



## The Role Of Contribution In The Determination Of Joint Property By Religious Court Judges

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**Abstract.** Joint Property is a property that is vulnerable to disputes by married couples when they divorce, to resolve this dispute, the religious court is the place to resolve this dispute. The marriage law and the compilation of Islamic law have also accommodated the settlement of this dispute with a balanced division for both parties. However, religious court judges sometimes depart from this provision by looking at the role of contribution as the main consideration in determining the share of each party. The role of this contribution is generally not regulated in law but can be analyzed juridically normative as part of the interpretation of the material of the law with various approaches. With the normative content contained in the role of contribution in the determination of joint property, the parties to the dispute can accept the binding decision, decisions regarding joint property that have been determined by religious court judges can be read with a broader perspective.

**Keywords:** Joint Property; Religious Court; Contributory Role; Normative Juridical

### 1. Introduction

Islam regulates maintenance in marriage as an obligation of the husband towards his wife and children, the maintenance provided by a husband to his wife and children is both in the form of inner maintenance such as providing attention and affection and maintenance in the form of property that will be used to make household life run normally. The property produced during marriage ultimately causes the mixing of property between the wife and husband. This mixing of property is also mentioned in Marriage Law Number 1 of 1974 in Article 35 paragraph (1) "*property obtained during marriage becomes joint property*". Legally, the existence of joint property is recognized by the state, although classical fiqh does not recognize this term (Wahyudi et al., 2023).

Joint property is part of the culture that has developed in various regions in Indonesia with various terms, but has the same essence, namely joint property generated during marriage (Nawawi, 2013). Joint property is one of the objects that are vulnerable to disputes by husband and wife when they divorce because of the unclear status of the owner of the joint property they are disputing. Disputes related to this joint property make the state provide solutions to resolve this dispute as stipulated in Law Number 1 of 1974 article 37 "*if the marriage breaks up due to divorce, the joint property is regulated according to their respective laws*". Further explanation of the settlement of this dispute is regulated in the Compilation of Islamic Law (KHI) article 88 which states that "*if there is a dispute between husband and wife about joint property, then the settlement of the dispute is submitted to the religious court*" (Marni et al., 2023).

Religious court judges are appointed by the state to resolve disputes related to joint property in accordance with Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989. In deciding this dispute, religious court judges are guided by applicable laws, the jurisprudence of the supreme court, Islamic fiqh books and other unwritten laws. (Sutopo et

al., 2021). Religious court judges make the marriage law and the Compilation of Islamic Law the main reference in deciding disputes related to the division of joint property. (Muhaimin, 2020).

In various decisions that have been made by judges, judges tend to vary in determining the distribution of joint property, there are judges who decide this dispute in accordance with statutory provisions, but there are also decisions that depart from existing statutory provisions, one of the reasons for the judge's deviation is by looking at the role of the contribution of each husband or wife during the marriage. Explicitly the role of contribution is not found in the law or in the Compilation of Islamic Law (KHI). Based on this, the author tries to examine the basis of the role of contribution used by judges in determining disputes over joint property in religious courts juridically normative (Liza et al., 2023).

## 2. Methods

In seeing the non-uniformity of religious court judges' decisions related to joint property disputes based on the role of contribution, the author sees this using a normative juridical approach by collecting primary, secondary and tertiary data. The research model used in this paper is qualitative research using a library research model. Some of the religious court decisions that the author uses are decisions from the South Jakarta religious court, the Central Jakarta religious court and the Bukittinggi City religious court. The purpose of this research is to see the role of contributions used by religious court judges as reasons in deciding joint property disputes normatively.

