



Juridical analysis of the division of joint property with inherited property after divorce

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ABSTRACT

The legal consequences arising from divorce cases, one of which is the division of joint property. Which where joint property has been regulated in article 128 kuhperdata regarding the division of joint property after divorce or death. If there are problems in the division of joint property and or inheritance, the husband or wife can file a court lawsuit. In the lawsuit, the important main objective is the existence of mediation outside and inside the court and the judge's consideration in determining the division of property. The aim is to understand the efforts of the parties to be understood before the court decision and the panel of judges in determining the division of joint property due to divorce. This case study is descriptive analytical in nature, namely by analyzing, namely by conducting research using laws and regulations and literature related to the division of joint property after divorce.

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1. Introduction

In essence, humans were created by God in pairs and humans are social creatures. Social creatures are creatures that interact or relate to other creatures. This means that humans cannot live alone. In addition, peoples always have the urge or lust to live together and loving with each other, including the urge to gather or live together and interact with each other with the opposite sex to form a family (Putri & Wahyuni, 2021).

A family is formed through a process called marriage or marriage or nomal marriage in general is the inner and outer bond of a man and a wife as husband and wife with the aim of forming a happy and eternal household based on the almighty God. The family is formed through a process called marriage. Marriage, as defined by Law Number 16 of 2019, is the union of a man and a woman as husband and wife with the intention of creating a joyful and long-lasting family (household) founded on the will of God Almighty (Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan, n.d.).

But in marriage or marriage problems can occur that can lead to divorce. Divorce is an event that is fairly concerning for the husband, wife, and kids in any family. Divorce can be caused by a number of factors, such as poor communication, arguments, dishonesty, intimate partner violence, problems with finances, newlywed marriage, changes in culture, and more. The breakdown of a household due to divorce can have several impacts, both on the former husband, former wife, and children born in the marriage/marriage, as well as on joint property and inheritance property. Inheritance In the perception of the Bargerlijk Wetboek or Civil Code, the definition of inheritance is property, assets and rights and obligations in the form of assets and liabilities with monetary value to be transferred from the deceased heir to the heirs regardless of gender (Anisya Fitri Suhartono et al., 2022). In general, a marriage agreement contains arrangements for assets of the married couple. The primary goal of a marriage agreement is to establish guidelines regarding property ownership in marriage. Some of the benefits of making a marriage agreement include: a) Avoiding asset combining by keeping husband and wife's assets independent reduces gono gini dispute over property and holds all properties within the heo's ownership in the case of a divorce; b) Any liabilities created during their marriage will be borne by both of them; c) The other spouse (wife or husband) does not have to agree if one wants to sell or transfer the property and take legal action over it; and; d) The spouse can pledge assets registered in their name without having to get advance authorization for the loan that they are gathering (Perjanjian et al., 2021).

Divorce can be caused by several factors, urually starting from the inability of the husband or wife to make theit partner happy or the inability of the husband or wife to carry out their obligations. Divorce has an impact not only on the dissolution of the marital bond between husband and wife, but even has an impact on child custody and the division of joint property (Sulis Tia Ningsih et al, 2022).

One of the consequences of breaking the bond of marriage due to divorce is property. This property is divided between husband and wife. This is often referred to as joint property. This is often referred to as common property. The positive law that applies in Indonesia, the definition of joint property is regulated in Article 35 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which reads: "The property obtained during the marriage becomes joint property". The article appears to explain what common property generally means, particularly that any property acquired during a marriage bond is considered joint property. Whoever is attempting to get wealth in the marriage is irrelevant. Whether the husband is working alone while the wife stays at home to care for the children and run the household, or the wife is working alone while the husband is living idly, or both the husband and the wife actively earn a living, the law mandates that any property acquired during the marriage bond becomes joint property, regardless of whose contribution is trying (SALINAN PRESIDEN REPUBLIK INDONESIA, n.d.).

Joint in KHI is property in a marriage or syirkah is property obtained either individually or jointly by husband and wife during the marriage bond that lasts, without questioning registered in the name of anyone. Article 1 letter f of the Compilation of Islamic Law provides a formulation of joint property in more detail. The provisions of Article 1 letter f of the Compilation of Islamic Law seem more moderate, because the Article requires that the property obtained during the marriage can only be considered as joint property when the property is obtained from the efforts of the husband and wife either individually or jointly. This means that the Compilation of Islamic Law requires that in terms of obtaining property in marriage, there is an involvement of the contribution and role of the husband and wife, so the husband and wife are actively trying to obtain marital property (Puspytasari, 2020).

Therefore, this article explores the following research questions; Based on the background above, the problem formulation can be: a) How should the division of joint property and the division of inheritance property be in civil law? b) How is the application of the law to the mixing of joint property with inherite property after divorce?

