

The Distribution System of Joint Property in Polygamous Families from the Perspective of Islamic Law Compilation and Civil Code

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ABSTRACT

This research discusses The Distribution System of Joint Property in Polygamous Families from the Perspective of the Islamic Law Compilation and the Civil Code. Polygamy, the practice of a man marrying multiple wives simultaneously, remains legally permitted in countries like Indonesia, though its social and legal impacts are widely debated. A key issue in such families is the division of joint property or assets. This normative legal study employs statutory, case, and conceptual approaches. It finds that the regulation of joint property for Muslims is governed by Law No. 1 of 1974 on Marriage and the Islamic Law Compilation, particularly Article 65 Paragraph (1) and Article 94 Paragraph (1). For non-Muslims, the Civil Code, specifically Article 128, applies. The study fills a significant gap in Indonesian family law by offering the first detailed comparative analysis of joint property distribution in polygamous marriages under both Islamic Law Compilation and Civil Code frameworks. The research reveals substantial differences in how these laws are interpreted, causing legal uncertainty for families dealing with property rights across religious boundaries. The findings have important implications for family law practitioners, judges resolving property disputes in polygamous families, and policymakers aiming to align statutory rules with modern views on gender equity and spousal rights. This is especially relevant when wives from different marriages dispute property shares or when ambiguous laws lead to discriminatory outcomes that disadvantage later wives, despite principles of equal treatment.

KEYWORDS

Polygamy, Shared Property, Compilation of Islamic Law, Civil Code, Justice



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INTRODUCTION

The household should be a place of mutual love and affection between two human beings who form a legal marriage bond with *khobiltu nikaha*, which is the sacred speech of a man who wants to marry a woman. Every human being has the right to form a harmonious family, as based on Article 28B of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia), which explains that the state guarantees the right of citizens to form families and continue their offspring through legal marriage, guarantees the right of children to survival, growth, and development, and the right to protection from violence and discrimination (Mustofa, 2018; Putri & Wahyuni, 2021; Santoso, 2012; Yusuf, 2019). To form a harmonious relationship in a marriage or household bond, it is necessary to have an attitude of mutual understanding towards each other (Agusta et al., 2025).

Marriage is a sacred process and cannot be avoided by every human being who wants to form a family based on the law. One of the most common cases of marriage in Indonesia is polygamy (Al-Krenawi & Kanat-Maymon, 2016). The concept of polygamy (*ta'addud al-zaujāt*) in jurisprudence is generally understood as a husband who simultaneously gathers two to four wives. In the teachings of Islamic law, polygamy is indeed allowed, but with some conditions that must be met. Not only referring to Islamic law, but from the perspective of the

Indonesian Civil Code, polygamy also exists, and the provisions or conditions are not much different (Nurmila, 2016). Therefore, a person who wishes to commit polygamy must understand the rules from the perspective of Islamic law and the Civil Code so that the marriage can also be recorded by the State (Maula et al., 2023).

Polygamous marriage itself has many pros and cons in society. Polygamous marriage can be carried out if a man who commits polygamy meets the requirements (Harimurti, 2021; Latupono, 2020). One of these is if the wife allows her husband to practice polygamy and also accepts the conditions imposed by the court; then it is allowed to practice polygamy (Rouf et al., 2023; Rouf et al., 2024).

Despite the formal legal frameworks governing polygamy in Indonesia, the practice raises profound social, economic, and legal challenges that extend far beyond the initial marriage contract (Vela, 2015). Polygamous families face unique vulnerabilities in property rights, particularly regarding the equitable distribution of jointly acquired assets among multiple wives and their children (Lubis et al., 2024; Sanjaya & Muhibbussabry, 2025). These challenges are intensified by the fact that subsequent marriages often occur after substantial marital property has already been accumulated with the first wife, creating complex questions about the temporal boundaries of property rights, the status of pre-existing assets, and the fairness of distribution mechanisms when marriages dissolve through divorce or death. Furthermore, the intersection of Islamic legal principles with civil law provisions creates interpretive ambiguities that leave many polygamous families uncertain about their rights and entitlements, particularly when statutory language appears to conflict with established jurisprudential precedents or customary practices (Alimuddin et al., 2025; Khairina et al., 2024).

In the Qur'an Surah An-Nisa verse 3:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ
مِّنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبْعًا ۖ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ
مَا مَلَكَتْ أَيْمَانُكُمْ ذَٰلِكُمْ أَذْنَىٰ أَلَّا تَعُولُوا ﴿٣﴾

"And if you are afraid that you will not be able to do justice to the orphan woman, then marry the women you like: two, three or four. Then if you are afraid that you will not be able to do justice, then (marry) only one, or the slaves that you have. That is closer to doing no wrong."

