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## CONTROL OF JOINT PROPERTY BY EX-HUSBAND AFTER DIVORCE IN BANUA KEPAYANG VILLAGE, LABUAN AMAS SELATAN SUB-DISTRICT, HULU SUNGAI TENGAH DISTRICT

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**Abstract:** This research is motivated by the problem of joint property controlled by the former husband after divorce in Banua Kepayang Village, Labuan Amas Selatan District, Hulu Sungai Tengah Regency. In this case, when a divorce occurs, the joint property is controlled by the former husband. It should be based on the Compilation of Islamic Law Article 97 states that "Widows or divorced widowers are entitled to one-half of the joint property as long as it is not specified otherwise in the marriage agreement." This type of research uses empirical legal research with a qualitative descriptive approach and a legal sociology approach. The data collection technique is done by interview. The data explored regarding the description of the control of joint property and the reasons behind the control of joint property by the ex-husband after divorce. The data source is informants with three former families. Data processing techniques through editing, categorization, description, and matrication. Data were analyzed using descriptive techniques. The results showed that the control of joint property was carried out by the ex-husband with a description of the joint property in each case varying. In the first case, the joint property was controlled entirely by the former husband. In the second case and the third case, the joint property was only partially controlled by the former husband by selling the joint property without distributing it to the former wife. There are several reasons behind the control of joint property. First, there is a signed agreement on stamp duty. Second, based on the understanding of the former husband that the former husband feels that he has contributed more in producing joint property, the existence of daily maintenance while still being husband and wife, iddah maintenance, and mut'ah maintenance, besides that because the former wife had cheated on him with another man when she was still a husband and wife. As according to the former wife, it was due to the ambition to fulfill all the wishes of the former husband such as buying a new car, a new motorcycle, building a house with a new wife, and others.

**Abstrak:** Penelitian ini dilatarbelakangi oleh adanya permasalahan terhadap harta bersama yang dikuasai oleh mantan suami pasca perceraian di Desa Banua Kepayang Kecamatan Labuan Amas Selatan Kabupaten Hulu Sungai Tengah. Dalam hal ini ketika terjadi sebuah perceraian mengenai harta bersama dikuasai oleh pihak mantan suami. Seharusnya berdasarkan Kompilasi Hukum Islam Pasal 97 menyebutkan bahwa "Janda atau duda cerai berhak seperdua dari harta bersama sepanjang tidak ditentukan lain dalam perjanjian perkawinan." Jenis penelitian ini menggunakan penelitian hukum empiris dengan pendekatan deskriptif kualitatif dan pendekatan sosiologi hukum. Teknik pengumpulan data dilakukan dengan wawancara. Data yang digali mengenai gambaran penguasaan harta bersama dan alasan yang melatarbelakangi penguasaan harta bersama oleh mantan suami pasca perceraian. Sumber data yaitu informan dengan tiga mantan keluarga. Teknik pengolahan data melalui *editing*, kategorisasi, deskripsi, dan matrikasi. Data dianalisis menggunakan teknik deskriptif. Hasil penelitian menunjukkan bahwa penguasaan harta bersama dilakukan oleh mantan suami dengan gambaran harta bersama pada masing-masing kasus berbeda-beda. Pada kasus pertama harta bersama dikuasai seluruhnya oleh mantan suami. Pada kasus kedua dan kasus ketiga harta bersama dikuasai hanya sebagian oleh mantan suami. dengan menjual harta bersama tersebut tanpa membagikannya kepada mantan istri. Ada beberapa alasan yang melatarbelakangi penguasaan harta bersama. Pertama, adanya surat perjanjian yang bertandatangan diatas materai. Kedua, berdasarkan pemahaman mantan suami bahwa mantan suami merasa lebih berkontribusi dalam menghasilkan harta bersama, adanya nafkah sehari-hari selama masih menjadi suami istri, nafkah iddah, dan nafkah mut'ah, selain itu dikarenakan mantan istri pernah selingkuh dengan laki-laki lain ketika masih bersatus suami dan istri. Adapun menurut mantan istri dikarenakan adanya ambisi untuk memenuhi semua keinginan mantan suami seperti membeli mobil baru, sepeda motor baru, membangun rumah dengan istri baru, dan lain-lain..



