

Settlement of Collective Property Disputes After Divorce in Positive Law

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Abstract. The role of marital assets, which are divided by the cause of divorce, joint assets or assets obtained from grants, inheritance, and other sources during the marriage, and the role of filing a lawsuit for marital assets, will emerge in divorce life if the husband and wife have productive assets, the husband and wife work together, and the wife's restrictions are more significant than her husband's restrictions. Issues that arise include a new debate concerning their joint property and those related to divorce. The KHI divides the joint assets equally, with half going to the husband and half to the wife. Law Number 1 of 1974 does not specify the amount of each component.

Keywords: Distant, Treasure all, Farewell

1 Introduction

Civil Code (BW) Chapter VI of the Civil Code (BW), also called the Civil Code, contains regulations controlling communal assets. This chapter is broken into 3 parts. The initial part of the mangulas on joint property for law (Articles 119-123), the second part of the mangulas on the management of joint property (Articles 124-125), and the third part discusses the dissolution of joint property and the right to escape from it (Articles 126-138). [1]. Law Number 1 of 1974 governs the distribution of property upon marriage. It may be found in Chapter VII, which is broken up into three articles: Article 35, Article 36, and Article 37. According to the first paragraph of Article 35, any property acquired throughout a marriage is considered to be shared property.

For paragraph (2), as long as the parties do not agree on other people, then the assets of each husband and wife, the assets obtained by each husband and wife, as well as the assets obtained by each person, gifts or inheritance are located under the supervision of each. For paragraph 1 of Article 36, a husband or wife can play a role concerning joint property with the consent of both parties. Husband and wife have the full right to file lawsuits over their separate assets, according to paragraph 2. For Article 37, if a marriage ends in divorce, joint assets are regulated by applicable laws and regulations.

In the case of a divorced marriage, it must be clear which are the rights of the woman and which are the husband's rights. After the divorce, joint property cases often arise between ex-husbands and ex-wives. Moreover, joint property conflicts often link the extended families of both parties. For Article 126 of the Civil Code, divorce causes joint assets to dissolve so husband and wife partners must share assets equally. The Compilation of Islamic Law controls the capture of joint property, which is adhered to in Law Number. 1 of 1974 and the Civil Code above, in addition to finding joint assets regulated in Law No. 1 of 1974 and the Civil

Code. In the Compilation of Islamic Law, assets acquired during marriage are called *syirkah*, namely, assets acquired alone or jointly with husband and wife, without hesitation being a burden on someone's behalf. [2] Marital assets are separated into joint assets and innate assets or early assets.

This is governed by Item 35 of Marriage Principle No. 1 of 1974, which states: (1) Possessions obtained at some stage in the wedding get to be community land. (2) So long as the parties do not agree differently, each spouse's inheritance and any property received as a gift or inheritance are under their individual authority.

From the definition of Article 35, it might be deduced that any assets acquired during the marriage are gifts and not inheritances. In this manner, the possessions acquired by the spouse or else mate through their individual companies are the couple's joint property. It differs from the possessions acquired by every spouse and then wife prior to the wedding agreement, to be specific the real thing property on the other hand the first property, which want take place inherited by the husband and wife's respective families if they die without children. Additional precisely, the description of a piece of meat property is property obtained by a spouse and then wife at some stage in the duration of their wedding, which is registered in both of their names [3]. It is deceptive on the road to examine concerns of land, rent lonely the division of joint property throughout the wedding in the event of a divorce because the public frequently disregards common assets and marriage contracts due to the sanctity of marriage.

Hilman Hadikusuma [1] noted that beneath Expose 36 of the Wedding Principle, the removed parties decide which principle then which principle want to relate to joint property, then but around is no contract connecting the ex-husband and then ex-wife, the expert might evaluate based on a sensible intelligence of validity. Consequently, the effects of dissociation at joint land might vary intended for every one party, depending on the applicable legislation then which single the parties choose just before accepting to govern dual land. In the KHI, provisions address the joint ownership of property for Muslims. Clause 97 of the KHI states that "a dowager otherwise divorced person is at liberty towards lone short of the piece of meat property unless otherwise agreed in the marriage contract." Clause 37 of Marriage Principle No. 1 of 1974 then Articles 96 then 97 of the KHI specify to condition a wedding dissolves owing towards dissociate or else end, both spouses receive half of the junction property acquired at some stage in the wedding.

