

# The Civil Law Perspective On Joint Property After Death Divorce (A Study Of Supreme Court Decision Number 597k/Ag/2016)

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**Abstract:** Joint assets are assets acquired during marriage from the time the marriage takes place until the end of the marriage or dissolution of the marriage due to divorce or death. Joint assets include assets acquired during the marriage or assets obtained as gifts, donations or inheritance. One of the legal bases for the division of joint assets upon divorce is Article 38 of the Marriage Law and Presidential Instruction Number 1 of 1991 concerning the Socialization of the Islamic Law Book (KHI). The analytical method used in this research approach is qualitative. The existing data is made in the form of words and sentences. In conducting this research, the author used a legal-normative approach. The purpose of this research is to find out about the civil law perspective regarding joint assets after divorce (Study of Supreme Court Decision Number 597/AG/2016). It can be concluded that based on Article 96 of the complications of Islamic Law, Article 37 of Law Number 1 of 1974 concerning Marriage, if the marital relationship breaks down due to death or divorce, then the joint assets between husband and wife are determined as follows. Husband and wife will each receive half of assets acquired during marriage.

**Keywords:** Divorce, Joint Property, Civil Law

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## Introduction

Marriage is a physical and spiritual bond between a man and a woman as husband and wife. Marriage not only unites a man and a woman in a household and family but also involves legal relations for both the husband and wife as well as their children. The purpose of marriage, as explained above, is to produce offspring, establish family life, and live together in society with a family bond. To live together, husband and wife need worldly wealth that can be used to meet daily needs. Worldly wealth is referred to as marital assets, family assets, or joint assets. (Margolang & Jaelani, 2023)

Article 1 of Law Number 1 of 1974 explains that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of building a happy and eternal family based on the Almighty God. According to Islamic law, marriage is considered an act of worship that follows the command of Allah SWT, and those who marry are considered to have fulfilled half of their religious obligations. Marriage has several purposes, primarily the continuation of offspring and the survival of humanity on earth according to the laws permitted by Islam.

The purpose of marriage, as explained above, is to have children, establish family life, and live together in society with a family bond. To live together, a man and a woman need worldly possessions that can be used to meet daily needs. Worldly wealth is referred to as marital assets, family assets, or joint assets. Joint assets are one of many types of wealth that a person can own. In everyday life, wealth has important significance for a person, because by having wealth, one can meet their life needs and achieve a good social status in society. This interest is seen not only from the aspect of its utility (financial aspect) but also from its orderliness. However, in practice, not everyone understands the legal regulations regarding property, especially property acquired during the marriage of a husband and wife. (Tobing, 2018)

Indonesian family law stipulates that joint assets are assets acquired during marriage, excluding those obtained through gifts or inheritance. Assets acquired during marriage are due to business reasons or personal property. Therefore, it is clear that joint assets are assets acquired within a legitimate marriage. Spouses have equal rights and responsibilities regarding joint assets. The division of joint assets after the dissolution of marriage is explained in Article 96 Paragraph 1 of the Compilation of Islamic Law (KHI), which states that if a divorce occurs due

to death, half of the joint assets become the property of the surviving spouse. This is in accordance with the provisions of Article 97 KHI, which states that in the contract, the widow or widower who divorces is entitled to half of all wealth, except if there is an agreement or contract otherwise.

Based on the explanation above, it can be understood that joint assets are the rights of married couples to use these assets to meet the family's needs during the marriage. However, if the marriage ends due to bankruptcy, divorce, or death, the joint assets must be divided according to the rules. Therefore, if one spouse passes away, the widow or widower receives half of the joint assets in accordance with the provisions of Article 96 Paragraph 1 of the Compilation of Islamic Law. (Khoiri, 2021)

### **Methods**

The research method used is a qualitative method. The data is presented in the form of words and sentences. In conducting this research, the author uses a normative legal approach. The Normative Legal Approach is legal research conducted by reviewing literature on the topic being studied using library materials or secondary data. The data collection method for this research was conducted using library research. The purpose of this literature review is to seek secondary data related to a particular topic. This research also aims to explain the causes of the occurrence of an event and to expand broader scientific knowledge.

