

The Contribution of Islamic Law in Resolving Aceh Customary Disputes Over Joint Property Division Due to Divorce

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ABSTRACT

In Aceh, joint property is referred to as "*heureta sihaurekat*". Among the scholars of the four madhhabs, the Hanafi, Maliki, and Hanbali allow joint property in the form of *syirkah mufawadhah abdan*, while al-Shafi'i rejects joint property associated with *syirkāh*. Based on initial interviews with customary leaders, it is found that all properties owned by a husband and wife at the time of divorce have equal rights between the husband and wife, despite any discrepancies in amount. Additionally, it does not consider who, whether husband or wife, was the earning member. The research questions in this study are: What is the model of joint property division due to divorce according to Aceh customary law? How does the existence of Aceh customary law decisions regarding the division of joint property due to divorce from the perspective of Islamic Law? This study uses a qualitative research method with a normative-empirical type by conducting observations, interviews, and documentation and analyzing using a descriptive method. In the pattern of division, the community leaders and village heads resolve it through mediation and discussion, thus distributing the property according to agreement, either equally, more to the wife, or even in thirds. From the perspective of Islamic law, the division of joint property conducted by the Aceh customary court can be associated with *maslahāh* (public interest) and '*urf*' (custom) that does not contradict sharia. In this case, the *maslahāh* that can be associated with community practice is *maṣlaḥah hajiyat* (basic necessity) and is considered a valid custom (*al-'urf al-sahīh*), and in distributing the property, a system of justice and consent from both parties is applied.

Key Words: Joint Property, Aceh Customary Court, Islamic Law

INTRODUCTION

One of the issues that often come to the surface after a divorce between a husband and wife is the matter of joint property. Joint property, as defined by the Marriage Law No. 1/1974, is property acquired or generated during the marriage between both parties. Meanwhile, the property that they brought individually is viewed as personal property unless a marriage contract states otherwise. Joint property represents a secular area that has not been touched by classic Islamic issues

and enters the realm of *ijtihad*. The division of joint property after a divorce is divided according to each party's effort.

Why is this property issue important to discuss? The simple answer is because property is a human necessity for living on this earth and demands justice among divorced husband and wife. Thus, property is something that cannot be ignored in a household life. Therefore, in this study, the researcher looks into the resolution of customary disputes about the division of property that must be clear and based on the provisions applicable in Islamic law.

In Islamic law, joint property is basically unrecognized, as this is not specifically discussed in *fiqh*. However, this aligns with the principle of individual property ownership. Based on this principle, the husband is obliged to provide sustenance in the form of living expenses within the household. If one of the spouses dies, then the deceased's property is fully his or her personal property distributed to the heirs. However, it is possible that there is joint property from earning a livelihood together, then if viewed from the concept of *fiqh*, such property in Islam is called *syirkāh* property.

Linguistically, *syirkāh* means *al-ikhtilāt* (mixing) or partnership of two or more things, making it difficult to distinguish between them. This includes partnership in property ownership or business association (A Masadi, 2002). The mentioned mixing here is when someone mixes their property with someone else's, making it impossible to distinguish (Yunus, 1998). Whereas terminologically, according to the Compilation of Sharia Economic Law, *syirkāh* is cooperation between two or more people in one capital, skill, or trust in a certain business with profit distribution based on ratio (Mardani, 2012).

In joint property, *syirkāh* is analogized with *syirkāh 'abdan* and *syirkāh mufawwadhāh*, which means partnership in effort and unlimited. This property they produce during the marriage becomes joint property, except for the personal property of each wife and husband. Although joint property is not clearly regulated in Islamic *fiqh*, its existence is accepted by most scholars in Indonesia. This is also supported by the fact that Indonesian society, between husband and wife, works together to complement each other in terms of fulfilling sustenance within the household.

Among the scholars of the four madhhabs, those who allow joint property in the form of *syirkah mufawadhah 'abdan* are the Hanafi, Maliki, and Hanbali madhhabs, while al-Shafi'i rejects joint property associated with *syirkāh*. The reason is that *syirkāh* must begin with a form of capital and also aims to increase property (Susanto, 2008).

However, this is rejected by Abu Hanifah, because this form of partnership is already explained in society in general, and most scholars, and also society accept it. Al-Shafi'i's reason focuses on the side that partnership is basically to develop

property with accompanying capital from both parties first, but according to Abu Hanifah, the form of partnership is not for developing property, but for seeking property. Whereas seeking property is more recommended than developing property. It's different if developing is already with existing capital, but seeking property is not necessarily having any capital in it, and relies on the effort of both (Tihami & Sahrani, 2010).

According to the researcher, if viewed from the term society uses for joint property, in Islam it might be accepted as 'urf. On the other hand, it can also be associated with *maslahat mursalah*. Because from the text about joint property, there is not a single verse in the Qur'an and hadith that explicitly mentions joint property.