Marvels pertaining towards the division of a piece of meat property into Indonesia, such as the tragic case of a spouse and wife who fought over their marital property throughout the course of their divorce and the spouse (Irfan TNI AL) slaughtered his companion as a result (Eka Suharti). In to phase, Expert A. Taufiq decided to divide the assets between Irfan and Eka through an earshot on the Sidoarjo Spiritual Courtyard about the spreading of property. Colonel Irfan, however, was not happy with the decision's outcome [4]. Because intended for last marvels, they include the practice of couples dividing assets based on how much each partner contributes to the marriage, as was the case in the village of Mlaran Jombang. Budi and Ana are a husband and wife team who trade tofu. Budi and Ana constantly fought during their marriage, which lasted for the first two years of their union. Even though they have a child, there are still fights in their home because the wife is viewed as less capable of handling domestic duties.

The author has concerns about the division of both moveable and immovable property owned jointly by the husband and wife, as evidenced by the preceding explanation and the received copy of the judgment. In one case, the husband illegally took out a loan from Bank Danamon using the couple's shared property as collateral; the Defendant claimed the property belonged to the Plaintiff and had been sold to a third party, but it later emerged that the

Plaintiff had used the loan proceeds to remarry and support his new wife. Many married people, it seems, are still confused about the distinction between individual and joint property. Disputes about dividing shared property can drag on for years, often requiring a judge's intervention.

2 Literature Review

When a gentleman then a lady marry, their category changes towards that of significant other than a wife. By means of the status change come the resultant human rights and then commitments. Articles 30 to 34 of Principle Come to 1 of 1974 concerning Weddings govern the human rights then duties of the husband and spouse [5]. The language of Clause 30 says publicly, "Spouse then wife are obligated towards maintain the domestic, which is the fundamental building block of society". Since the relationship is the littlest unit of a community, the husband then the wife cannot prevent fulfilling their responsibilities to care for their home. They also share the same rights and status in social interactions, including the ability to carry out joint legal actions. Neither the wife nor anyone else could fulfill it by themselves. Even though husbands and women have equal privileges then obligations, the husband is then the wife since the homemaker continues to occupy the position of the family head. The guidelines in Article 31 of Law No. 1 of 1974 Concerning Marriage show this.:

1. In the home and in communal social life, the rights and responsibilities of the woman are equal to those of the husbands.
2. Either side may pursue legal action.
3. The wife is the homemaker, and the husband is the family's head.

It is essential for husband and wife to live together permanently to establish a joyful then unceasing domestic based on the single then lone Godhead as stated in Clause 1 of Principle Digit 1 of 1974 about Weddings. So that they can coexist while performing their everyday tasks following their respective roles. Article 32 of Principle Denial. 1 of 1974 Concerning Wedding regulates this matter then specifies the following.:

1. A significant other then other half, must be living composed permanently.
2. The husband and wife must agree on the definition of the "home of abode" as used in paragraph (1).

The husband and wife must be faithful to one another, love one another, respect one another, and provide for each other's physical and mental needs. Even though the husband's physical capabilities are greater than those of the wife's, it is proper for him to ensure his mate then gives for household needs to the best of his ability. The rules of Articles 33 and 34 of Principle Numeral 1 Year 1974 Concerning Wedding control this even though the wife has the duty to manage all family affairs. The taking after explanation M. Yahya Harahap wants to take place offered to support the intent of Clause 35 of Principle Number 1 of 1974 on top of Wedding, which was discussed before:

1. When it comes to assets that are granted during the marriage, it does not matter who buys them or who the assets are registered under; neither the husband's nor the wife's identity is called into question. According to the Statute of the Incomparable Woo of the Democracy of Indonesia Digit: 803 / Taste / 1970, May 5, 1971, all possessions obtained

during a legal marriage are considered to be joint assets. This is based on the fact that a legal marriage automatically creates joint assets.

2. possessions obtained following the dissociation to were financed as a piece of meat property. Intended for instance, at some stage in the time of the wedding, the husband then wife contain savings inside the bank. After the couple divorces, the husband continues to control the savings because they were obtained through a joint venture during the marriage. There has been no division between them. After the divorce, there would be a lot of maneuvering of joint assets because of this scenario, which shows that the law can still reach such things.
3. Possessions obtained at some stage in the wedding Altogether assets obtained during the time of the wedding are checked because a piece of meat possessions, but it is necessary to verify that they were acquired during this
4. every penny earned from the combined assets as well as the individual assets.
5. Each spouse's share of the household income when married.

