



Transfer of joint property in a polygamy according to the compilation of Islamic law

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Abstract

The rules regarding joint property in a marriage are listed in chapter XIII of the Compilation of Islamic Law (KHI). These rules refer to marriages with the principle of monogamy, but regarding joint property in a polygamous marriage, the rules are not much different from monogamous marriages. The facts that occur in the transfer of common property in polygamous marriages that occur in society are mostly not following the rules determined by the government. This study aims to explain the transfer of common property in polygamous marriages based on the Compilation of Islamic Law (KHI), the transfer of common property in polygamous marriages that occur in the community is not following applicable regulations and the legal consequences of the transfer of common property in polygamous marriages without the consent of one of the wives.

The method used by the author in this research is an empirical juridical method where the approach uses a case approach. The data sources used by the author are primary data in the form of interviews with Geuchik Gampong, Religious Affairs Office Staff (KUA), Makamah Syar'iyah Staff, and other related parties in polygamous marriages. While secondary data is obtained from laws, books, and other literature related to this research.

In Article 94 paragraph (1) of the Compilation of Islamic Law (KHI) it is stated that "The joint property of a marriage of a husband who has more than one wife, each separate and independent". Furthermore, in paragraph (2) it is stated that "the ownership of joint property from the marriage of a husband who has more than one wife as mentioned in paragraph (1), is calculated at the time of the second, third, and fourth marriage contracts." then in Article 96 paragraph (1) of the Compilation of Islamic Law (KHI) explains that if the breakdown of marriage due to the death of one of the parties, the joint property left behind becomes the right of the spouse who lives longer. Furthermore, in Article 97 of the Compilation of Islamic Law (KHI) it has been explained that if the breakdown of marriage is due to divorce, the widow/widower is entitled to each half of the amount of joint property as long as this is not determined otherwise in the marriage agreement. This research uses the empirical juridical method. The results showed that the provisions regarding the transfer of joint property in polygamous marriages have been regulated in the Provisions of Islamic Law, namely in Articles 85 to 97 of the Compilation of Islamic Law (KHI). Based on the rules outlined in the Compilation of Islamic Law (KHI), it is concluded that each wife gets $\frac{1}{2}$ share of the joint property that exists during the marriage. In this case, the first wife's share will be greater than the second wife's share, and so on. The property obtained by the husband during the marriage bond with the first wife is joint property owned by the husband and the first wife. Meanwhile, the property obtained by the husband during the marriage bond with the second wife and during that time the husband is still married to the first wife, then the property is joint property belonging to the husband, first wife, and second wife. This is also the case with the second marriage if the husband marries the third and fourth wives. However, in the facts that exist in the community, the transfer of joint property in polygamous marriages is still carried out not by applicable regulations, this is due to the lack of understanding of law and religion for each party. If there is a transfer of joint property without the consent of one of the wives, it is considered null and void.

Keywords: shared property, polygamy, compilation of Islamic law

Introduction

Marriage according to religious terms is called "nikah", which in its explanation is to do *ijab qabul* or contract or can also be said to be an agreement to binding between a woman and a man in a halal bond that aims to realize happiness in navigating household life in a way and determination that is approved by Allah (Indonesia, 1991). The permanence of a marriage bond is one of the main goals of Islam. Akad is one of the prayers for the perpetuity of marriage that is carried out forever and ever. (Sudiyat, 1981) ^[14]

The purpose of marriage is basically to lead to the pleasure of Allah, perfect religion to be full of peace in life, and reap affection between husband and wife. As described in the Quran letter ar-Rum verse 21 which means:

"And among the signs of His greatness is that He has created for you mates of your kind, that you may be

attracted to them and feel secure in them, and that He may establish between you love and affection. Indeed, in such there are signs (of Allah's greatness) for the thinking people."

However, in practice, when a marriage takes place intending to live eternally, forever, and happily, there are still problems that will inevitably occur, one of which is the problem that makes the marriage break up, including whether it is called a living divorce or a death divorce (one of the spouses dies), or that the husband is polygamous. Polygamy is a practice that has recently become a public conversation and has led to pros and cons. Polygamy itself means that a husband has more than one wife in a marriage bond. The Compilation of Islamic Law (KHI) states that it is permissible for a husband to practice polygamy or have more than one wife, but it must be based on Article 56 of the Compilation of Islamic Law (KHI), which states that:

1. Husbands who wish to have more than one wife must obtain permission from the Religious Court.
2. Must be based on Chapter VIII of Government Regulation No. 9 of 1975.
3. If a marriage with a second, third, or fourth wife does not have the permission of the Religious Court, it will not have the force of law.