From the above verse, it is explained that a husband can only have a maximum of four wives and must be fair to his wives; if the husband is not able to act justly, then he should have only one wife. At the time of marriage, a married couple is bound by a family, so it often happens that husband and wife seek joint acquisitions, thus increasing wealth in the family. Wealth in marriage can be in the form of property obtained by the husband and wife during the marriage (Kadengkang, 2017).

Based on Article 35 paragraph (1) of Law No. 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, it is stipulated that property obtained during marriage becomes joint property. Jo. Article 1 letter f of the Presidential Instruction of the Republic of Indonesia No. 1 of 1991 concerning the Dissemination of the Compilation of

Islamic Law (hereinafter referred to as Presidential Instruction No. 1 of 1991) interprets that: "Property in marriage or Shirkah

is property obtained either individually or jointly as long as the marriage bond lasts, hereinafter referred to as joint property, regardless of being registered in the name of anyone."

On the other hand, sometimes there are several husbands who do not have only one wife (Sahrani & Tihami, 2010). Thus, the division and separation of common property is important to be researched and analyzed. Based on this description, the existence of the division of joint property in marriage in Indonesian society has its own place that plays a very important role in significant events. In this study, the title was raised *"The system of distributing gono gini property to polygamous families in the perspective of the Compilation of Islamic Law and the Civil Code."*

This research explicitly addresses a significant gap in Indonesian family law scholarship concerning the practical application and interpretation of joint property distribution rules in polygamous marriages. While existing legal literature has extensively examined general principles of marital property division under both Islamic Law Compilation and Civil Code frameworks, there remains a notable absence of systematic comparative analysis specifically focused on polygamous contexts where multiple wives simultaneously claim rights to jointly acquired assets (Hidayati, Muhibbin, & Suratman, 2025). This gap is particularly problematic given the increasing number of polygamous marriage cases adjudicated in Indonesian Religious Courts and the documented inconsistencies in judicial interpretations of property rights across different jurisdictions. Previous research has largely treated polygamous property distribution as a marginal issue within broader discussions of marriage law, failing to adequately examine the complex intersections of temporal property acquisition, competing wife claims, and the reconciliation of formal equality principles with substantive equity concerns. This study fills this critical void by providing a comprehensive doctrinal and jurisprudential analysis of how Indonesian law—both in statutory text and judicial practice—addresses the unique challenges of property distribution in polygamous families, thereby offering much-needed clarity for legal practitioners, judges, and families navigating these complex issues.

This research focuses on the arrangement and distribution of gono-gini property for polygamous families according to the *Compilation of Islamic Law* and the *Civil Code (KUH Percivil)*. The main objective is to analyze how the two sources of law regulate the property of the gono-gini and its distribution system to polygamous wives. To clarify the scope, this study limits the discussion to joint property between polygamous wives. It is hoped that the results of the research can provide theoretical benefits for students and universities, as well as practical benefits for the community and the government in understanding the distribution of inheritance. Previous research has shown differences in problem formulation and conclusions, which confirms the importance of understanding the legal dynamics in the practice of gono-gini property division. Thus, this research contributes to the understanding and implementation of related laws in the context of polygamy.

METHOD

This research used a normative legal approach to identify legal rules, principles, and doctrines related to the issues encountered. It applied legislative, conceptual, comparative, and The Distribution System of Joint Property in Polygamous Families from the Perspective of Islamic Law Compilation and Civil Code

case approaches (Irwansyah & Yunus, 2020; Marzuki, 2016). The legislative approach focused on relevant laws and regulations, while the conceptual approach analyzed the meaning of existing rules when no specific regulations applied. The case approach examined relevant legal decisions, and the comparative approach compared legal institutions across different systems.

Legal cases were selected based on systematic criteria to ensure relevance and representativeness. The primary focus was on Religious Court and District Court decisions involving polygamous marriages with contested joint property claims, prioritizing cases that addressed the division of marital property among multiple wives, detailed judicial reasoning on Islamic Law Compilation or Civil Code provisions, various types of property, and different timelines of property acquisition.

Cases were identified through searches of Indonesian court decision databases (Direktori Putusan Mahkamah Agung) using keywords such as "harta bersama," "poligami," and "pembagian harta gono-gini." Out of 47 relevant decisions from 2010 to 2024, 15 landmark cases were selected to represent the range of judicial interpretations and reasoning. The comparative analysis examined statutory provisions and scholarly commentaries from both Islamic and civil law traditions, highlighting convergences and divergences in property rights and dispute resolution mechanisms.

Legal materials included primary sources like the 1945 Constitution, Civil Code, Compilation of Islamic Law, and Law Number 1 of 1974 on Marriage, along with secondary sources such as journals, and tertiary materials like language dictionaries. Data collection involved literature studies for organized synthesis, and analysis was conducted using a qualitative descriptive method to outline facts and address related problems and solutions.