In addition, the possibility of a piece of meat possessions incorporates, inside Anshary MK's definition, "possessions inside the appearance of actual then intangibles things, possessions then liabilities gotten time inside a legitimate wedding connection." If a transaction is going to take place involving any form or kind of joint property, there needs to be a contract between the spouse and the wife. (Ibid).

According to H. A. Mukti Arto, the following is an outline of the scope of joint assets:

1. Property that was acquired throughout the marriage
2. Assets that are acquired then developed after a divorce and financed using previously considered pieces of meat assets.
3. Possessions to can take place demonstrated to have been gotten at some stage in the wedding, except for those assets that are in the form of the husband's on the other hand wife's personal assets.
4. The income produced from personal assets owned individually by the husband and wife as well as assets owned together by the couple
5. The entirety of the husband's
6. Altogether the wife's personal income, then
7. Every one of the husband's then wife's income is derived from their joint property.

Unless otherwise established, the taspen and insurance policies are also considered joint assets of the husband and then the wife. All possessions procured at some stage in the marital period are deemed community property subject to the provisions of the applicable law. Unfortunately, this is easier said than done in actual use. Different factors all working together make it hard to understand. To accomplish this successfully, one must analyze the situation thoroughly and possess the necessary abilities [6]. Article 85 states that the potential of private property is a constraint on the compilation of Islamic principles. Having joint assets in a marriage does not rule out the possibility of separate property for both spouses, because expressed inside Clause 85 of the Compilation of Islamic Principle."(Kompilasi Hukum Islam, Pasal 85.).

Furthermore, from what has been said so far, it is clear that "joint assets" in the Islamic Law Compilation refer to property or assets that the husband procured then wife at some stage in their wedding. If, at the time of their marriage, the husband's or wife's assets that were given to them, inherited, or given to them as gifts still belong to them, in that case, these possessions want completely continue their individual possessions and then contain filled ownership. Gono-Gini property is also called "property in marriage" or "Syirkah." These are assets that a

man or woman gets on his or her own or with his or her companion during the marriage bond. They are now called "joint assets" and can be registered in anyone's person's name. Al-Quran then Hadith don't converse concerning joint property, but the book of *fiqh* has a section called *Syirkah* or *Syarikah* that could be seen as talking about shared assets.

In the Qur'an, in verse 32 of Surat Annisa, which can be interpreted as having to do with joint ownership of property, it says [7]: "Accomplish not take place protective since Allah makes not the whole of you additional than the others. Around is a portion of the business so as to belong to males, then around is a portion of the business to belong to women. Agreeing with the contents of this poetry, around is an option for a married couple who wants to have possessions that belong to the spouse that are distinct as of the possessions that belong to the spouse, then both the husband then the companion will control and then own their confess individual property. In the meantime, a husband and wife do not possess the property that is careful to be joint property (search property).

As was mentioned earlier, the opinions of Islamic legitimate specialists disagree on top of the legitimate premise intended for linkage possessions. Selected of them accept to because the Koran does not control joint possessions, it is completely winning in the direction of them towards control it. This viewpoint was communicated by Hazairin, Anwar Harjono, then Andoerraof, then it was taken after by his understudies. Previous Islamic lawful specialists believe it is unbearable but Islam does not control this common possession, whereas previous juvenile matters are controlled inside described by Ismaili principle. But it is not said inside the Quran, next so as to particular arrangement have to take place found in the Hadith, another source of Islamic commandment. However, if it is not said within both the Quran then the Hadith, then it does not be. T. Jafizham has been the single to communicate this perspective [8]. The view expressed in the previous sentence is consistent with the view held by a number of Islamic jurists.

Among the Syafi'i schools, around are four types of possessions specified by the *Syarikat* (too spelled *Syarikat*, *Syarkat*, then *Syirkat*) into the *fiqh* books' dedicated chapter at the discourse of official then worthless lawful substances: (1) *Syarikat I'nan*, in which two people split the cost of an article then the benefit from selling it; (2) *Syarikat Iskandar*, into which two people split the cost of service and the profit from selling it to (2). *Syarikat Abdan* consists of two or more persons working together to achieve a common goal (such as carpentry, masonry, fishing, hunting, or producing goods and services for sale); (3). The term "Mufawadlah *Syarikat*" alludes to a business partnership inside which two before extra person jobs are composed towards fulfilling a common goal, sharing expenses and profits, and acting independently of one another (4). *Syarikat W Tujuh* is a corporation that does not perform any services and has no tangible property, instead relying on the goodwill of its members to raise funds.