## 3. Results and Discussion

### 3.1. Property in Marriage

Property in the large Indonesian dictionary (KBBI) can be understood as goods, both money and so on, which become wealth, wealth can be tangible and intangible, which is valuable and according to the law is owned by a company or individual. (Indonesia, 2008). Basically, Islam only recognizes two types of property, namely the husband's property and the wife's property. Islam limits property to belong to each husband and wife, so that all rights attached to the property are the absolute rights of each husband and wife, so that they can be used without any intervention from others. Islam and the classical fiqh books do not recognize the mixing of property as is common in various regions in Indonesia. Property in marriage is regulated in more detail in the compilation of Islamic law in chapter 13 (thirteen) concerning property in marriage, basically during marriage there are three types of property that can be classified respectively in accordance with the provisions in the compilation of Islamic law. The provisions in the Compilation of Islamic Law (KHI) basically state that there is no mixing of assets between husband and wife. However, this condition can remain like that or can change its status to joint property. With the existence of three types of assets during marriage, husbands and wives have the same obligations in maintaining joint property, husband's property and wife's property. This obligation is confirmed in the compilation of Islamic law article 89 "*the husband is responsible for protecting the joint property, the wife's property and his own property*", as well as the provisions in article 90 "*the wife is also responsible for protecting the joint property and the husband's property that is in her*" (Hizbullah et al., 2023).

#### 3.1.1. The Husband's Property

Husband's property is property that is fully controlled by the husband and the husband has full authority to manage and utilize the property, husband's property if examined from the source of obtaining it can be in the form of innate property before marriage as long as it is explained by the husband that the property is his in the marriage agreement as stipulated in

law number 1 of 1974 article 29. Husband's property can also be in the form of acquired property that is determined as a gift or as an inheritance. Husband's property must be maintained by the husband and wife as explained in the compilation of Islamic law. The husband's property can also be used to pay debts that are used for joint interests if the joint property is not sufficient to pay debts for joint interests as stated in article 93 paragraph (3) *"if the joint property is insufficient, it is charged to the husband's property"*. this can be accepted because the obligation to pay off debts is the husband's obligation as a person who is mandated by law to provide maintenance.

### 3.1.2. The Wife's Property

The wife's property is property that is fully controlled by the wife, and the wife has the absolute right to carry out legal actions on her property. The wife's property can also be obtained in a similar way to the husband, but the wife's property can also be obtained from the husband, as long as the husband grants or gifts the property to the wife. The wife's property is also the responsibility of the husband to protect it. If the joint property cultivated by the husband and wife during the marriage is not enough to pay the joint debt and the husband's property is also not enough to pay this joint debt, then the wife's property may only be used to pay the joint debt. This is in accordance with the provisions of Article 93 paragraph (4) *"if the husband's property does not exist or is insufficient, it shall be charged to the wife's property"*.

### 3.1.3. The Joint Property

Joint Properties are assets obtained and cultivated during the marriage period either by making one party work outside the home and the other party work on domestic affairs in the household or both parties work together outside the home as long as it is not regulated in the marriage agreement.(Afrizal & Kodri, 2022). Joint property may not be used without the consent of the other party, namely the husband or wife as stipulated in article 92 *"husband or wife without the consent of the other party is not allowed to sell or transfer joint property"*. However, the husband or wife can request the religious court to conduct a bail seizure if there is an act that harms or endangers the joint property as stipulated in article 95 paragraph (1) *"without prejudice to the provisions of article 24 paragraph (2) letter c of government regulation Number 9 of 1975 and article 136 paragraph (2), the husband or wife can request the religious court to conduct a bail seizure of the joint property without an application for divorce, if one of them commits an act that harms and endangers the joint property such as gambling, drunkenness, extravagance and so on"*.

Joint property is known by various terms such as *Cakkara* in Bugis custom, *perpantangan* in Kalimantan custom, *hareuta syarikat* in Aceh culture and *gono gini* in Javanese custom.(Zarkasih, 2018). Joint assets can be classified as *urf amaly* or customs that only develop in most parts of Indonesia.(Az-Zuhaili, 1995). Joint property is theoretically categorized as *shirkah abdan* because in the effort to obtain it, the roles of husband and wife are found.(Sabiq, 2008).

In practice, joint property also has great benefits in the event of a divorce between husband and wife, so the wife will have a holding property after not being with her husband anymore. On the other hand, the reality that occurs in the community if there is a divorce, the child will come with his mother, so the existence of joint property can also guarantee the fulfillment of the needs of the child, because this need is *dharuriyat*. So the concept of joint property is in line with the benefit that is the goal and will of *shari'*. The legality of joint property is also found in marriage law number 1 of 1974 and in the compilation of Islamic law (KHI). Joint property becomes property whose ownership is in the name of both parties and cannot be used unilaterally without permission from the other party. In practice, joint

property can be divided by half for the husband and the other half for the wife if they divorce, in line with the provisions in article 97 of the compilation of Islamic law.