RESULT AND DISCUSSION

Arrangement of Gono-Gini Property According to the Compilation of Islamic Law and the Civil Code

The state of Indonesia is based on Pancasila, as in the first precept is the One Godhead. The precepts are very closely related to the religious or spiritual aspects. Thus, marriage not only has a natural and physical element, but also an inner and spiritual element. One of the crucial things in polygamous marriage is about the property of gono-gini in marriage. Gono-gini property is one of the many properties that a person has. In daily life, wealth has an important meaning for a person because by owning wealth, it will be easier for him to be able to meet the needs of life reasonably and obtain a good social status in society. This importance is not only in terms of its usefulness (economic aspect) but also in terms of its regularity (legal aspect). Economically, people are used to struggling with the property they own, but legally people may not understand much about the legal rules that govern property, let alone property obtained by a married couple during the marriage period.

Regarding the division of gono-gini property, it can be seen at a glance how it is divided, so when there is a divorce, the distribution of the property is returned to their respective punishments. If the husband and wife are Muslims, then the division is according to Islamic law, in this case adhering to Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law and if the husband and wife are non-Muslim, then the division adheres to civil law and customary law.

When viewed from the origin of wealth in marriage, it can be classified into three groups:

- a. The property of each husband and wife that they had before the marriage, either obtained because of inheritance or other business ventures, in this case called inherited property.
- b. The property of each husband and wife obtained during the marital relationship, but was obtained not because of their joint or individual efforts, but was obtained through grants, inheritances, or wills for each.
- c. Property acquired after they are in a marital relationship for the efforts of both of them or one of them, in this case is called livelihood property.

In Indonesia, the division of gono-gono property is divided into 2, namely according to the Compilation of Islamic Law and the Civil Code.

1. Gono-Gini Property Arrangement Based on Compilation of Islamic Law

In Islamic law, there is no known term common property or gono-gini that exists is the wealth of what they are striving for, because husband and wife admit that there is joint property in addition to personal wealth, so it can be said that property is obtained through their efforts or individually during the marriage period. So, when they (husband and wife) have been bound by the marriage agreement as husband and wife, then everything becomes united, both property and children as stipulated in the Qur'an surah An-Nisa' verse 21 which reads:

وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَى بَعْضُكُمْ إِلَى بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا
غَلِيظًا

It means, "How will you take it (Back), when you have been associated with one another (as husband and wife) and they (your wives) have made a strong covenant (marriage bond) with you?" (Q. S An-Nisa' verse 21).

It does not need to be accompanied by shirkah (agreement in marriage). Because marriage with ijab qobul and fulfilling other requirements such as wali, witness, dowry and walimah can be considered as shirkah between husband and wife.

Strictly speaking, the implicit meaning and provisions regarding the property of gono-gini and its problems are indeed not found in the Qur'an or the hadith of the Prophet, as well as in classical fiqh books it is very rare and there is not even a discussion of this issue. However, legal experts in Indonesia have different opinions about gono-gini property. The first opinion says that the property of gono-gini is regulated in Islamic law. The existence of gono-gini treasures is based on verses of the Qur'an, such as Surah Al-Baqarah verse 228, Surah An-Nisa' verses 21 and 34; This verse hints that the property gono-gini is the 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. The second opinion considers that gono-gini property is not known in Islam, except for shirkah (agreement) between husband and wife that are made before or at the time of marriage. This is understandable, because the family system fostered in Arab society does not recognize gono-gini property, because the one who works in the family is the husband. and the wife is only in charge of managing household affairs.

Based on Article 37 of Law Number 1 of 1974 concerning Marriage and Articles 96-97 of the Compilation of Islamic Law (KHI), it is stated that if the marriage is broken either due to divorce or death, then each husband and wife get half of the gono-gini property obtained during the marriage. This provision is in line with the jurisprudence of the Supreme Court of the Republic of Indonesia No. 424.K/Sip.1959 dated December 9, 1959 which contains a legal

abstraction that in the event of divorce, each party (husband and wife) gets half of their gono-gini property. If a divorced married couple, then the issue of property is carried out by deliberation or peace, then the division can be determined based on agreement or willingness between the two parties. This is the legal way and the best way to settle. Thus, the distribution of gono-gini property can be pursued through the decision of the Religious Court or through family deliberation. In this settlement through deliberation, it is possible for one of the parties to get a greater or smaller percentage than the other, subject to the agreement and without the element of coercion.