In Indonesia, the MUI has issued a fatwa saying that joint property can be classified into *syirkāh* property, because it is understood the wife can also be counted as a partner in the partnership, even if her work is not equivalent to the husband or perhaps does not work in the same field (has income). Analogizing joint property with *syirkāh* is very reasonable, because it owns property together in terms of working together. Only in the concept of *syirkāh* is more dominant towards business. Then this analogy can also be understood with the argument, that the union of husband and wife's property wealth as additional property due to joint effort. Thus, if a divorce occurs (death/alive), joint property can be divided into two.

In Aceh, such property is called *heureta sihaurekat*; in Minangkabau, it is called *harta suarang*; in the Sunda region, it is named *guna kaya* or *tumpang kaya* or *raja kaya*; in Jakarta, it is termed *harta pencaharian*; in Java, it is called *barang gana* or *gono-gini*; in Bali, it is referred to as *drube gabro*; in Kalimantan, it is called *barang perpantangan*; in Sulawesi, it is known as *barang cakra*; and in Madura, it is known by the name *ghuna-ghana* (A. A. Dahlan, 1996).

In customary law, regarding the division of joint property, there are four types recognized at the time of marriage, namely:

1. Property acquired by each party before the marriage;
2. Property given to both bride and groom at the time of marriage;
3. Property acquired during the course of the marriage;
4. Property acquired by the husband and wife during the marriage bond and originates from efforts made by either or both parties.

The mechanism for dividing joint property can be done according to the existing situation. It could be by inviting the former partner to divide the joint property through discussion. As an alternative, one can also use the help of customary society and the court so the process of dividing joint property can be done fairly and properly.

Aceh is honored by the state as a special region, one of Aceh's special features is the application of customary law. Customary court is an institution of the village

(*gampong*) and or mukim that resolves disputes or customary cases. Custom has a significant influence on Islamic Sharia. Therefore, the fuqaha have placed custom in a strategic position, namely as one of the bases for consideration in formulating Islamic law.

Custom and Islamic law in their application in society seem to be very contrasting. In fact, history where Islamic law has been well implemented during the Aceh Darussalam sultanate era. Islamic law has become an inseparable part of the life of the Aceh society at that time. Thus, with the granting of Special Autonomy to Aceh in 2001 has become a strategic vehicle to realize the reimplementation of Islamic Sharia in Aceh and to revive the customs that have started to fade because Aceh has been hit by prolonged conflict. Now, with the enactment of Law Number 11 of 2006 concerning Aceh.

RESEARCH METHODS

This research falls into the category of normative legal research, often also referred to as doctrinal legal research. According to legal experts, normative legal research emphasizes the law as norms, rules, regulations, and laws that apply at a certain time and place. Therefore, it has a coercive nature, and if someone violates these rules, they will be threatened with strict and real sanctions (Sunaryati Hartono, 1994).

In conducting this research, there are several approaches to be undertaken: the statute approach, the comparative approach, and the case approach (Mahmud Marzuki, 2005).

The data collection techniques in this research consist of document review, interviews, and observation. Through document review, comprehensive and thorough information about the theory of *kafā'ah* will be explored through fiqh books and literature. Through interview techniques, complete information about what is known, experienced, and also the views and opinions of informants will be explored. In this research, the researcher conducted interviews with 12 informants from 6 sub-districts out of the 23 sub-districts in Pidie Regency and one informant from the Sharia Court of Sigli.

In addition to interviews, the author also uses the observation technique. In the implementation of observation, the researcher uses aids to facilitate observation in the field, such as a notebook, so that all data obtained in the field through this observation can be recorded directly. The purpose of observation is to collect data by directly observing the field regarding the object of study. Additionally, the author also uses the documentation technique. Documentation in this research involves the collection of evidence and information in the form of photos of research activities.

RESULTS AND DISCUSSION

Theoretical Foundation

Joint property is a form of family law renewal in Indonesia. The term "joint property" was only recognized and became popular in Indonesian legal literature since the enactment of the Marriage Law No. 1 of 1974, specifically contained in Article 35 paragraph (1), which was then arranged in the Compilation of Islamic Law (KHI), precisely in Chapter XIII articles 85 to 97. This indicates that the concept of joint property began to be recognized after the enactment of the Marriage Law No. 1 of 1974, and its regulation strengthened after the compilation of the Compilation of Islamic Law (KHI). Therefore, the subsequent question is why is the concept of joint property included in the National Marriage Law and KHI? What exactly is the spirit carried by this concept of joint property?