In essence, a husband who wants to commit polygamy must obtain permission from the court and must also fulfill the conditions clearly stated in the Compilation of Islamic Law (KHI) as well as with justifiable reasons. Marriage is a matter that has broad consequences in the legal relationship between husband and wife. Marriage is a legal event that will give birth to rights and obligations. one of the rights and obligations is regarding the joint property. (Wibisono, 1980)^[19]

Article 85 of the Compilation of Islamic Law explains that in a marriage there may be property belonging to each husband or wife. Furthermore, it is explained in article 94 paragraph 2 of the Decree of the Minister of Religion of the Republic of Indonesia Number 154 of 1991 concerning the Implementation of Presidential Instruction Number 1 of 1991 which explains that the ownership of joint property from the marriage of a husband who has more than one wife as described in paragraph (1) that will be calculated when the second, third or fourth marriage takes place. So that the joint property for husbands who have more than one wife, the largest share is obtained by the first wife because the husband's longest marriage period is with the first wife.

Based on the explanation described above, it is necessary to know about the provisions regarding the implementation of the division of joint property in polygamous marriages, from the amount of property obtained by each wife because the transfer of joint property in polygamous marriages that occur in the community is considered to still have uncertainty and unfairness to each party. Because by being polygamous, the husband has other responsibilities that must be equalized according to the definition of justice for each of his wives, who get the same portion as the first wife, or even the husband is more inclined to the second wife, or due to several other things (Fuad, 2000)^[7]. Based on this, a husband who has more than one wife will arise a dispute regarding the joint property. So a clear rule is needed regarding the division of this property.

Method

The method used in this research is the empirical juridical research method. an empirical juridical method is a legal research method regarding the relationship between normative law that is enforced in action on every legal event that occurs in society. (Muhammad, 2004)^[9]. Empirical legal research can also be said to be field research. In empirical legal research, the data collected is based on primary/basic data, namely data obtained directly from the community as the main source through field research, namely by conducting interviews. (Effendi, 2018)^[6]

Result and Discussion

Property according to the view of sharia is a wasilah / intermediary to perform servitude to Allah. Property is one of the basic needs of humans in running life so scholars' ushul fiqh define property as categorized into one of al-

daruriyat al-khamsah (five basic needs) which include religion, reason, soul, offspring, and property.

Joint property can also be said to be property during the marriage period, or it can also be referred to as property obtained by the husband and wife because of their efforts, whether they work together or only the husband works while the wife takes care of the household. (Ramulya, 2000)^[11]. According to traditional fiqh, joint property is defined as property generated by the husband and wife during the marriage bond or can be called syirkah so that the property obtained is mixed, which in other words can be said to be inseparable (Prodjodikoro, 1991)^[10].

Polygamous marriage is a marriage in which one party (husband) marries more than one wife at the same time, this means that the wives are still married to their husbands and are not divorced or still valid with their husbands (Tihami, 2013)^[18]. The majority of scholars allow a man to practice polygamy but followed the conditions that must be carried out, namely being able to be fair to his wives, both in material terms, food, clothing, shelter, and qasam (a division of turn home), as well as in immaterial form, namely mawaddah wa rahmah which means love and affection (Hasan, 2006)^[8].

The transfer of joint property is associated with the separation of marriage either in the form of divorce or the death of one of the parties to the marriage, be it the wife or husband. Joint property for Muslims in Indonesia is regulated in the Compilation of Islamic Law which is the result of ijtihad of scholars by looking at the conditions, needs, and legal awareness of Muslims in Indonesia. As stipulated in Article 85 of the Compilation of Islamic Law joint property in marriage does not rule out the possibility of each property belonging to the husband or wife. However, it is further explained in Article 86 of the Compilation of Islamic Law (KHI) that there is no mixing between the husband's property and the wife's property due to marriage, meaning that each property is the right and full control of each wife or husband. The article can be interpreted that the arrangement that separates ownership rights on property in marriage as stipulated by the rules of Islamic law.

Article 91 of the Compilation of Islamic Law (KHI) explains joint property, including:

1. Joint assets as mentioned in Article 85 above can be in the form of tangible and intangible objects.
2. Tangible assets can include movable objects, immovable objects, and securities.
3. Intangible joint assets can be in the form of rights and obligations.
4. Joint assets can be used as collateral by one party with the consent of the other party.

In a polygamous marriage, it will have a legal effect, namely the joint property obtained during the polygamous marriage. As explained in article 98 of the Compilation of Islamic Law (KHI), it is stated that:

1. Joint property from the marriage of a husband who has more than one wife, each separate and independent.
2. Ownership of joint property from the marriage of a husband who has more than one wife as referred to in paragraph (1)
3. It is counted at the time of the second, third, or fourth marriage contract.