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## INTRODUCTION

In a household life, problems will inevitably arise such as disputes that result in disharmony. Divorce is an alternative or the last door that is done if the household cannot be maintained anymore. In the Marriage Law Article 39 paragraph (1) states that "Divorce can only be carried out in front of a Court session after the Court concerned has tried and failed to reconcile the two

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parties". If the divorce is decided, it will have legal consequences, one of which is the position of joint property.<sup>1</sup>

Joint property is regulated in the Marriage Law Article 35 paragraph (1) which states that "Property obtained during marriage becomes joint property" Sometimes when a divorce occurs regarding the division of joint property is carried out by deliberation, this is done so as not to incur costs and energy. However, most of the division of joint property through deliberation raises disputes between each of the divorced parties, this is because it is difficult to achieve justice and agreement between the parties.<sup>2</sup>

As is the case in Banua Kepayang Village, namely after a divorce, usually regarding joint property is shared by deliberation, but in this problem the joint property is not shared by deliberation but is controlled by one of the parties and previously there was no making of a marriage agreement. As for the Compilation of Islamic Law (KHI) in Article 97 states that "Widows or divorced widowers are entitled to one-half of the joint property as long as it is not specified otherwise in the marriage agreement."<sup>3</sup> If this problem is associated with KHI article 97, there is a discrepancy regarding the division of joint property between the ex-husband and ex-wife that occurs in Banua Kepayang Village.

## **METHODS**

The method used in this research is an empirical legal research method with a qualitative descriptive approach and legal sociology. The data collection technique is carried out by interview, namely the question and answer process between the author and the informant regarding the problem under study in order to obtain relevant data regarding the description of joint property control and the factors behind it. After the data is collected, it is processed and analyzed using descriptive techniques. This is to answer the research focus

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<sup>1</sup> Syaifuddin, Turatmiyah, and Yahanan, *Divorce Law*, p. 20.

<sup>2</sup> Panal Herbet Limbong, Syawal Amry Siregar, and Muhammad Yasid, "Legal Arrangements in the Division of Joint Marital Property According to the Current Civil Law in Indonesia," 1, 3 (2022): 213.

<sup>3</sup> Ministry of Religious Affairs of the Republic of Indonesia, "Compilation of Islamic Law in Indonesia" (2018).

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formulated in the research coherently and systematically so that it can be easily understood and become information for others.

## **RESULTS AND DISCUSSION**

### **An Overview of the Control of Joint Property by the Former Husband after Divorce in Banua Kepayang Village**

From the overall problem regarding the arrangement of joint property that occurred in Banua Kepayang Village, Labuan Amas Selatan Subdistrict, Hulu Sungai Tengah Regency, it is known that in all cases in this study, the division of joint property after divorce is only through family deliberations. The reason is because when filing a lawsuit for joint property as well as divorce in court, it will slow down the trial process. Basically, the division of joint property filed at the time of divorce can indeed slow down the trial process, because there will be two cases considered by the judge in one trial, namely divorce and division of joint property. As explained by Damanhuri, the division of joint property can be carried out when there is a divorce and the division can be submitted at the time of filing a petition for divorce or contested divorce.<sup>4</sup>

It's just that every case of joint property can also be filed after a divorce so that it will make it easier for the ex-wife to challenge her rights in joint property in court. This is regulated in Article 86 paragraph (1) of Law Number 7 of 1989 which states that "A lawsuit regarding child control, child maintenance, wife's maintenance, and joint property of husband and wife can be filed together with a divorce lawsuit or after the divorce verdict has obtained permanent legal force."<sup>5</sup>

In Banua Kepayang Village, Labuan Amas Selatan Subdistrict, Hulu Sungai Tengah Regency, it is known that there are cases of control of joint property after divorce. Of all the cases, there was control of joint property by the former husband. Basically, joint property after divorce must be divided between husband and wife unless there are other provisions regarding the

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<sup>4</sup> Damanhuri, *Legal Aspects of Joint Property Marriage Agreement*, p. 34.

<sup>5</sup> "Law of the Republic of Indonesia Number 7 of 1989 concerning Religious Courts" (n.d.), <https://www.dpr.go.id>.