In this study, an example of the case of Decision Number 211/Pdt.G/2024/PA. Ktbm regarding the distribution of gono gini property, In the judgment there was one of the plaintiffs before marrying the defendant who had inherited property in the form of yard land on which currently stands the PRABA Foundation building, PRABA High School and SMK Building with a land area of approximately 3000 (three thousand) Square Meters. At the time of the marriage process, the Plaintiff and the Defendant have obtained joint property, namely: land and house building of approximately 2000 M2 located in Wonojoyo Hamlet, RT 003 RW 006, Trimodadi Village, South Abung District, North Lampung Regency, which the estimated price of the land and house building is currently Rp. 250,000,000.00 (two hundred and fifty million rupiah), a plot of garden land measuring approximately 1250 M2 located in Selang Hamlet, Sinar Ogan Village, South Abung District, North Lampung Regency, with the current price range of the land is Rp. 100,000,000.00, a plot of garden land measuring approximately 10,000 M2 in Kamar Mandi Hamlet, Sinar Ogan Village, South Abung District, North Lampung Regency, the estimated price of the land is currently Rp. 100,000,000.00 (one hundred million rupiah), a plot of land and a house building measuring approximately 17 x 15 M2 located in Wonojoyo Hamlet, Trimodadi village, South Abung District, North Lampung Regency, with the estimated current price of the land and building being Rp. 100,000,000.00 (one hundred million rupiah), land and house building measuring approximately 107 M2 located in Gembongan Hamlet, Sukoreno Village, Sentolo, Kulon Progo Regency, Yogyakarta Province, with an estimated current land price of Rp. 500,000,000.00 (five hundred million rupiah), and a 2002 Panther Touring Car with License Plate BE 1805 TS previously Heregistered number BE 2441 TB, which was purchased in 2012 for Rp. 121,000,000,- (one hundred and twenty-one million rupiah).

Based on this, in accordance with the provisions of Article 35 paragraph (1) of the Marriage Law, the Plaintiff is entitled to 1/2 (half) of the value of the Marriage property. That because the defendant does not have good faith to divide the marital property to the plaintiff, then based on Article 1239 of the Civil Code to avoid and guarantee that this decision is not in vain and can be implemented properly, the Plaintiff requests that the Kotabumi religious court be willing to place a security confiscation (conservator beslag) first on the marital property, that because this lawsuit is based on strong evidence, Therefore, the plaintiff requests that the Kotrabumi Religious Court state that the Decision in this case can be implemented first, (uitvoerbaar bij voorraad) even though the Defendant submits legal remedies in the form of Verzet, Appeal, cassation and other legal remedies.

Matrimonial property is not only mentioned in the Marriage Law, but is also described in the Compilation of Islamic Law which is in line with the main decisions or authorities of the religious courts, which has been embraced by scholars and scholars of Islamic law throughout

Indonesia in seminars that have been organized and identified as guidelines for government agencies and for those who need it to resolve disputes in the three areas of law mentioned above. As much as possible, apply the Compilation of Islamic Law in addition to other laws and regulations.

Regarding joint property, according to Article 1 letter F, the Compilation of Islamic Law contains property in marriage or shirkah, namely property obtained during the marriage without questioning whether it is registered in the name of the husband or wife. In this Compilation of Islamic Law, it is explained about the existence of joint property in marriage, namely in book 1 Article 85 to Article 97.

Article 85: The existence of joint property in marriage does not preclude the existence of property belonging to each husband or wife

Article 86:

- 1) Basically, there is no mixing between the husband's property and the wife's property because of marriage
- 2) The wife's property remains the wife's right and is fully controlled by her, as well as the husband's property remains the husband's right and is fully controlled by him.

Article 87:

- 1) The inherited property of each husband and wife and the property obtained by each as hasiah or inheritance are under the control of each other, as long as the parties do not specify otherwise in the marriage agreement
- 2) Husband and wife have the full right to commit legal acts on each other's property in the form of *hinah*, gifts, *sodaqoh* or others.

Article 88: If there is a dispute between husband and wife about joint property, then the settlement of the dispute shall be submitted to the Religious Court.

Article 89: The husband is responsible for maintaining the common property, the wife's property and his own property.

Article 90: The wife is also responsible for maintaining the common property and the husband's property that belongs to her.

Article 91:

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

Article 92: A husband or wife without the consent of the other party is not allowed to sell or transfer joint property.

Article 93:

- 1) Husband and wife's debts are charged to their respective assets.
- 2) Debts made for the benefit of the family are charged to the common property.
- 3) If the joint property is insufficient, it is charged to the husband's property.
- 4) If the husband's property is not available or insufficient, it is charged to the wife's property.

Article 94:

- 1) The joint property of a husband who has more than one wife, each separate and independent.

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- 2) The ownership of joint property from the marriage of a spouse who has more than one wife, is calculated at the time of the second, third or fourth marriage contract.

Article 95:

- 1) The husband or wife can ask the Religious Court to place a Confiscation of Guarantee on the property of the divorce lawsuit application, if one of them commits acts that are detrimental and endanger the common property such as gambling, drunkenness, extravagance and so on.
- 2) During the Confiscation period, the sale of common property for the benefit of the family can be made with the permission of the Religious Court.

Article 96:

- 1) In the event of a divorce, half of the joint property becomes the right of the couple who lives longer.
- 2) The distribution of joint property for a husband or wife whose wife or husband owes a debt must be postponed until there is a certainty of his or her actual death or legal death on the basis of the decision of the Religious Court.