### 3.2. Religious Court Decision

In the South Jakarta religious court decision number 1266/pdt.G/2014/PA.JS, the wife's share of joint property is 40% and the husband's share is 60% related to the disputed property, namely a plot of land and the building above it and other joint property and both of these couples work in the same place. In the decision of the Central Jakarta Religious Court number 0062/pdt.G/2016/PA.JP, the husband's share was 25% and the wife's share was 75% with the condition that the husband and wife were divorced because the husband did not provide proper maintenance during the marriage period and the wife was actively working to meet the needs of both of their households. In the Bukittinggi religious court decision number 618/pdt.G/2012/PA.BKT, the wife's share is 2/3 of the joint property and the husband gets 1/3 of the joint property. With a description of the case that the husband has neglected to provide maintenance during the marriage period and all debt burdens are borne only by the wife. In these three decisions there are differences in the determination of shares for husbands and wives, one of the reasons for the judge in determining this decision is the difference in the role of the contribution of each party in the collection of joint property, both active and passive contribution roles.

### 3.3. Normative Juridical Analysis of The Role of Contribution

The role of contribution which is taken into consideration by judges in determining joint property is not in accordance with the provisions in the Compilation of Islamic Law Article 97 "*widows or widowers of divorce are each entitled to one-half of the joint property as long as it is not specified otherwise in the marriage agreement*". The difference between judges in deciding the amount of division of joint property and prioritizing the role of contribution is because basically the division in article 97 is only regulating not binding so that there is a gap for judges to switch to other arguments. On the other hand, this equal division is not absolute but only formal, so that religious court judges can decide on a different amount of division in order to create justice for the parties to the dispute.(Rochaeti, 2013).

The role of contribution can be seen with normative juridical analysis by using three approaches, namely statute approach, case approach and conceptual approach.(Sovia et al., 2022). The statutory approach can be used to see the lack of role and contribution of one of the parties in the process of collecting joint property due to one of the parties not carrying out his obligations and neglecting to fulfill his duties as a husband as stipulated in marriage law number 1 of 1974 article 34 paragraph (1) "*the husband is obliged to protect his wife and provide all the necessities of household life according to his ability*", by using extensive interpretation, namely interpretation by expanding the meaning and terms (Muhaimin, 2020), then the fragment of article 34 paragraph (1) *...provide everything ...* can be interpreted as maintenance that the husband must strive for with all his abilities in line with the further explanation of the husband's obligation to provide religious education for the wife and opportunities to learn other knowledge, as for maintenance related to property can include three things, first nafkah, kiswah (clothing) and residence for the wife, second household expenses, care costs and medical expenses for the wife and children When the husband is not responsible for providing for his family, the husband is considered not to contribute equally to the wife or the husband is negligent with his duties as a husband regulated in the legislation.

In an ideal marriage according to article 31 of the marriage law that husbands and wives are equal in rights and obligations, then further explained the rights and obligations of



husbands and wives, husbands to wives and families and wives to husbands and families in the compilation of Islamic law. In cases where the husband's share is greater than the wife's, as found in the decision of the South Jakarta Religious Court, the husband's role is considered by the judge to be more dominant in the collection of joint property and the existence of assets owned by the husband not during the marriage period but managed together after the marriage occurred, so the wife's contribution to these assets is only limited to operational fulfillment using joint property. However, the wife has also carried out her obligations as stipulated in the law, so the amount of joint property obtained is also greater than the negligence and irresponsibility of one party during the marriage period.