### **Results and Discussion**

#### **Civil Law Perspective on Joint Assets After Divorce**

Article 119 of the Civil Code stipulates that from the moment of marriage, a legitimate and complete relationship is established between the assets of the husband and wife, unless the marriage contract specifies otherwise. The unity of assets exists as long as the marriage exists and cannot be annulled or altered by mutual agreement. If there is an intention to deviate from this provision, the husband and wife must follow the procedure by making a marriage contract as stipulated in Articles 139 to 154 of the Civil Code.

Articles 128 to 129 of the Civil Code regulate that if the marital bond between the husband and wife is severed, the joint assets must be divided between the husband and wife, regardless of which party acquired the assets previously. Regarding prenuptial agreements, they are permitted under the law as long as they do not violate public decency and order prevailing in society (Purnomo, 2020).

Assets acquired during the marriage are joint assets. Assets that are gifted or inherited by either spouse remain under the control of both parties unless there is a specific agreement otherwise. Concerning joint assets, either the husband or wife can dispose of them as they please with mutual consent. It is also important to note that either spouse has the right to bring matters concerning joint assets to court, and if the marriage is dissolved due to divorce, the joint assets will be subject to their respective laws (Margolang & Jaelani, 2023).

Legal provisions regarding joint assets can complicate the fair division of such assets. The division of joint assets after the dissolution of marriage is explained in Article 96 Paragraph 1 of the Compilation of Islamic Law (KHI), which states that in the event of a divorce, half of the joint assets become the right of the surviving spouse. This is in accordance with Article 97 KHI, which stipulates that in a divorce contract, the widow or widower is entitled to half of the entire wealth. The above statements indicate that joint assets are the rights of the married couple to use for family needs during the marriage. However, even if the marriage ends due to divorce or death, the joint assets must be distributed according to their respective rules (Djuniarti, 2017).

According to Law No. 1 of 1974 on Marriage, Articles 35 and 36, it is stated that:

Property acquired during the marriage becomes joint property. Property brought into the marriage by each spouse as a gift or inheritance remains under the responsibility of each spouse unless there is an agreement otherwise. From these articles, it can be concluded that if the marriage is dissolved, the joint assets are regulated according to their respective laws (Rochaeti, 2013).

Based on Article 36 Paragraph (2) of Law No. 1 of 1974 on Marriage, Article 87 Paragraph (2) of the Compilation of Islamic Law, the wife has full rights to take legal action regarding her personal property. They are free to decide whether to sell, transfer, or mortgage the property without interference from their spouse and do not require legal support from their husband to proceed. These provisions clearly state that both husband and wife have rights to manage joint assets in a marriage. Therefore, one party cannot entrust the other with carrying out legal procedures regarding joint assets in marriage, as both parties have equal rights as co-owners of the assets.

One of the legal foundations for the division of joint assets in the event of death is Article 38 of the Marriage Law and Presidential Instruction No. 1 of 1991 on the Dissemination of the Compilation of Islamic Law (KHI).

a. If a divorce occurs due to death, half of the joint assets become the property of the surviving spouse.

b. The division of joint assets to the husband or wife of a missing spouse must be postponed until the confirmed death or legal death as determined by a religious court decision.

According to Article 96 of the Compilation of Islamic Law, Article 37 of Law No. 1 of 1974 on Marriage, if the marriage is dissolved due to divorce, the joint assets between the husband and wife are divided as follows: each spouse will receive half of the assets acquired during the marriage, and in the case of divorce due to death, the joint assets are given to the surviving spouse (Sebagai et al., 2021).