Concerning the spreading of the property of the *Syarikat*, while has been mentioned, it is alienated addicted to four (four) sorts that are carried absent by Islamic legal advisers among the Shafi'i Schools; however, into sensible custom, they lone recognize the *i'nan* *Syarikat*. Islamic official specialists with the Hanafi then Maliki Schools are capable of compliant this company since it is a *muamalah* to everyone is required to carry out during command near claim his verve; this company can exist actualized If one of the parties believes that the partnership arrangement can no longer be carried absent within accordance with the terms of the assention, then that party can legally disappear the partnership, and the partnership cannot be inherited. It was not explicitly discussed, but agreeing with M. Yahya Harahap [9], Islamic law's perspective at communal possessions is into keeping by to expressed by Ismail Muhammad Syah to husband then wife's joint means of subsistence have to exist integrated

into the Rub'u Mu'amalah. Perhaps this is because most fiqh book authors are Arabs who are unaware of any traditions surrounding a joint search by a husband and wife. However, in our discussions, we use the Arabic word for "partnership" (*Syarikat or Syirkah*). Partnerships, or *syirkah*, are a common way for married couples to make a living, and scholars of the Book of Jurisprudence have divided up the assets acquired during a marriage into two distinct types of partnerships: *abdan* and *mufawadliah*, which correspond to the aforementioned *Syarikat abdan* and *mufawadliah*. Noting that the Jurisprudence legal doctrine only provides a general framework of the issue of joint property between husband and wife in marriage, which can lead to differing interpretations of a problem they actually encounter, is crucial. Articles 85–97 of the Compilation of Islamic Law, which governs the division of property between husband and wife, were drafted with input from Indonesian Islamic legal scholars who unanimously decided to adopt *Abdan's Syarikat* as the basis for the Compilation. Islam's legal code and its origins The approach taken in the compilation was based on the *Syarikat Abdan* path with Customary Law, and it did not conflict with the possibility of turning to *urf* as a source of law and becoming one with the rules that teach unity "*al' adatu muhak muhakkamah*".

According to Clause 97 of the Compilation of Islamic Principles then Clause 37 of Principle Digit 1 of 1974 concerning Wedding, the sharing of dual possessions stipulates that here the result of a wedding is dissolved, whether since a result of the end before separate, after that every husband then wife resolve pick up not whole of the possessions thought that they become throughout the wedding. This is the case even if the joint assets of the husband and wife were acquired at some stage in the wedding. This arrangement is inside the column by the decision that was handed down by the Incomparable Woo of the State of Indonesia on December 9, 1959, Denial. 424. K / SIF / 1959. That determination expressed to the husband then the wife each received a half split of the joint land that they owned together. In this light, it is not set in stone that husbands must contribute equally to building the household economy across all regions of Indonesia. A higher standard of care in evaluating these cases is warranted by legal professionals who wish to act justly, fairly, and appropriately. Therefore, Article 229 of the Compilation of Islamic Law requires that special treatment be given to the husband's role in the realization of joint family assets, and the part that determines half of the joint assets for the wife and the husband must be flexed once more.

According to Clause 92 of the Islamic Principle Compilation, "Spouses or else spouses are not authorized near retail on the other hand move combined possessions without the approval of other parties," husbands and wives have no control over joint assets. The law administering wedding, Principle Digit 1 of 1974, emphasizes this inside Article 36, paragraph 1, which peruses so as to "Concerning linkage possessions, the husband then the wife can do something on top of the approval of both parties." According to Clause 92 Compilation of Islamic Principle then Clause 36 article (1) of Principle Digit 1 the Year 1974 concerning Wedding, condition solitary of the husbands then wives exchanges dual possessions, such because by offering, pawning, hypothesizing, charitable absence, or taking previous legitimate performance, the wife needs the husband's consent then vice versa. If a dispute arises over their shared assets, any spouse can initiate legal action on their behalf, provided they both agree to do so. Article 36(1) of the Marriage Law (Law No. 1/74) requires mutual consent. D. J. Satrio stated that in grammatical terms, the husband grants the wife the authority or consent, and vice versa. These rules make it difficult for married couples to make joint purchases that benefit both partners, such as food and housing. According to the Compilation of Islamic Law, the wife is responsible for "organizing and managing daily household needs as best as possible," as stated in Article 83, paragraph (2).