Article 97: Divorced widows or widowers are each entitled to one half of the joint property as long as it is not otherwise specified in the marriage agreement

Taspen and insurance include joint property. By referring to the applicable provisions, all property obtained during the marriage bond automatically becomes joint property. But in practice, it is not so simple. Various related elements that cause it to be complicated. This requires adequate analysis and skills in the completion process. In Article 85 of the Compilation of Islamic Law, it is limited by the possibility of the existence of each property. More broadly, Article 91 of the Compilation of Islamic Law emphasizes the scope of joint property including:

- 1) Common property can be in the form of tangible or intangible objects.
- 2) Tangible common property can include immovable objects, movable objects and securities.
- 3) Intangible joint property can be in the form of rights and obligations.

The concept of joint ownership in Islamic Sharia is property received by a married couple during marriage, and the property of the husband or wife during the period of pre-marriage, such as gifts, inheritances, subsidies or other property, and at the time of marriage, all these assets are if they remain the property of a person, the property remains wholly owned by everyone and has full control over that property. The Qur'an and Hadith do not talk about common property, but in the book of fiqh there is a discussion that can be interpreted as a discussion about common property which is called Shirkah or Sharikah.

Some Islamic law experts say that it is impossible if Islam does not regulate this common property, while other small matters are regulated in detail by Islam and determined by the legal level, none of them are left behind, all of them are included in the scope of the discussion of Islamic law. If it is not mentioned in the Qur'an, then it must be in the Hadith and the Hadith is the source of Islamic law as well.

2. Arrangement of Gono-Gini Property Based on the Civil Code

Marriage in Indonesia is not only influenced by customs, but can also be influenced by religious teachings, namely Buddhism, Hinduism, Christianity, Catholicism and Islam. The existence of this influence gave birth to many rules that regulate marriage. In the implementation of marriage, of course, it also gives birth to rules regarding joint property in marriage. The occurrence of a joint dispute only arises when the husband and wife will decide

to end their marriage bond or divorce. In this case, the divorce application is submitted to the Religious Court, while in the District Court, the divorce lawsuit must be decided and only then can a joint property lawsuit be filed.

The law allows a husband or wife to combine (accumulate) a divorce claim with a claim for division of joint property in a single lawsuit. In the Civil Procedure Law, this kind of lawsuit is allowed, known as Accumulation of Lawsuits in Religious Courts. Theoretically, viewed in terms of proceedings in the Court, filing a lawsuit between a divorce lawsuit and a joint property lawsuit cumulatively is the most effective and efficient way and is very profitable because it does not waste much time that applies in the Religious Court. Because at the time the Plaintiff filed a lawsuit at the same time, it included two types of lawsuits, namely a divorce lawsuit and a lawsuit for the division of common property, although the types are different, where a divorce lawsuit is a main lawsuit, while a joint property lawsuit is an accessory lawsuit that is attached to the main lawsuit. The way the assessor can be determined in a reference if the divorce lawsuit is automatically rejected, the lawsuit for the division of joint property is declared unacceptable (*niet ont vankelijk verklaard*). Likewise, if the divorce lawsuit is granted, it is open to the possibility of granting the division of joint property as long as the existing goods can be proven as joint property.

In the Civil Code (BW), about common property according to the law and its regulations are regulated in Chapter VI Articles 119-138 which consists of three parts. The First Part on Common Property according to the Law (Articles 119-123), the Second Part on the Management of Common Property (Articles 124-125) and the Third Part on the Joint Dissolution of Joint Property and the Right to Detach from It (Articles 126-138).

According to the Civil Code, from the moment the marriage is held, according to the law, there is a comprehensive joint property between the husband and wife, as far as there are no provisions in the marriage agreement. The joint property during the marriage may not be abolished or changed by an agreement between husband and wife, this is regulated in article 119 of the BW. J. Satrio, stated that grammatically it can be interpreted that the husband or wife must act together, the husband gives his power/consent to the wife and vice versa. With regard to profits, the common property includes movable and immovable goods of the husband and wife themselves, both existing and future, as well as goods obtained by them free of charge, unless in the latter case the bequeaver or the grantor expressly stipulates the opposite in Article 120 of the BW).

In Article 122 of the Civil Code or *Burgerlijk Wetboek* "From the moment the marriage is carried out for the sake of the law, a unanimous union between the property of the husband and wife applies, just regarding it with the marriage agreement no other provisions are omitted". The rule throughout the marriage cannot be abolished or changed by an agreement between husband and wife. All debts and losses throughout the marriage must be taken into account for the unfortunate luck of the union. For those who are subject to the Western Civil Law (BW) regarding property acquired during marriage in Article 119 of the Civil Code states that the marriage is held during the marriage, for the sake of the law the union between the union is not between the property of the husband and wife, just regarding it with the marriage agreement no other provision is held.

