a union of property, then the marriage agreement must be carried out so that the separation of property and the debts and receivables of each spouse can be determined in their respective powers and responsibilities.

The acquisition of joint property, namely from the time the marriage is inaugurated until the breakup of the marriage, the joint property includes the husband's income, the wife's income, as well as the husband's income, the wife's income, as well as the proceeds and income from the husband's personal property during the marriage, even though the principal property is not included in the joint property. According to the Supreme Court's jurisprudence, a marital property is considered joint property, unless it can be proven otherwise. Property acquired during marriage is included in joint property. The explanation of joint property according to the Civil Law, as well as the Marriage Law stipulates that the property obtained by a married couple during the marriage period becomes joint property. If viewed from the period of acquisition of property, namely in the period of marriage still ongoing, in other words, the property exists when the marriage bond has not been broken, then it can be concluded that the property is joint property. Abdul Manan said that "Joint property is property obtained during the marriage bond and without question being registered in whose name (Manan, 2017)

## **2. Methods**

The method used in this study is normative juridical. Normative legal research is a method or way of researching literature materials. Normative legal research is research aimed at obtaining objective law (legal norms), namely by conducting research on legal issues. The nature of the research used in this study is descriptive and analytical by describing the problem systematically and comprehensively. The purpose of analytical descriptive research is to describe precisely, the nature of an individual, a symptom, a situation or a certain 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 material is found in all documents that are relevant reading 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 that contain concepts and information that support primary legal materials and secondary legal materials, such as dictionaries, encyclopedias and so on. This research was conducted by data analysis with a qualitative approach that uses a deductive mindset.

### 3. Discussion

#### *A. Definition of Common Property*

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

In more detail, joint property includes any form of assets acquired by husband and wife during their married life, which can be movable property (such as vehicles, household appliances, 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 welfare.

#### *B. Scope of Common Property*

The scope of joint property includes different 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 (KUHPercivil), the scope of joint property includes:

1. **Property Acquired During Marriage** The property in question is all assets acquired during the marriage, regardless of who is more active in acquiring the property. This includes income from work, business, or investments made by both parties. Therefore, even if only one of the parties directly manages or earns income, the acquired property remains the common property.
2. **Property Purchased with the Proceeds of Joint Property** If a property is purchased with money or assets derived from common property, then the property is also included in the category of common property. For example, if a husband and wife buy a house or vehicle with money earned from their joint income, then the property is joint property, even if only one party drafts the purchase contract or holds the official documents.
3. **Property Acquired by Partition of Inheritance or Grant** In general, inheritances and grants received by either party to the marriage are considered personal property, unless otherwise specified in the grant or inheritance, or if the inheritance is used for mutual benefit. If a grant or inheritance is used for household purposes or to purchase common property, then the asset can be considered common property.
4. **Assets Obtained from Joint Venture Businesses** run by husband and wife together, whether managed by one party or both, are also included in the category of joint property. For example, if a husband and wife open a shop together and make a profit, then the profit is joint property. Likewise, 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 period, if replaced with new property acquired, then the replacement also becomes joint property. A common example is if the husband and wife replace a vehicle damaged by an accident with a new vehicle, then the replacement vehicle will be considered joint property.

### *C. Exclusion of Common Property*

While in general all property acquired during a marriage is considered joint property, there are a few exceptions to consider:

1. **Personal Property**

Personal property is property owned by one of the parties prior to the marriage, or property acquired during the marriage by way of a grant or inheritance that is clearly addressed to one of the parties. This personal property is not included in the common property.

2. **Marriage Agreement**

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

3. **Property Acquired by Distribution of Private Property Rights**

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

### *D. Legal Regulations on Business Ownership in Marriage*

Business ownership within the scope of marriage is part of the property that is legally subject to the provisions on joint property. In Indonesia's 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 is notarized and recorded at the civil registry office or KUA. This provision is in line with the principle of mixing property (*community property*) which is also adopted in Article 119 of the Civil Code (KUHPercivil), which states that: "Since the marriage took place, legally there has been a mixing of all the property of husband and wife into one unit, unless otherwise stipulated in the marriage agreement." This means that even if only one party actively manages or runs the business, as long as the business is built and developed during the marriage period, the proceeds of the business are included in the joint property (*gono-gini*). This also applies even if only one name is formally listed as the owner or founder of the business, such as in the deed of establishment of a business entity or business license (Muhammad, 2019).

One of the main problems that arises in the case 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 start-up capital. There are forms of indirect contribution that are also legally and ethically recognized, such as:

1. Provide moral and psychological support that enables business continuity.
2. Take care of the household so that the couple can focus on business.

3. Playing a role in informal accounting, distribution, or business logistics without formal recognition.

In practice, proving contributions is a challenge when there is no official documentation. Then, 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 receipts, invoices, or informal financial records.

#### *E. Mechanism for Resolving Business Disputes in Marriage Related to the Division of Joint Property at the Time of Divorce from a Civil Law Perspective*

Business disputes in marriage are often a complex issue when it comes to the division of joint property, especially when divorce occurs. When the husband and wife run a business together or one of them runs a business using joint capital, then the property generated from the business will be part of the joint property and must be divided fairly in the event of divorce.