2. Method

This research uses Normative Juridical Research. Normative Juridical is an approach in legal research that emphasizes applicable legal norms, both in the form of laws, regulations, and court decisions. This approach focuses on analyzing legal texts and how these norms are applied in practice.

This research was carried out to produce beneficial results and in agreement with the title and problems to be explored in this study. The normative juridical research approach involves conducting legal study in libraries by solely looking at secondary data or library items. The data sources used by the author are the Marriage Law No.1 of 1974, the Civil Code, as well as legal journals and other scientific papers.

3. Analysis and Results

3.1. Joint Property and Inheritance Property in Civil Law

In the Indonesian Civil Code (KUHPerdata), arrangements regarding inheritance are contained in Book II which regulates "Binding" and "Inheritance". In particular, provisions regarding inheritance are contained in Articles 832 to 1130 of the Civil Code. Some important articles related to inheritance include: a) Article 832 of the Civil Code-Stipulates that "inheritance is all the wealth left by the person who died"; b) Article 833 of the Civil Code-Mentioning the inheritance that falls to the heirs; c) Article 854 of the Civil Code Stipulates that inheritance can be divided into inheritance by law or by will; d) Article 1053 of the Civil Code - Mentioning the rights and obligations of heirs in dividing the inheritance (Alfiyani & Muamar, 2023).

Inheritance property is wealth left by the testator to his heirs. Inheritance law is a set of rules governing the inheritance of the property of a person who has died (heir) to another person who is entitled to inherit the property (heir). The inheritance distribution system is a ranking system. That the heir whose degree is closer to the testator closes the heir who is further away. The point is, as explained above that in the Law there are two ways to get inheritance, one of which is Ab intestato which is known by the existence of four classes of heirs that: a) While there is still a group 1, then closed the possibility of groups II, III, and IV to receive inheritance from the heir; b) If group I does not exist then group II is entitled to receive inheritance from the testator and closed inheritance rights for groups III and IV; c) If group II does not exist then the right to receive inheritance is group III and closed inheritance rights for group IV; d) If the heirs of group III do not exist, the heirs of group IV are entitled to receive the inheritance. If all heirs are absent then the entire inheritance will be handed over to the state.

In inheritance law, the main problem lies in inheritance rights not in inheritance obligations, therefore an important element in inheritance law is the property left by the testator to the heirs. If the element of inheritance does not exist, meaning that the person who died did not leave property, inheritance becomes irrelevant, otherwise if the heirs do not exist, Inheritance remains relevant as the heirs' inheritance is transferred to the state (Ria, Wati dan Zulfikar, 2015).

One that defines of joint property in marriage is the joint property between husband and wife obtained by both during the marriage, such as if someone gives money, or a bicycle engine, or other valuable items to the husband and wife, or property obtained by the husband and wife from the results of their work, and the savings from the husband's salary and the wife's salary are combined, all of which can be taken as joint property. This is in accordance with the definition of joint property mentioned in Law No. 1 of 1974 concerning Marriage, namely, objects obtained during marriage become joint property. To clarify the above understanding, the following points should be noted: a) Items purchased from the husband's salary (property), such as chairs, beds, refrigerators, stoves, cars are the husband's property and are not joint property, including in this case is the inheritance property obtained by the husband, or gifts from others given to the husband specifically; b) Things that are bought with the husband's money and then intentionally and clearly given to his wife, such as the husband buying clothes

and jewelry for his wife, or the husband buying a motorcycle and giving it to his wife, then this property, although bought with the husband's money, has become the wife's property, and is not included in the scramble property; c) Items purchased from the wife's property, or someone else donating something specifically for the wife, then all of that is the wife's right and is not joint property (Liky Faizal, 2015).

3.2. Division of Joint Property and Division of Inherited Property in Civil Law

One of the most crucial factors in estimating the value of a judge's decision that includes justice (*ex aequo et bono*) and legal certainty is the judge's consideration. In addition to providing benefits for the parties involved, this judge's consideration must be handled with great care and attention. Separation of joint property can be done by agreement or agreement in a notarial deed which must be announced in the same way (Aprindawati et al., 2023).

In BW (civil) inheritance law, there are three important elements, namely there is someone who dies or the heir (*erflater*), there is someone who is still alive as an heir who will receive inheritance at the time of death or heir (*erfgenaam*) and there is a certain amount of property left behind or inherited property (*nalatenschap*) (Limbong et al., 2023). When someone has passed away, the BW inheritance law system and the Islamic inheritance law system both have the same opening time for inheritance distribution. This circumstance results from inheritance, which serves to take the place of a deceased person's property ownership position (Dika Ratu Maru'atun et al., 2024).