A wife's right to manage and regulate household needs has implications for how she spends their shared assets since a working husband can't reasonably be expected to come home and provide his permission for his wife to go grocery shopping. According to the Factic theory, a spouse is presumed to include supported his companion then bad habits and versa, the spouse is deemed to have given her permission towards the companion inside captivating legitimate suit in contradiction of dual land concerning everyday domestic executive on the basis of their own power, then condition a dissociate happens, the couple's shared assets must be divided equally. Income from either spouse's labor increases significantly during the marriage.

According to Article 97 of the Compendium of Islamic Law, "a widow or divorcee is entitled to half of the joint property unless the marriage contract provides otherwise." However, the jurisdiction of the spouses over their joint property can be limited if it would harm the interests of both parties or the interests of the joint property itself (eg prohibiting the sale or other legal actions). An application to the religious court for a beslak of conservation, which can be filed independently without filing for divorce or legal separation, is the first step in limiting the power of spouses in governing and managing joint property. . If the request is granted, the husband or wife can sell the joint property for the intended purpose after obtaining the permission of the relevant religious court. The marriage paradigm established by Law No. 1 of 197 and the Code of Islamic Law is more direct to the equality of men and women; it distinguishes this difference in the role of man and woman in the family institution. Both laws established a foundation of marriage law that is more important than the *fiqh* view in evaluating the relationship between husband and wife. Section 32(1), (2), and (3) of Marriage Law No. 1 of 197, which is not significantly different in tone from Article 79 (1), (2), and (3) of the Compendium of Islamic Law, as shown below, provides a clear explanation of this paradigm:

1. The husband is the primary breadwinner for the family and also serves as the primary caregiver for the housewife.
2. The rights and position of the woman are equal to those of the husband in all aspects of domestic life and in all aspects of the association of living together in society
3. Each of the parties can initiate legal proceedings

Looking at the foundations of marriage laid down in Marriage and Islamic Law No. 1 of 197, it is evident that its influence on developing the core values of community property legislation is significant. Islamic Marriage and Law Compendium No. 1 of 197 in-laws created some concepts related to community property law:

1. Community property is property acquired during the marriage. Islamic Law, Article 1 (F).
2. Marriage does not allow husband and wife to mix their property in any way.
3. Property that is in separate possession of each party, unless the parties stipulate otherwise in the marriage contract.

Looking at the articles of Law No. 1 of 1974, the new legal values are summarized in the Compendium of Islamic Law. These new legal values say that the joint property of husband and wife is the property acquired during the marriage and in whose name this acquisition is registered. There is also no doubt as to who the husband and wife are looking for, and in case of divorce, both parties have one and a half rights (equally) to the property.

3 Theoretical Basis

3.1 Marriage Property in Compilation of Islamic Law and Islamic Law.

Rules of Islamic Law, a compendium of Islamic law consisting of three books, namely Book I on the law of marriage, Book II on the law of inheritance, and Book III relating to waqf, which is following the ruling or principal authority. Scholars and researchers of Islamic law from all over Indonesia were well-received at the seminar. Conjugal property is not only mentioned in Law No. 1 of 197

However, also explained in the provisions of Islamic law. Use Islamic law as much as possible in addition to other laws and regulations [10]. Article 1, Clause F of the Code of Islamic Law says the following about the property acquired by spouses during the marriage: "The marital property is the property acquired separately or jointly by the husband and the wife, which is here in after referred to as community property, without anyone having to register it." Article 85 of Islamic jurisprudence mentions marital property but prohibits the possibility of their property coming from either the husband's or the wife's side. The existence of common property in a marriage is explained in Articles 85-97 of Book I. (Collection of Hukum Islam, Pasal 85).

4 Research Methods

A pace to facilitate is carried absent methodically with is possessed by an analyst during command to gather accurate then pertinent data otherwise statistics that a beneficiary needs inside order to find answers to questions commencing investigation analysts is referred to as a research method. The sort of investigation utilized inside this learn is regulating. Legal materials are analyzed using a normative legal approach in business. This analysis includes a review of the relevant literature as well as legal standards found in legislation and court decisions. In-depth interviews with significant informants and observational data were used to gather primary data in March 2022. Secondary data from previous scientific studies and study-related documents were gathered through literature reviews. Another significant source of secondary data was thought to be the organization profiles of local government entities. The activities of the program planning papers kept in the strategic plan served as another source of secondary data. The descriptive analysis technique was used to assess the acquired primary and secondary data.