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

In principle, joint property includes everything acquired during the marriage, be it money, goods, or other assets, including the proceeds of the business being run. According to Article 35 paragraph (1) of Law Number 1 of 1974 concerning Marriage, property obtained during the marriage period is joint property unless there is a marriage agreement that stipulates otherwise. Likewise, in Article 119 of the Civil Code (KUHPercivil) which states that property acquired during marriage is joint property, unless there is an agreement on the separation of property.

At the time of divorce, the division of joint property including the business carried on during the marriage must be completed. Business assets that are part of a common property can include:

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

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

The mechanism for resolving business disputes in marriage, especially related to the division of joint property, 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 a joint property dispute. This mediation is conducted by a neutral third party, such as a court mediator, who seeks to help both parties reach an agreement without going through a lengthy litigation process. In this case, married couples who have 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 an agreement between the two parties can be used as a basis for resolving the dispute over the division of property.

###### b. Litigation Process in District Court or Religious Court

If mediation fails or the two parties do not reach an agreement, then the case can proceed 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 the division of joint property.

In the litigation process, both parties can file a civil lawsuit regarding the division of joint property, which includes businesses run during the marriage. The court will examine the 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 each party's contribution to the business. If one of the parties plays a more dominant role in carrying out operations or providing capital, the court will assess the proportionate distribution 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 Distribution Agreement (Collective Agreement)

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

If there are difficulties in determining the value of the business that is run together, then an assessment (valuation) can be carried out by independent appraisers who have competence in their fields. This expert will assess the fair value of the business based on financial statements and other aspects.

3. Obligations of the Court in the Distribution of Common Property

In the context of divorce, the division of joint property is one of the important issues that need to be resolved by the court. Indonesian laws provide for the division of joint property in divorce, which aims to create justice for both parties (Soepomo, 1999).

The court plays an important role in determining how the common property is divided so that the division is fair and proportionate.

1. Principles of Justice and Balance

The court is responsible for ensuring that the division of joint property is done fairly and proportionately. This means that the division must pay attention to 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 inequality that may occur between parties who are more active in earning a living and those who play a role in the domestic sphere.

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

In many divorce cases, one of the parties, especially the wife, may not be directly involved in the husband's business operations, even though both acknowledge that the business is a joint result. In this case, the court needs to consider the contribution of parties who are not directly involved in the business, such as wives who take care of the household and children more. Even though the wife does not directly work in the company or business owned by the husband, her moral and emotional contribution is still considered part of the joint effort in building the family.

3. Distribution by Contribution

The court must carefully evaluate each party's contribution to the income and formation of the common estate. If one party is directly involved in the work or business, the contribution is easier to measure, both in financial and material form. However, for parties who are more focused on domestic roles, the court must consider the value of the work which cannot be measured directly, but has a great influence on the smooth running of family life and the continuity of the husband or wife's business.

4. The Principle of Fairness in Distribution

The court also prioritizes the principle of fairness in the distribution of common property. The distribution of assets is not always divided in half 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 influence of the division of assets on their future welfare.

5. Protection of Children's Rights

In addition, if there are children in the divorce, the court will consider the needs of the child in determining the distribution of property. The shared assets will also consider allocations for education, care, and other needs for children. The child's right to financial support and proper upbringing will affect the court's decision on the division of property.

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

In some cases, the court also considers social and economic value in determining the amount of the share received by each party. A fair division is not only determined by material value, but also considers its impact on social and economic life after divorce, so that neither party is unreasonably disadvantaged.

In the case of Ferry SP Sinamo S.H., M.H as the husband where the husband was declared bankrupt by the commercial court. Hernawaty saragih as the wife of the bankrupt party wants to save her personal property so that it will not be confiscated by the commercial court. So that the wife made a marriage agreement to separate assets at the notary office in Langkat. Where the curators of Mangatur Ruhut Banuara Sianipar S.H.M.M and Hadi Yanto S.H.M.H are looking for evidence that the marriage agreement of separation of assets was made at the notary office in Langkat after the husband was declared bankrupt by the commercial court.

A couple's property can be confiscated if they do not make a marriage agreement, separation of property or the couple's property can be confiscated if a marriage agreement is made to separate property after one of the spouses is declared bankrupt. And this has caused many disputes over common property in the community.

## 4. Conclusion

### A. Conclusion

The legal regulation of business ownership in marriage as well as the mechanism for resolving business disputes related to the division of joint property, it can be concluded that in the Indonesian legal system, property acquired during the marriage period, including business, is considered as joint property. This applies even if only one party manages and runs the business, unless there is a



separation agreement that governs it differently. The court in resolving joint property disputes will consider the contributions of each party, both direct and indirect, such as capital or operational support.

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

## B. Suggestion

For couples who run a business together to make a pre-nuptial or post-nuptial agreement that clearly governs the division of property and business ownership rights. This agreement can avoid disputes and provide legal certainty for each party. Spouses involved in business should always maintain clear and detailed documentation, such as financial statements and proof of business transactions, to facilitate the evidentiary process in the event of a dispute. In addition, it is important to conduct legal education to the public, especially for couples who have joint ventures, about their rights and obligations in marriage, as well as the importance of written agreements to protect their rights legally.

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