This situation will become a conflict for the perpetrators of polygamous marriages themselves, this is because each party involved in polygamous marriages feels more entitled to inheritance. The transfer of joint property in a polygamous marriage is basically that each wife has the right to have an equal share of the joint property that occurred since the start of their respective marriages. (Abdullah, 1997) ^[1]

The Compilation of Islamic Law has regulated the joint property of wives brought to the second marriage by polygamous husbands, namely in Article 92 of the Decree of the Minister of Religious Affairs of the Republic of Indonesia Number 154 of 1991 concerning the Implementation of Presidential Instruction Number 1 of 1991 which states that a husband or wife without the consent of the other party is not allowed to sell or transfer joint property (Syarifuddin, 2007) ^[17].

Another provision in the Compilation of Islamic Law is contained in Article 94 of the Compilation of Islamic Law which states that the joint property of a person who commits polygamy is separate and independent so that the joint property will be calculated at the time of the second, third and fourth marriage contracts. This is intended to avoid the mixing of joint property which can lead to disputes if in the future the husband or wife divorces or dies. (Budianto, 2021) ^[5]

The provisions of Article 94 of the Compilation of Islamic Law essentially aim to prevent disputes between the wives, both the first wife and the wives of the cellab, including the possibility of cases of claiming inheritance by the respective families of the wives, this occurs because of the unclear ownership of joint property from the first wife, second wife and so on so that a dispute will arise in the future regarding the joint property. In terms of joint property in a polygamous marriage, the second wife and so on have no rights to the joint property that existed before the marriage with the second or subsequent wife. This explains that the second wife and so on have no rights to the joint property that existed before the marriage with the second or subsequent wife (Syah, 1965) ^[16]. Based on the explanation above, the division of joint property in a polygamous marriage will harm the lives of the wife and her children. (Sudarono, 2021) ^[13]

The division of joint property in the event of a polygamous marriage can be described as follows (Abdurrahman, 1992) ^[2]

1. Divorce due to death is a form of separation of the husband and wife relationship due to the death of the husband/wife. The division of joint property in the case of a death divorce marriage can be divided into 50:50. This provision is basically by what is explained in Article 96 paragraph (1) of the Compilation of Islamic Law which states that for a divorced marriage, half of the joint property obtained during the marriage will be the right of the surviving spouse or the one who lives longer. In essence, the determination of the death of one of the parties must be clear, this is because it is related to the status of determining the joint property so that the division becomes clear.
2. Divorce due to marital disputes is when a married couple is severed from their relationship due to divorce between them, and the division of joint property is regulated based on their respective laws. Article 97 of the Compilation of Islamic Law explains that a widow

or widower who is divorced alive has the right to each half of the joint property as long as there are no other provisions in the regulation. This means that in the case of a living divorce if there is no marriage agreement, the settlement in the division of joint property is taken based on the provisions therein. If there is no marriage agreement, the settlement is based on the provisions in Article 97 above, namely each is entitled to one-half of the joint property.

The Supreme Court of the Republic of Indonesia published a book on the Technical Guidelines for Religious Courts in 2008, in the explanation of joint property, if there is a division of joint property caused by death or divorce for a husband who has more than one wife, it can be calculated as follows, including the share of the first wife will get $\frac{1}{2}$ of the joint property obtained by her husband during marriage, The acquisition is added to $\frac{1}{3}$ x the joint property obtained by the husband together with the first wife and the second wife, then it will be added $\frac{1}{4}$ x the joint property obtained by the husband together with the third wife, the second wife and the first wife, plus $\frac{1}{5}$ x the joint property obtained by the husband with the fourth wife and so on (RI, 2011) ^[12].

In essence, the purpose of regulating joint property in polygamous marriages in the Supreme Court, among others, is to prevent the husband from smuggling the rights of his previous wife. Therefore, the Supreme Court firmly regulates and requires the separation of joint property between the husband joint property and the previous wife when the husband will enter into a polygamous marriage. Based on this, the teachings of Islam also strongly require a clear, neat, and correct order and bookkeeping carried out by the husband and wife who own the joint property, so that it will avoid mixing the joint property of the first wife, second wife, and so on, so that the rights of the first wife will be clearer and guaranteed in the joint property, after the determination by the Religious Court.

Based on the explanation above, which has explained that the first wife gets a larger share than the parties of the second wife, the third, and so on. As long as there is still a marriage between the husband and the first wife, the property accumulated during the marriage is joint property belonging to the husband and the first wife. Meanwhile, if the husband remarries a second wife and during the marriage, the husband buys valuable assets or also called joint property, then the property becomes the property of the husband, first wife, and second wife. Likewise, for the husband's marriage with his next wife, if the husband is still married to his previous wives, then the property belongs to the husband and all his wives.