Thus, this article shows that as long as property becomes joint property or mixed property is for the sake of law to be a joint relationship, or if husband and wife before marriage enter The Distribution System of Joint Property in Polygamous Families from the Perspective of Islamic Law Compilation and Civil Code

into an agreement before a notary regarding their property, then husband and wife can take deviations according to the existing agreement. The marriage agreement made in front of a notary is evidenced by the existence of a notarized (authentic) deed not under the hand. For those who are subject to the BW regarding the union of property, this is coercive, which means that after the marriage takes place, as long as it concerns the common property in the marriage as long as there can be no other agreement on the property, but for them it is not possible to exercise control (*beschekking*) over their respective shares.

Based on the provisions of Article 124 of the Civil Code, it is the husband who has the right to take care of the joint property, including the authority to carry out various acts against the property owned. Based on Article 124 of the Civil Code, there are elements including:

- 1) Only the husband can manage the joint property;
- 2) The husband may sell, move and encumber it without the assistance or knowledge of his wife, except in the case provided for in Article 140;
- 3) The husband shall not give a joint property as a grant between them while both are living, either immovable or whole or a certain part or amount and movable property, unless to the children born and their marriage, to give a position; and
- 4) Even the husband may not stipulate provisions by way of grants regarding a special item, if he reserves for himself the right to use the proceeds of the item.

Based on these provisions, it can be known that the husband himself takes care of the property and only the husband is authorized to do acts against the regulated property. A wife should not interfere in the management of wealth. However, there are exceptions, namely the husband is not allowed to take care of it as stated in Article 140 Paragraph (3) of the Civil Code which states, they also have the right to make an agreement, that even if there is a class of common property, fixed goods, registration papers in the ledger of state loans, other securities and receivables obtained in the name of the wife, or which during the marriage and the wife fall into the joint property, must not be transferred to another person or burdened by her husband without the wife's consent.

Article 140 Paragraph (2) of the Civil Code stipulates that, similarly, the agreement may not reduce the rights intended for the husband as the head of the husband and wife's union, but this does not reduce the wife's authority to require for herself the management of personal property, both movable and immovable goods, in addition to the free enjoyment of her personal income. The acts as mentioned in paragraph (2) are deciding, not in the sense of managing (as in paragraph 1), as the husband's actions are limited, namely that he does not have the right to manage assets outside of the common property, such as inherited property and acquired property because these two types of property remain the authority of each spouse. For example, inherited property in the form of a *hibah* can only be managed when it comes to the affairs of their children's lives.

Basically, the right to the joint property in marriage is not only in the form of movable and immovable objects acquired during the marriage period, whether in the name or not in the name of the wife and husband, but also related to those brought by both of them in marriage. For example, objects in the name of the wife in the form of bills and shares or valuable objects brought by her during the marriage, then these objects cannot be renamed in the name of the husband or in the name of the wife. Nevertheless, these objects remain part of the common

property. These objects may be sold, transferred, or encumbered by the husband without the wife's intermediary.

Based on the explanation above, it can be reiterated that the husband's authority or power is so great in the management of common property. The husband is not responsible to the wife with regard to the management. He is also not obliged by his wife to give him calculations, including if later the joint property dissolves. However, the husband's power was limited by the following two things:

1) Restricted by laws and regulations.

The husband's power in managing joint property is limited by law, as this is regulated in Article 124 Paragraph (3) of the Civil Code. Husband and wife can also donate together. Article 124 Paragraph (3) above provides an exception to grants intended to pay attention to the status of children born from their marriage, that is, the grants made are for the benefit of the children and their future. In this form of grant, the husband is allowed not to ask for his wife's help, this is regulated in Article 124 Paragraph (3) of the Civil Code prohibits the husband from giving part of the joint property without his wife's consent, except to give a position to children born from their marriage.

2) Limited by the Husband-and-Wife Agreement in the Marriage Agreement.

Based on Article 119 of the Civil Code, if the prospective husband and wife before the marriage is held no marriage agreement is made, in which the union (mixed) property is limited or eliminated altogether, then for the sake of the law there will be a unanimous union (mixed) between the property of the husband and wife, both that they bring in the marriage, and that they will obtain throughout the marriage. A wife also has the right to release her share in the marital property, as follows:

- a. In Article 132 Paragraph (1) of the Civil Code, the wife is no longer entitled to her share of the assets of the common property, except for the right to clothes, blankets, and bed sheets.
- b. In Article 132 Paragraph (2) of the Civil Code, the wife is limited in her obligations in terms of paying debts of the common property.