In this context, the division of joint assets within family life can vary. In some regions, the wife is entitled to half of the joint assets, considering that some husbands may not contribute to the household budget. Practitioners must ensure a sense of fairness and justice, giving special consideration to the husband's participation in creating the joint assets within the family. The remaining share of the husband for the maintenance of joint assets falls under Article 229 of the Compilation of Islamic Law (KHI).

### **Case Study: Supreme Court Decision No. 587k/AG/2016**

At the level of the Supreme Court of the Republic of Indonesia Decision No. 597 K/Ag/2016 on the division of joint assets, the plaintiff was the legal wife of the defendant, and the marriage was dissolved in 1995. The Supreme Court Decision of the Republic of Indonesia, Sharia Court of Lhoksukon, dated December 2, 2013, No. 338/Pdt.G /2013/MS-LSK, and the divorce certificate No. AC: 31/AC/2014/MS- January 28, 2014 LSK, indicated that the plaintiff's marriage to the defendant was terminated. During the marriage, the couple did not have children but had joint assets. After negotiations at each disqualification stage, including appeals to the Sharia Court of Lhoksukon, the Sharia Court of Aceh, and finally the Supreme Court, the disqualification request was formally accepted, although the appeal could be discontinued. The original defendant/petitioner claimed that he could not fully accept the Sharia Court of Aceh's decision and requested that the decision be reviewed at the appeal level.

In the appeal, the panel of judges annulled the Lhoksukon Sharia Court's decision, acting unfairly in handling, adjudicating, and deciding the case. The legal considerations and arguments presented were found to favor the original defendant/petitioner. The appellate judges of the Sharia Court of Aceh reviewed and resolved the case, as the legal aspects and reasons for annulment aligned with the defendant/petitioner's view. Judge Aceh Sharia stated, "The defendant admitted that the main issue of the lawsuit was the assets acquired during the marriage with the plaintiff, but the defendant denied its use, claiming that the plaintiff justified it based on legal grounds." The justification was that the assets were acquired by the defendant through his village midwife business. Despite the defendant's voluntary contribution to household needs, the plaintiff did not cover the cost of his parents' living expenses.

After reviewing the case, the panel of judges of the Sharia Court of Aceh found that the plaintiff was unemployed; thus, the defendant's claim of not recognizing the assets acquired during the marriage as joint assets had to be annulled, as the assets were acquired within the marriage. The assets were obtained after the plaintiff worked as an honorary employee and later as a government official. It was also proven that the plaintiff was the one who made the transactions.

Therefore, the reason for not recognizing the assets as joint assets was the plaintiff's unemployment. Hence, the court's decision No. 168/Pdt.G/2014/Msk-Lsk dated July 6, 2015, could not be upheld and had to be annulled.

Considering these legal aspects, there was no need to re-evaluate other cassation grounds. The Supreme Court found sufficient reasons to grant the cassation request and annul the decision of the Aceh Sharia Court. Pdt.G/2016/MS-Aceh, March 14, 2016, annulled the decision of the Lhoksukon Sharia Court No. 168/Pdt.G/2014/MS-Lsk dated August 10, 2015. The Supreme Court addressed the issue, though it decided to bring the husband's (wife's) cassation request into the process. The Sharia Court's decision No. 9/Pdt.G/2016/MS-Aceh, March 14, 2016, annulled the Lhoksukon Sharia Court's decision No. 168/Pdt.G/2014/MS-Lsk dated August 10, 2015.

### **Analysis of Supreme Court Decision No. 597k/AG/2016**

In the Supreme Court Decision No. 597k/AG/2016, the judge's opinion was based on witness testimony and documentary evidence. The judge's decision was grounded in legal requirements, relying on competent evidence that met the minimum standard of proof. The truth was based on irrefutable evidence, regarded as the absolute truth.