If viewed from the case approach, the diversity of the distribution of joint property is due to the element of negligence of one of the parties, between one case and another case is different, so that the religious court judge decides according to the level of negligence committed by each perpetrator, in the case in the Central Jakarta religious court the husband only gets 25% of the joint property, while in the case in the Bukittinggi religious court the husband gets 1/3 of the joint property, This difference can be seen from the level of negligence of the husband in the case in Central Jakarta, the husband provides a very insufficient income to meet daily needs, while in the case in Bukittinggi the husband works and provides sufficient daily income, but the husband's negligence lies in the husband's non-contribution in paying off the house loan and business capital debt used by the husband to develop the business, the repayment effort should be charged from the joint property because the allocation of the debt is for both parties, but in reality the debt obligation is only borne by the wife. This is certainly contrary to Article 93 paragraph (2) of the Compilation of Islamic Law *"Responsibility for debts incurred for the benefit of the family shall be borne by the joint property"*.

In the case in the South Jakarta court, the wife received a smaller allocation than the husband, but the amount of joint property was greater than the previous two cases, This is based on the reality that the wife has a big share in the collection of joint property because the wife also works and has never neglected her duties and responsibilities as a wife as referred to in chapter nine of marriage law number 1 of 1974 concerning the rights and obligations of husband and wife from article 30 to article 34 and in the compilation of Islamic law chapter twelve concerning the rights and obligations of husband and wife, but one of the assets claimed is part of the joint property, but in fact the asset belongs to the husband before marriage. However, because the management of these assets uses joint property, the wife's contribution is calculated so that the amount of joint property is almost balanced.

In a conceptual approach, Islam positions the husband as the owner of a productive role who works and produces something that can be used to fulfill the needs of his family, and the wife has a reproductive role because of her ability to produce offspring.(Sastrawati, 2018). The judge's decision that provides rations for wives and husbands in dispute related to joint property according to their respective contribution roles is seen as providing a sense of justice for the two parties in dispute, the role of contribution that the author means can be in the form of an active role of one of the parties by working to produce assets or a passive role by providing support in domestic affairs in the household that support the performance and effectiveness of efforts to collect joint property.(Mufidah, 2008). In general, the sense of justice expressed by the judge is also in line with the principles of justice in Islam as explained by Allah in His word

*"Indeed, Allah has commanded you to deliver the message to those who are entitled to it, and if you set a law among men, you should set it justly; indeed, Allah is the best of instructors to you; indeed, Allah is all-hearing, all-seeing". (Q.S An-nisa: 58)*

The concept of justice that adheres to Islamic provisions is one of the fundamental theological aspects as a Muslim in deciding cases and disputes related to Muslims and is binding on everyone theologically. The shift in values from women being passively involved to being active in collecting joint assets caused the husband to no longer be characterized as the absolute breadwinner, but the active involved in collecting joint assets than the husband and the husband was also considered by the judge to be negligent in carrying out his obligation. Justice that is caused in the end makes the parties to disputes related to joint property make *sulhu* (peace) as an alternative solution and division of joint property by looking at the role of contribution as the main reference in determining the share of joint property and making both parties to the dispute can reconcile and accept the decision gracefully. (Sawitri & Mansur, 2022).

#### 4. Conclusions

Joint property, which is prone to disputes when the marriage ends in a divorce, makes it an object that is contested between husband and wife, which ultimately makes the relationship between the two even worse after the divorce. The main problem in joint property is the ambiguity of ownership of the property so that each party considers joint property as part of its rights that must be maintained. To resolve this dispute, the religious court is the institution appointed by the State to resolve this dispute. In the process of resolving this dispute, the religious court refers to the relevant laws and regulations as reference material in providing decisions, but sometimes religious court judges also decide cases that are not in line with the laws and regulations by looking at the facts that exist by prioritizing the principle of justice as the main principle in their decisions.

The transition of religious court judges from statutory provisions in deciding cases of joint property disputes by looking more at the role of the contribution of each party, although the role of this contribution is not explicitly mentioned, the role of contribution is also normative and valid as one of the judge's considerations in deciding disputes over the distribution of joint property. The role of this contribution is important to see so that one party who contributes not maximally during marriage will not get a division of property in accordance with statutory provisions. By looking at the role of this contribution, each party will get a share in accordance with the role of their contribution and this is in line with the principles of justice and the principle of the judiciary itself, namely the judge's decision must be accompanied by reasons as the judge's responsibility to the community so that it has objective value.

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