The deadline for the right of release is one month after the dissolution of the joint property, more precisely after the occurrence of divorce. Within one month, the wife can apply for the right of release to the Registrar of the District Court at the place of residence of the last husband and wife, this provision is regulated in Article 133 Paragraph (1) of the Civil Code. If the release occurs due to the death of the husband, the period of one month is calculated from the death of the husband which is indeed known to the wife, as this is regulated in Article 133 Paragraph (2) of the Civil Code. Based on Article 134 Paragraph (1) stipulates that if the wife dies within a period of one month before submitting the deed of release, then her heirs have the right to relinquish their right to union in the manner mentioned in the last article, and within a grace period of one month, after the death of the wife, or after the death is known to them. Furthermore, the same paragraph (2) stipulates that the wife's rights to blankets and bed sheets cannot be fought for by her heirs. The loss of this right of release is regulated in Article 136 and Article 137 of the Civil Code.

Regarding the division of joint property in marriage after divorce, in general, joint property is divided equally between husband and wife. This is based on the provisions of Article 128 of the Civil Code. The distribution of joint property is good to be carried out fairly, so that it does not cause injustice between which is the husband's right and which is the wife's. The Distribution System of Joint Property in Polygamous Families from the Perspective of Islamic Law Compilation and Civil Code

right. If there is a dispute between husband and wife about joint property, the settlement of the dispute is submitted to the court. Settlement through the courts is an option. The provisions on the division of joint property are based on the conditions that accompany the relationship of a marriage, such as death, divorce, and so on.

According to the provisions in the Tinghoa Religion, the mutual legal certainty obtained by married couples during marriage, in the event of divorce, the division of joint property is carried out based on Chinese customary law. At the time of the division of joint property, the same provisions apply as in inheritance. Inheritance is also a dead wealth. This means:

- 1) Each spouse can use the entire part;
- 2) Each spouse is prohibited from using his or her part which is an object in a common object;
- 3) In such a case, the parties can jointly use the common object;
- 4) How far one of the husband/wife takes care of the other is a complicated matter, the law does not determine.

The phenomenon of polygamy has become more prevalent lately, especially because it is openly displayed by role models among the bureaucracy, politicians, artists, and even religious figures. Polygamy is actually an accumulation of at least three factors:

- a. The paralysis of our legal system, especially the Marriage Law.
- b. There are still many patriarchal cultures in society that view wives as just concoctions, must follow what the husband wants and must not refuse;
- c. The strong interpretation of religion that is gender-biased and not accommodating to human values.

Religious interpretations that position the wife only as a sexual object, do not have independence as a whole human being. The sociological reality in society explains that polygamy has always been associated with Islamic teachings.

Polygamous marriage as a legal act will certainly bring certain legal consequences, including in the field of marital property, which if in the future the marriage ends either due to divorce or death. Article 1 letter f of the general provisions of the Compilation of Islamic Law states that property in marriage or shirkah is property obtained individually or jointly in a marriage bond without questioning who is registered in whose name it is. This is in line with the concept of Islamic Law regulating the system of separation of husband and wife property as long as the person concerned does not specify otherwise or is agreed in the marriage agreement, Islamic Law gives leeway to husband and wife to make a marriage agreement according to the wishes of both of them and the agreement is legally binding. This division of common property in Islam is called shirkah.

The husband who receives the gift, whether grants, inheritances and so on, has the right to fully control the property he receives without having to enter into the marital property. Likewise, vice versa for wives who receive grants, inheritances or others have the right to full control, this also applies to the inherited property that existed before the marriage of both parties also has the right to own their own without the intervention of the other party.

A property is said to be a common property or shirkah, is by looking at the origin of the property and when it was acquired, if the property was acquired during the time of marriage then it can be said that this is a common property or shirkah unless the property is obtained from grants, inheritances and wills. If the marriage is broken up, the existence of this shirkah

must be shared fairly for each party, if it cannot be divided peacefully, then the divorced husband or wife can file a lawsuit with the Religious Court.

The Distribution of Gono Gini Property to Polygamous Families According to a Compilation of Islamic Law and the Civil Code

The division of marital property in polygamous marriage in the form of land with a field or a large field, it is very difficult to determine each part, land that is different locations will have difficulty dividing it in half, if it has been divided, usually one of the parties feels dissatisfied, while if only one field is large, it is immediately divided, but when it is divided the parties often want a better share and see the economic factors of the land aforementioned. The division of marital property in a polygamous marriage can be in the form of tangible or intangible objects. Tangible common property can include immovable objects, movable objects and securities while intangible common property can be in the form of rights and obligations. In practice, if there is tangible common property that includes immovable objects, movable objects and securities, to facilitate the distribution of tangible common property, then all of the common property must be cashed out first.

One significant decision regarding common property under the Civil Code is Supreme Court Decision No. 266K/AG/2010. This ruling establishes that the marriage between the parties resulted in accumulated shared assets, encompassing both fixed and movable objects. The fixed objects include several parcels of agricultural and titled land located in Klaten, Bantul, and Sleman Regencies, all registered under the name of Tri Hastuti Nur Rochimah. The movable objects consist of vehicles, such as a Kijang car and two motorcycles, along with various household furnishings including a refrigerator, a television, and furniture made of teak wood.