Under the civil inheritance concept, a person's rights and obligations are automatically inherited by their heirs after their death. Law Civil inheritance law has a distinctive feature, namely the absolute right of the respective heirs to at any time demand the distribution of the inherited property. Which in a sense if the heirs demand the distribution of the inheritance in court then the claim cannot be rejected by the heirs can be rejected by other heirs (Muhti et al., 2024).

According to civil law, the division of inheritance can be seen according to the group of living heirs, with conditions that must be met, namely: heirs, heirs and property left by the heirs. In civil law, heirs are divided into 4 types, including: a) Group I, heirs who also include children in a straight line down, extra-marital children, husband or wife, legally recognized children, adopted children who are appointed by court decision and legalized as legitimate children; b) Group II, heirs include father and mother who follow in a straight line and above as well as brothers and sisters; c) Group III, heirs include grandmothers and grandfathers straight line descendants and above; d) Group IV, heirs include relatives of both parents of the heir or group III and group IV (Anisya Fitri Suhartono et al., 2022).

Transfer of inheritance from heirs to the heirs must be done properly, in accordance with the applicable legal rules by prioritizing deliberation to reach an agreement. by prioritizing deliberation to reach an agreement. BW inheritance law is defined as follows: "All the legal rules that regulate the fate of a person's wealth after he dies and determine who the person is. a person after he dies and determines who the person is who can receive it". receive it". According to western civil law, a person becomes an heir according to Civil inheritance is caused by marriage and blood relations. So it can be understood that the events of marriage and inheritance have a very close legal relationship (Achmad, 2023).

Absolute part, which is part of the testator's estate which is then handed over to the heirs according to straight line descent in accordance with the law. The absolute part is contained in Article 914 of the Civil Code which stipulates the absolute part that the heirs will receive, namely: a) If there is only one child, the absolute share is 1/2 of the share to be received; b) If there are two children, the absolute share is 2/3 of what should be received; c) If there are three or more children, the absolute share is 3/4 of the share they are entitled to by law (Anisya Fitri Suhartono et al., 2022).

The process of transferring marital property can be done in various ways according to the form of the property. various ways in accordance with the form of the property, be it movable objects and immovable objects. In the process of transferring transitional property, the main thing is to prove the status of the property so that it can be transferred to other parties. is to prove the status of the property so that the party or parties can be declared entitled to transfer it. The process of proof which is sometimes ignored in carrying out the process of transferring rights to property in an ordinary marriage can cause a problem, especially if the party or parties are entitled to transfer it. ordinary marriage can cause a problem, especially if it occurs at the time of the termination of marriage, either due to death or divorce. This can also cause problems/disadvantages to third parties as good faith recipients of the transfer of rights in good faith (Andayani et al., 1974).

In Civil Law inheritance law there are 3 components therefore, inheritance will only occur if several elements of the requirements that must be met are met: a) Heir (erflater) An individual who has died with male or female gender and inherits wealth assets, rights, or obligations during his lifetime can be called an heir. It can also be interpreted that heirs are individuals who have died and left their assets; b) Ahli Waris (erfgenaam) In the Civil Code, what is meant by heirs are members of the blood family who are legitimate and beyond marriage, including husbands and wives residing separately from marriage (Article 832 of the Civil Code). Furthermore, in (Article 833 of the Civil Code) it is stated that all heirs, by legal provision, automatically acquire ownership rights over all assets, entitlements, and outstanding claims of the deceased. According to the civil code, inheritance can be obtained through two methods: heirs determined by law and heirs determined by a will; c) Inheritance (Nalatenschap) The inheritance in western relative law system sourced from the supply of the Civil Code (Burgerlijk Wetboek) includes all property along with the rights and obligations of the testator in the legal field of wealth names that can be valued in money. According to the Civil Code (Burgerlijk Wetboek), wherever the property comes from, it remains a single unit which as a whole passes from the hands of the deceased to his heirs (Dika Ratu Maru'atun et al., 2024).

Based on Article 36 of the Marriage Law, those who carry property are still authorized to perform legal acts on the property they carry. This is confirmed in Article 31 paragraph (2) of the Marriage Law, which states that each party is entitled to perform legal acts, so the woman as a wife is still considered authorized to perform legal acts. While in BW a married woman is considered incapable of performing legal acts (handelings onbehuzaam). There must be a husband's consent to perform a legal act (Usanti, Trisadini dan Anand, 2019). This is based on Articles 110, 108, 1330 BW. For example, a woman who is 25 years old and unmarried, she is authorized to perform legal acts. The adult requirement has been met, based on Article 330 BW. However, after she marries, she becomes incapable of performing legal acts (1963sema003.Pdf, n.d.).