From the case above, it can be concluded that the husband initially opposed the division of joint assets by the Lhoksukon Sharia Court Judge, who divided the assets with one-third to the husband and two-thirds to the wife. The husband argued that the Lhoksukon Sharia Court's decision was unfair and should not be unjust, as it was reasonable for joint assets to be divided equally between the divorced spouses. Therefore, the husband appealed to the Banda Aceh Sharia Court, and the Banda Aceh Sharia Court judge decided that the division of joint assets was half for the wife and half for the husband. However, the wife appealed the Banda Aceh Sharia Court judge's decision. Consequently, the wife filed a cassation to the Supreme Court. The Supreme Court's final decision stated that in the above decision, the husband was entitled to one-third (1/3) of the joint assets, and the wife had two-thirds (2/3) of the joint assets. The judge's decision differed from the Lhoksukon Sharia Court's and the Supreme Court's decisions. The Lhoksukon Sharia Court and Supreme Court judges based their decisions on marriage conditions, supplemented with witness testimonies and evidence proving that the husband did not fulfill his obligations as a spouse. The Supreme Court Decision No. 597 K/Ag/2016 did not rule that the division of joint assets should be half and half but decided that the wife was entitled to two-thirds (2/3) of the joint assets and the husband to one-third (1/3), based on the formation of the joint assets.

This ruling aligns with Article 97 of the Compilation of Islamic Law and Articles 128 to 129 of the Civil Code, which state that widows and widowers receive equal shares. However, in this case, it was clear that the woman had a larger share in creating the joint assets, justifying a greater portion for her (2/3) compared to the man's (1/3).

It is acknowledged that according to Article 35 Paragraph 1, joint assets are those acquired during the marriage, and according to Article 1 of the Compilation of Islamic Law, assets acquired during the marriage, whether individually or jointly, as long as the marriage continues, are considered joint property. If the joint assets are created during the marriage, they become jointly owned without questioning who created them. However, the Supreme Court judges in Decision No. 597 K/Ag/2016 believed that social justice goes beyond the contributions or efforts of the parties involved. The court also considered that the husband was unfair in fulfilling the household needs, as he was the first to work, and a significant portion of the wealth came from his job.

Although the husband had moral responsibilities as a motivator, protector, and companion to his wife, or when the wife pursued her profession with at least the husband's consent, it could lead to joint ownership. Having a career as a midwife or other profession could not be used to deny the equal right to joint assets.

In summary, the Civil Law perspective on joint assets after divorce death stipulates that the joint assets are the rights of both husband and wife to use during the marriage. However, if the marriage is dissolved due to bankruptcy, divorce, or death, the joint assets must be distributed according to the applicable rules. In the event of one spouse's death, the surviving widow or widower is entitled to half of the joint assets per Article 96 Paragraph 1 of the Compilation of

Islamic Law. This principle ensures that both parties' contributions and rights are recognized and protected, reflecting a fair division of joint property.

### Conclusion

The Assets acquired during marriage are joint assets. Each spouse's property obtained as a gift or inheritance remains their respective right unless there is a prior agreement. Concerning joint assets, either the husband or wife can freely use the joint assets with mutual consent. It is also important to note that either spouse has the right to bring matters concerning joint assets to court, and if the marriage ends due to divorce or death, the joint assets fall under this law. According to the Compilation of Islamic Law Article 96, Article 37 of Law No. 1 of 1974 on Marriage, if a marriage ends due to death or divorce, the joint assets between the husband and wife are determined as follows: each spouse receives half of the assets acquired during the marriage. In Supreme Court Decision No. 597K/AG/2016, the division of joint assets after divorce was determined by the Supreme Court judge, who did not follow the provisions of Article 97 of the Civil Code. The judge established the division based on the principles of equality and social justice, allocating two-thirds to the wife and one-third to the husband. Judges are given the freedom to explore fair legal values within society. In this case, the division of joint assets was not based on the provisions of Article 97 of the Civil Code because the husband should have played a significant role in earning a living and fulfilling household needs but did not perform his duties well towards his wife and was less responsible for household needs. The wife, however, played a larger role in supporting and acquiring joint assets. Thus, based on the principles of justice and social equity, the judge allocated two-thirds to the wife and one-third to the husband.

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