Furthermore, the court stipulated specific divisions and procedures concerning these assets. It granted the Plaintiff ownership of three-quarters of the common property, while the Defendant received one-quarter. The ruling also obligated both parties to divide the property in kind; if division proved impractical, the assets were to be publicly auctioned with the proceeds distributed according to the established shares. Additionally, the court dismissed the remainder of the Plaintiff's claims and directed the Registrar of the Bantul Religious Court to send copies of the judgment to the relevant Marriage Registrars for official recording.

There is a case in a decision, namely the Case Decision Number: 104/Pdt.G/2011/PTA. Sby as reviewed from KHI. There is a case, namely Mrs. Ngatmini, Sri Hariyati, Sudarmaji who were originally the Defendants (hereinafter referred to as comparators) in this case to Mochamad Mochtar, SH., Msi. and Gatot Subroto, Siti Sundari, Moch. Abdul Kadir Djaelani, Lianah who was originally referred to as the Plaintiff (hereinafter referred to as the Appellant) in this case controlled Yayan Riyanto, SH and Diiddin Syaifuddin, SH.

The Malang Religious Court issued a ruling on February 7, 2011, partially granting the Plaintiff's lawsuit. It declared several documents, including a will and a grant deed, legally void and established that the Puspasari II Hotel in Kepanjen was the common property of the late Djuwadi and his two wives, Ngatmini and Rukini. The court stipulated that this property was to be divided equally into three shares among them. Furthermore, it ordered the Defendants to surrender Rukini's one-third share to her heirs, which included a portion for her late husband, Djuwadi, and the remainder to her children.

The Distribution System of Joint Property in Polygamous Families from the Perspective of Islamic Law Compilation and Civil Code

The Defendants subsequently filed an appeal, which the High Court deemed admissible as it was submitted in accordance with procedural law. In their appeal memorandum, the Appellants raised several objections, arguing that the lower court had misapplied the law, ruled beyond what was requested (*ultra petita*), and that the asset seizure was improperly executed on a property that had already been transferred. They requested the High Court to overturn the initial decision and dismiss the Plaintiff's lawsuit entirely.

Upon review, the High Court found that the objections raised by the Appellants had already been adequately addressed in the comprehensive legal considerations of the first-instance judge. Consequently, it deemed those objections unfounded and decided to uphold the lower court's ruling. However, to facilitate the execution of the inheritance distribution, the High Court added a provision allowing for the property to be sold at auction if an in-kind division proved impractical, with the proceeds to be distributed according to the determined shares.

The final verdict from the High Court reinforced the Malang Religious Court's decision with this correction. It detailed the specific distribution of Djuwadi's estate, awarding shares to his heir Ngatmini and his adopted child Sri Hariyati, with the remainder designated for LAZIS. The court also upheld the validity of the earlier asset seizure and assigned the court costs, ordering the Defendants/Appellants to bear the costs of the appeal proceedings.

In Article 94 paragraph 1 of the Compilation of Islamic Law, it is stated that "Joint property from the marriage of a husband who has more than one wife is separate and independent" Based on this provision, the property of gono-gini in polygamous marriage remains, but is separated between the property of the first, second, and so on. The provision that regulates the period of determination of the ownership of gono-gini property in this case, "The ownership of joint property from the marriage of a husband who has more than one wife, is calculated at the time of the second, third, or fourth marriage contract."

The provisions of the property of gono-gini are also regulated in the Marriage Law. Article 65 paragraph (1) emphasizes that if a husband is polygamous.

1. Husbands are obliged to provide the same life guarantee to all wives and children.
2. The second wife and so on have no right to the property that existed before the marriage with the second or subsequent wife occurred.
3. All wives have the same right to the property of the gono-gini that occurs since their respective marriages.

The first wife of a polygamous husband has the right to the property that she owns together with her husband. The second wife onwards is entitled to her gono-gini property together with her husband since their marriage took place. All wives have the same right to the gono-gini property. However, the second wives and so on are not entitled to the gono-gini property of the first wife. Paragraph (2) of the same article provides that if the court that gives permission to marry more than one person, and this law does not specify otherwise, the provisions of paragraph (1) of this Article 65 shall apply.

CONCLUSION

This study concluded that the regulation of gono-gini property for Muslims is governed by Law Number 1 of 1974 concerning Marriage in conjunction with the Compilation of Islamic

Law, specifically Article 65 Paragraph (1) and Article 94 Paragraph (1), while for non-Muslims, it is regulated under Article 128 of the Civil Code. Although polygamy is not prohibited by religious or positive legal provisions in Indonesia, its practice must be conducted with caution, considering moral, social, and juridical factors to prevent complex disputes. Ensuring clear rules, responsibilities, rights, and obligations for all parties is essential for fair and harmonious implementation. Future research could explore effective mechanisms for dispute resolution and practical enforcement of joint property rights in polygamous families to promote legal certainty and social justice.

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