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marriage agreement on joint property. This is as explained by Panal Herbet Limbong, et al that joint property is a legal consequence after divorce and the division is regulated according to their respective laws, be it Islamic law, customary law, and other laws.<sup>6</sup> As for the share between husband and wife, namely one-half of the joint property. This is in accordance with KHI Article 97 which reads that "divorced widows or widowers are each entitled to one-half of the joint property as long as nothing else is found in the marriage agreement".

The assets controlled by the former husband in each case vary, including 1 (one) semi-permanent house certified in the name of the former husband, 1 (one) motorcycle with BPKB in the name of the former husband, 1 (one) car with BPKB in the name of the former husband, and a plot of paddy field certified in the name of the former husband. Basically, joint property can be in the form of tangible or intangible property, movable or immovable objects, and securities. This is as explained by Zainuddin Ali that tangible property such as houses, cars, jewelry, and others. As for intangible property in the form of rights and obligations by the former husband and former wife. The reason rights and obligations are included in joint property is because rights and obligations are included in *syirkah abdan mufawwadah* (unlimited partnership) which is non-material in nature.<sup>7</sup>

Based on the results of interviews in each case, it is stated that the results of the sale of joint property are not distributed by the former husband to the former wife for various reasons, even though between them there is no marriage agreement. Basically, regarding joint property after a divorce, it must be divided between the former husband and former wife because the property was obtained after the marriage took place unless there are other provisions in this matter, whether divided by Islamic law, customary law, and other laws.

The amount of joint property controlled by the ex-husband in Banua Kepayang Village varies, some are controlled as a whole and some are only partially controlled. This is based on case I which explains that their joint

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<sup>6</sup> Herbet Limbong, Amry Siregar, and Yasid, "Legal Arrangements in the Division of Joint Marital Property According to the Current Civil Law in Indonesia."

<sup>7</sup> Zainuddin Ali, *Islamic Civil Law in Indonesia*, 1st ed. (Jakarta: Sinar Grafika, 2006), p. 154.

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property is fully controlled by the ex-husband, including a semi-permanent house that has been sold, a motorcycle, and a plot of paddy field. Meanwhile, based on case II and case III, it is stated that the joint property controlled by the ex-husband is only partially controlled, as in case II includes the proceeds from the sale of a semi-permanent house and the sale of a motorcycle, while in case III includes the proceeds from the sale of a car and the sale of a motorcycle. Basically, joint property should not only be controlled by one party, this is because in producing joint property it comes from the efforts or cooperation between husband and wife. As explained by Liky Faisal that in producing joint property, it is not only dominated by the husband, but the wife also participates in trying to produce joint property either working as a career woman or becoming a housewife.<sup>8</sup>

### **Factors Behind the Control of Joint Property by the Former Husband after Divorce**

#### a. Agreement

Based on the results of the interview in case I, the reason why the former husband controls the joint property as a whole is due to the existence of an agreement between the former husband and former wife made after the marriage took place when they were still husband and wife. Basically, the making of a marriage agreement is made before the marriage contract takes place by being legalized by the Marriage Registrar and included in the marriage certificate. This is as in Article 29 paragraph (1) of Law Number 1 of 1974 which states that "At the time or before the marriage is held, both parties by mutual consent can submit a written agreement legalized by the marriage registrar, after which the contents also apply to third parties involved". The agreement made by the ex-husband and ex-wife was not legalized by the Marriage Registrar and was not included in the marriage certificate because the agreement was made after the marriage contract.

However, there is a Constitutional Court Decision Number 69 / PUU-XIII / 2015 regarding the marriage agreement made by the husband and wife after

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<sup>8</sup> Liky Faizal, "Joint Property in Marriage," *ijtima'iyya*, 2, 8 (August 2015).