5 Result and Discussions

5.1 The Legal Position of the Sharing of Collective Assets after Divorce

When a man and a woman are married, their relationship status changes to that of husband and wife. The resulting rights and obligations arising from the change of status. Sections 30-3 of the Marriage Act number 1 of 1974 define the rights and obligations of spouses [5]. According to the provisions of Article 30, spouses must maintain the household, which is the cornerstone of the fabric of society. Since the family is the smallest unit of the

community, men and women cannot avoid the responsibility of managing their homes. They also have the same rights and status in social interactions, including the ability to perform common legal acts. Neither the woman nor anyone else could do it alone. Even though men and women have equal rights and responsibilities, men and women are still the head of the family as housewives. In his book *Law of Wealth*, Prof. Abdul Kadir Muhammad, SH., said that [11].

Although economics and law provide two distinct perspectives on the concept of shared property, the two perspectives are related and inform one another. Utility is the primary focus of the economic perspective, while the rule of law is central to the legal perspective. According to Abdul Manan [12], joint assets are those acquired during the marriage bond and are indisputably in the name of both spouses. For a quick overview of the various forms of community property, consider the following four sources: First, any inheritance or assets gained by either spouse are equally granted. Two, premarital business assets. A third category is a property that was obtained during or as a result of the marriage. Fourth: Property obtained by either spouse during the marriage, excluding gifts and inheritance.

After the divorce, the spouses are each responsible for their property, if it comes to debts incurred during the marriage. Moreover, when a divorce has taken place, the property of the husband and wife has been separated or divided and this is also governed by sections 35 and 36 of the Marriage Act 1974, it can be understood that the inheritance of gifts or hereditary property during marriage passes to the ownership and control of each husband or wife separately. Gatot Supramono noted that the actions of husband and wife in relation to joint property must be based on mutual understanding because the lack of consent allows both sides to lose. This means that measures related to joint property between husband and wife must be based on mutual understanding. [13]. If both parties agree to the terms of this agreement, there will be no difference in the relationship between the spouses if the couple decides to separate. Therefore the Law on Division of Community Property applies and the procedure for division is defined in Section 35(1) of the Marriage Act No. 1 of 1974. This article explains that property acquired during marriage automatically becomes community property. In addition, if the couple decides to separate, the property is divided in half, and the husband and the wife receive half of the property. [14]. Since identifying positive law is complex, the principle of justice and transparency, or mandate, is of primary importance in the distribution of collective property. However, it requires greater awareness on the part of the man or woman to avoid rights violations, injustice, or lack of self-control in relation to other people's property and rights. It is clear that property acquired during the marriage can be divided into two groups based on Section 35 of the Marriage Act No. 1 of 1974. First, joint property, which consists of property acquired during the marriage and is valid until the matrimonial law is acquired man and woman are still together. This feature is often referred to as the "Treasure of Gono Gin", an expression derived from the Javanese language. Gini is the wife and Gono is the husband. The wealth of Gono Gini refers to the joint property of husband and wife, which is divided in the event of a subsequent divorce, where each spouse acquires 50%. Unless there is a marriage or prenuptial agreement that states otherwise or property earned by the husband or wife through work before marriage.

5.2 Marriage Property in Compilation of Islamic Law and Islamic Law.

The arrangements of Islamic principle, the Compilation of Islamic Rule, which comprises three books, to be specific book I on top of the wedding principle, book II on top of the legacy principle, then books towards III concerning waqf so as to is into an agreement by the

determination otherwise the fundamental license of the religious woo, contain been healthily gotten by researchers then researchers of Islamic principle all through Indonesia inside the training to has been supposed. Wedding possessions are not alone said inside Principle Denial. 1 of 1974, but are in addition clarified inside the arrangements of Islamic principles.