3.3. Application of Law on the Mixing of Joint Property with Inheritance Property after Divorce

The binding choice of the court has permanent legal force so that it must comply with and implement the choice. Usually because the choice has three powers, namely formal, verification and executory. This executory control is a powerful weapon against parties who do not want to enforce the court's ruling that holds permanent legal authority. (Mushafi & Faridy, 2021) One of the parties only has to file a petition for execution if one of the parties is not convinced to comply with the court's choice. A joint property that is only controlled by one of the parties, will be forced reallocation, then the property will be divided, for property that cannot be divided and will be sold, then the remainder of the sale shall be allocated based on the choice of the judge (Najih et al., 2024).

In the Civil Code (BW), the formulation of Joint Property according to the Law is regulated in Chapter VI, Articles 119-138, which consists of three articles. sections. The first part is about joint property according to the law (articles 119-123), the second part is about the formulation of

joint property and the right to disengage from it (articles 126-138). To the extent that the marriage agreement contains no provisions, the Civil Code states that a husband and wife have a comprehensive joint property from the moment of marriage. A husband and wife cannot agree to amend or terminate the joint property during their marriage. The husband and wife's moveable and immovable assets are included in the joint property with regard to profit (Article 119). Both existing and future, as well as goods that they acquire free of charge, unless in this last case the bequeath or the donor determines the return expressly (article 120). Only the husband may manage the joint property. He may sell it, transfer it and encumber it without the assistance of his wife, unless the wife by virtue of a marital agreement does not diminish his right to manage his property. (article 124). Joint property is dissolved by law, caused by separation of property, divorce, separation of bed and board, death, and marriage with the permission of a judge during the absence of a husband or wife. (Article 126). When compared with the description of marital property in Law No.1 of 1974, the description in the Civil Code is more extensive, up to 18 articles. In Law No.1 of 1974, it is only described in three articles. There are fundamental differences between the two laws (Nurdin et al., 2024).

Control over inherited property which determines that after the occurrence of divorce, the inherited property remains the property of the legal spouse and is in control of each during get married in accordance with Article 35 paragraph (2) of Law of the Republic of Indonesia Number 1 of 1974 regarding Marriage. Article which determines that the wife's property remains controlled by the wife and fully belongs to the wife, as well as the husband's property remains controlled by the husband and fully belongs to the husband. husband and fully become the husband's property (Jessica Mutiamas Salamoru, Ngadino, 2021).

Article 290 paragraph (1) of the Civil Code: "blood family is a family relationship between them, of which one is a descendant of another, or who all have the same ancestors", and in article 852 a of the Civil Code: "in the case of the inheritance of a husband and wife who have died first, the wife or husband who lives the longest, in carrying out the provisions of this chapter, is equated with a legitimate child and the deceased with the understanding that if the marriage of the husband and wife is for the second time or next, and from the previous marriage there are children or descendants of these children, the new wife or husband shall not receive a larger share of the inheritance than the smallest share of the inheritance which would have been received by a child of the deceased or, in the case where the child has died first, by all the descendants of the deceased's successors, and in no case shall the share of the new wife or husband exceed one-fourth of the estate of the deceased" (Cerine & Sidauruk, n.d.).

Another provision is contained in the Supreme Court Decision dated December 9, 1959 Number 424 K/Sip/1959 emphasizing that: The Supreme Court's jurisprudence states that in the event of a divorce, the husband and wife must split the joint property, with each receiving half of the share. This Supreme Court decision is also not much different from the formulation contained in Article 96 and Article 97 of the KHI which is also the application of Article 37 of the UUP where each husband and wife are entitled to half of the joint property in the event of a divorce, either due to death or living divorce. Based on the description above, it is clear that the division of joint property after a divorce, each husband or wife gets one-half of the total joint property (Ratnawaty, 2021).

The rules related to joint property aim to protect the rights of each party, both husband and wife, and provide legal certainty in the implementation of property division after divorce. In the provisions of Islamic law, for example, both parties are each entitled to half of the joint property, as stated in Article 97 KHI. Whereas in the civil law system, joint property is generally divided equally or according to an agreement authorized by the court. If there is a dispute, the court will make a decision based on the material and non-material contributions of each party, as well as considering the welfare of children who may be affected (Purba, Rhido dan Siregar, 2024).

4. Conclusion

From the description above, the consideration of the Panel of Judges must be in accordance with the applicable laws and regulations, namely Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law that joint property includes assets and liabilities. Assets are assets owned by the Plaintiff and Defendant during the marriage and liabilities can be referred to as debts owned by the Plaintiff and Defendant during the marriage. The assets and liabilities in this case have the same position that the Plaintiff and Defendant are entitled to half of the joint property. This is in accordance with Article 37 of Law Number 1 of 1974 Concerning Marriage and Article 97 of the Compilation of Islamic Law which states that each widow or widower is entitled to half of the joint property. Thus, the consideration of the Panel of Judges based on the evidence sent by the Plaintiff and the Defendant has achieved a sense of justice for both parties, that what is jointly obtained will become property.

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