The provision of joint property does not apply to the property intended for the second, third, and fourth wives (such as houses, furniture, and clothing) as long as the property intended for the second, third, and fourth wives do not exceed $\frac{1}{3}$ (one third) of the joint property obtained with the second, third and fourth wives.

If there is a legal action in the form of a breakup of marriage either due to divorce, death, or court decision, it will lead to other legal actions, namely the distribution of property that is jointly owned by the parties who are entitled to it. The implementation of the transfer of joint property in a polygamous marriage is the same as the transfer of joint property in a monogamous marriage because each husband or wife gets one-half of the amount of joint property.

However, the amount received by the first wife is always greater than the other wives. This is because the ownership of the joint property of a husband who commits polygamy is calculated at the time of the contract, but the share obtained by the wife or husband must still pay attention to the children's rice related to the polygamous marriage. (Susanto, 2016) ^[15] The transfer of joint property in a polygamous marriage should be carried out fairly so that in the future it does not cause harm to the parties involved in the marriage. Nowadays, there are many transfers of joint property without the consent of one of the parties, especially in polygamous marriages. Many transfers of joint property in polygamous marriages are made without the consent of one of the wives. This is as regulated in Article 92 of the Compilation of Islamic Law which explains that when one party sells or transfers joint property, there must be the consent of the other party concerned. The legal consequences of the transfer of joint property are considered invalid and null and void. If the transfer of joint property in marriage causes problems or disputes, the parties involved should settle through the religious court. as stated in Article 88 of the Compilation of Islamic Law which explains that if there is a dispute between husband and wife about the joint property, then the settlement of the dispute is submitted to the Religious Court. However, in the facts that occur in the case of the transfer of joint property in a polygamous marriage where it is carried out without the consent of one of the wives, no resolution makes one of the aggrieved wives get legal certainty. It has not regulated the sanctions obtained by the relevant parties when transferring to the joint without the consent of one of the parties. This factor is one of the reasons why people think that the transfer of joint property in polygamous marriages without the consent of one of the wives is considered normal and there is no effective solution to the problem.

Conclusion

The provisions regarding property in marriage have been regulated in Article 91 of the Compilation of Islamic Law up to Article 97 of the Compilation of Islamic Law. However, the provisions mentioned in these Articles adhere to the principle of monogamous marriage. Regarding the transfer of joint property in a polygamous marriage, it is not much different from that of a monogamous marriage. It's just that the transfer of property in a polygamous marriage is a little more complicated. The provisions regarding the transfer of joint property in polygamous marriages are mentioned in Article 94 paragraph (1). Where the article explains that "The joint property of a marriage of a husband who has more than one wife, each separate and independent". Furthermore, in paragraph (2) it is stated that "the ownership of joint property from the marriage of a husband who has more than one wife as referred to in paragraph (1), is calculated at the time of the second, third, and fourth marriage contracts." Furthermore, in Article 96 paragraph (1) of the Compilation of Islamic Law, it is stated that "in the event of a death divorce, half of the joint property becomes the right of the spouse who lives longer." Furthermore, in Article 97 it is determined that, "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." From the description and explanation above, we can conclude that the transfer of joint property in a polygamous

marriage is that if there is a legal act in the form of a breakup of the marriage, the parties involved in the polygamy marriage get one-half of the amount of joint property, but the share received by the first wife is greater than the amount obtained by the second wife, third, and so on. This is because the ownership of joint property is calculated at the time of the contract, so in a polygamous marriage, the first wife is the wife with the longest period of marriage with her husband among the other wives as for the shares of the parties involved in a polygamous marriage after the termination of the marriage due to death or divorce, are as follows: for the first wife $\frac{1}{2}$ of the joint property with the husband obtained during the marriage, plus $\frac{1}{3}$ x joint property obtained by the husband together with the first wife and second wife, plus $\frac{1}{4}$ x joint property obtained by the husband together with the third wife, second wife and first wife, plus $\frac{1}{5}$ x joint property obtained by the husband with the fourth, third, second and first wife. This aims to avoid the injustice of the rights of the previous wife by the husband. The division of joint property should be carried out fairly, but in the facts that occur in the community, the transfer of joint property in polygamous marriages is carried out not following the rules that have been regulated. This is due to a lack of concern for the rule of law and a lack of understanding of the law. If there is a transfer of joint property in a polygamous marriage without the consent of one wife, the transfer is considered invalid and null and void.

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