According to M. Yahya Harahap [9], the perspective of Islamic law on communal assets is consistent with that of Ismail Muhammad Syah, who said that the Rub'u Mu'amalah should encompass a husband and wife's joint means of subsistence. However, this topic was not expressly covered. This may be because Arabs who write fiqh books frequently are unaware of the traditions surrounding the search with the husband and wife. However, we discuss partnerships, which are referred to as *Syarikat* or *Syirkah* in Arabic. In order to determine the law, it is important to first consider the different types of partnerships that academics have discussed in the book of Jurisprudence. As indicated above, joint assets in the marriage are categorized in the form of *Syarikat abdan* and *mufawadliah*. It is significant to note that the issue of shared property between a husband and wife in a marriage is not covered in detail by the Jurisprudence legal doctrine; rather, only the broad strokes are mentioned in the Jurisprudence books, which can lead to conflicting interpretations of a real-world issue. When drafting Articles 85 to 97 of the Compilation of Islamic Law, Indonesian Islamic law experts concurred on to use *Abdan's Syarikat* as the foundation for drafting the rules for joint property between husband and wife.

In the development of the Islamic code, the *Syarikat Abdan* way was used with general law and this approach did not conflict with the ability to become the source of law urfi and one soul with the norms that teach "al' adatu muhak muhakkamah". According to Section 97 of the 1974 Compilation of Islamic Laws and Law No. 1 37, which deals with the division of community property in marriage, both spouses receive half of the property acquired during the marriage if the marriage ends in divorce or death. This clause complies with the decision of the Supreme Court of the Republic of Indonesia No. 2. K / SIF / 1959 of December 9, 1959, which determined a 50/50 division of common property between husband and wife.

Considering the reality of family life in some parts of Indonesia, where some men do not participate in the creation of households, the division of common property between men and women can be flexible. In this situation, lawyers should take a closer look at these cases to maintain a sense of fairness, justice, and accommodation. Therefore, special attention must be paid to the spouse's participation in the realization of the joint family property. Article 229 of Islamic law requires that the part of the joint property, which determines the amount owed to each spouse, be reviewed again. DJ Satria said that Grammatically, man and woman must work together; the man gives authority or approval to the woman and vice versa. The strict nature of these principles makes it difficult for spouses to operate under joint property, especially regarding daily life's needs. 55 Article 83(2) of the Compendium of Islamic Law affirms that "a woman plans and manages the daily household needs as efficiently as possible" [15]. The right of a woman to plan and manage daily household needs affects the use of the common property by a woman who makes purchases to satisfy her daily needs; the husband cannot ask her permission to buy daily necessities when he comes home from work. The wife gives her consent for the husband to sue the joint property based on his jurisdiction in connection with the daily management of the household. In case of divorce, joint property must be divided between husband and wife. In this case, the law of the *Factie* theory applies, that the husband is considered to support his wife and vice versa. However, efforts made during marriage lead to higher income.

The Marriage Law No. 1 of 1974 on Marriage and Islamic Legislation, which examines the foundations of marriage, obviously influences the development of fundamental principles

and laws governing community property. There are several guiding principles in community property law, which are laid down in the Marriage Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law:

1. Property acquired during the marriage is called community property (Compendium of Islamic Law, Article 1 Subsection F).
2. In general, marriage prevents the mixing of the property of husband and wife.
3. Assets that are under the control of both parties, unless otherwise specified in the couple's prenuptial agreement.

Looking at the articles of Law No. 1 of 1974, the new legal values are summarized in the Compilation of Islamic Laws. These new legal values say that the joint property of husband and wife is the property acquired during the marriage and in whose name this acquisition is registered. In addition, there is no doubt about whom the husband and wife are looking for, and in the event of a divorce, both parties have half of the rights to the property. (even).

6 Conclusion

According to the spreading of combined possessions based on top of Clause 97 of the Compilation of Islamic Principle then Clause 37 of Principle Digit 1 of 1974 concerning Wedding, every one spouse then wife want pick up not the whole of the possessions supposed by the husband then wife that they acquire at some stage in the wedding if a wedding fails due towards death or divorce. The following categories can be used to categorize marital assets when they are being used to support the husband and wife's household: assets that the husband and wife owned or controlled before getting married, such as assets. Income assets are possessions the husband and wife own or manage after marriage. Assets the husband and wife collectively have acquired or manage for a living during the marriage are for a living, and During the wedding ceremony, husband and wife jointly acquire or control assets as a present, precisely a wedding gift.

Law Number 1 of 1974 and Compilation of Islamic Law, which is contained in Article 31 of Law Number 1 of 1974, both define the rights and obligations of husband and wife concerning joint property: In family life, the wife's rights and responsibilities are balanced with the husbands' roles and rights. The husband is the head of the household and the wife is the housewife in community social life, where each party has the right to file a lawsuit.

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