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the marriage takes place. as explained by Putu Astika Yasa that the making of a marriage agreement can be harmonized with the legal needs of the couple with regard to the interests of the marriage actors.<sup>9</sup> The existence of the Constitutional Court's decision does create flexibility for the interests of marriage actors in entering into a marriage agreement. It's just that the existence of this Constitutional Court Decision causes new problems to arise, namely about the legal consequences of agreements made before the time of the marriage agreement that applies in the Constitutional Court Decision.

b. Understanding

Based on the reasons for the control of joint property by the former husband after the divorce that occurred in Banua Kepayang Village in case II and the former and case III, it is known that the former husband feels that he has contributed more in producing joint property, so that based on the understanding of the former husband it is normal that the joint property is only controlled by him. Basically, the husband and wife both contribute to producing joint property, although in case III the wife is only a housewife, but there are rights and obligations carried out by the wife. Marriage is a form of muamalah worship in which there are rights and obligations of husband and wife. It is mentioned that one of the wife's obligations is to serve the husband, there is no discussion about having to cook, wash, and others. However, based on the custom in Indonesia regarding this matter, it is done by the wife so that the wife must be paid with joint property.<sup>10</sup>

In addition, there are other factors for the control of joint property by the former husband, namely according to the former husband he has divided the joint property, namely into daily maintenance while still being husband and wife, which is Rp.200,000 (two hundred thousand rupiah), mut'ah maintenance, and iddah maintenance of Rp.6,000,000 (six million rupiah) each. According to the former husband's understanding, this is included in the

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<sup>9</sup> Putu Astika Yasa, "Analysis of the Constitutional Court Decision Number 69/PUU-XIII/2015 on Marriage Agreement," *Kertha Semaya*, 12, 7 (2019), <https://doi.org/1024843/KM.2019.v07.i02.p11>.

<sup>10</sup> Ismuha, *Husband and Wife's Joint Property Earning (Viewed from the Point of View of the 1974 Marriage Law and Islamic Law)*, p. 282. 282.

division of joint property. Basically, daily maintenance, mut'ah maintenance, and iddah maintenance are not included in the joint property but it is an obligation of the husband to his wife. This is as in Q.S At-Talaq / 65: 7, namely:

لِيُنْفِقْ ذُو سَعَةٍ مِّن سَعَتِهِ وَمَن قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا لَّأَمَّا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا

"Let him who has means spend according to his ability, and let him who has limited means spend from what Allah has given him. Allah does not burden a person except what is given to him. And Allah will give ease after hardship."

Another factor in the control of joint property by the former husband after divorce in case I and case III is because the former wife had an affair with another man when she was still a husband and wife. Basically, this is a betrayal of the former husband, but this does not affect the division of joint property. The Marriage Law and KHI also do not regulate this matter so that infidelity is not a determining factor in the division of joint property.<sup>11</sup>

In all cases, according to the ex-wife, the factors behind the control of joint property are due to greed by the ex-husband to fulfill his ambitions such as buying a new car, remarrying another woman after divorce, buying a new motorcycle, and building a house with a new wife. Basically, joint property is the result of cooperation obtained by husband and wife, so that if there is a divorce, the joint property must be divided according to their respective laws. This is as stipulated in KHI Article 97 that "Widows or divorced widowers are each entitled to one-half of the joint property as long as nothing else is found in the marriage agreement". In this case there is injustice because the joint property is controlled by one party with only selfishness.

## **CONCLUSION**

The joint property controlled by the former husband in each case is different, some are fully controlled and some are only partially controlled. The

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<sup>11</sup> An Nur Islamic University Lampung, "If the Husband/Wife Cheats, Does it Get Gono Gini Property?" June 2023, <https://an-nur.ac.id/jika-suami-istri-selingkuh-apakah-dapat-harta-gono-gini/>. Accessed on December 20, 2023 at 15.15 Wita



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form of control over joint property in this study is that the joint property is sold by the former husband and the proceeds of the sale are not distributed to the former wife.

The factors behind the control of joint property by the former husband include the existence of a signed agreement on stamp duty, the former husband feels that he has contributed more in producing joint property, according to the former husband, daily maintenance when he was still a husband and wife, mut'ah maintenance, and iddah maintenance are considered sufficient in the division of joint property. In addition, the former wife had an affair when she was still a husband and wife, which caused the former husband to be angry and did not want to share the joint property. According to the ex-wife, the factor of controlling joint property is due to fulfilling the wishes of the ex-husband such as buying a new car, buying a new motorcycle, building a house with a new wife, and others.

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