Some references mention that the concept of joint property is an abstraction from the reality of traditional customs and culture of Indonesian society. Abdul Mannan mentions that in Indonesia, there are four (4) types of family property (*gezimsgood*) in marriage:

1. Property obtained from inheritance (both before they became husband and wife or after they became husband and wife); such property in Central Java is called *barang gawaan*, in Betawi called *barang usaha*, in Banten called *barang sulur*, in Aceh called *hareuta sihareukat*, and in Nganjuk Dayak called *perimbit*.
2. Property obtained through one's own efforts before becoming husband and wife; such property in Bali is called *guna kaya*, in South Sumatra distinguished between husband's property and wife's property before marriage (husband's property is called *harta pembujangan*, and wife's property is called *harta penantian*).
3. Property generated together by husband and wife during the course of marriage; this property in Aceh is called *hareuta seuhareukat*, in Bali called *druwe gebru*, in Java called *harta gono gini*, in Minangkabau this property is called *harta saruang*, in Madura called *ghuma ghuma*, and in South Sulawesi called *cakkar*.
4. Property obtained by the bride and groom at the time of marriage, and this property becomes the property of the husband and wife during the marriage (Khallaf, 1990).

According to Yahya Harahap, if viewed from the historical aspect of the formation of joint property, there has been a development in customary law regarding joint property. In old customary law, it was stated that the formation of joint property was based on the condition of the wife's active participation in assisting the husband's work. If the wife did not physically participate in helping the husband to seek property, joint property would never be formed in the marriage. In its development, starting in 1950, new legal products began to emerge that set aside the condition that the wife must be physically active in realizing joint

property (Harahap, 1993). Finally, the requirement for wives to be actively involved in helping husbands seek property was removed following the decision of the Supreme Court of RI No.K/SIP/1956 dated November 7, 1956 (Harahap, 1993).

Since then, even if the wife is not active and not directly involved in seeking joint property and her duty is only to take care of the household inside the house, then the property obtained by the husband outside the house or the property obtained from his efforts is called joint property. With this legal renewal regarding the formation of joint property, there are several substantive contents that can be presented.

First, joint property is essentially a reflection of the recognition of equality in husband-wife relationships. In its meaning, they cooperate (even if not the same work) in realizing the aspirations of the household. Besides, joint property is also part of the recognition of the wife's role even if she is not actively involved in seeking property. The cooperation based on the principle of equality is what causes the institution of joint property to be closely associated with the principle of *musyarakah*, which is based on equality. Each party is considered to contribute equally to the results of the effort obtained.

Second, in joint property, there is actually an attitude that upholds the principle of justice. It is very unfair, in the view of law and humanity, if a wife who works at home every day, takes care of the household and children (especially her husband) so that the husband can succeed in earning a living, but all of that is not seen as work worthy of pay.

Third, the institution of joint property, as the name "joint" suggests, also indicates that togetherness is part of the principle that continues to be maintained. Togetherness itself can be interpreted as a total commitment in a legitimate marriage.

Whereas in Islamic Fiqh literature, there is no explicit mention of the term joint property. This is marked by the absence of a definition (*ta'rif*) of joint property in classical fiqh. However, recently there have been serious efforts made by Islamic law experts in Indonesia to include joint property as part of the Islamic marriage institution in Indonesia. This effort seems to bear fruit, marked by the inclusion of joint property issues in the content of the Marriage Law No. 1 of 1974. Subsequently, the existence of joint property has been strengthened since the birth of KHI, which also contains rules about joint property.

Regarding the existence of joint property as part of contemporary Islamic law institutions, there are at least a few views that can be presented, namely:

1. The transformation of the joint property institution into part of Islamic law occurs through the custom route. Meaning, joint property, which originally came from customs (*'uruf*) of Indonesian society, is believed to contain values of goodness and bring welfare, especially for women (wives) (Al-Zuhaily, 1986).

Therefore, it is very appropriate if the joint property institution is elevated in status to be part of Islamic law.

2. The transformation of the joint property institution sourced from customs into part of Islamic law occurs through *qiyas*, namely analogized to the concept of *syirkāh*. In this case, Ismail Muhammad Syah said that joint property in Indonesian society's marriage can be categorized in the form of *syirkāh abdan* and *mufawadah* (Ismuha, 1978).

In the context of Islamic *fiqh*, there are 4 (four) types of *syirkāh* models, namely:

1. *Syarikat 'Inan*; that is, two people who partner in certain property, for example, partnering in buying an item and the profits are divided equally.
2. *Syarikat Abdan*; that is, two people who partner, where each performs a job with effort and the result (salary) is for them together according to the agreement they made.
3. *Syarikat Mufawadah*; that is, a partnership of two people or more to carry out a job with their hands, where each of them issues capital and receives profit from what they work on.
4. *Syarikat Wujud*; that is, a partnership without work or property, namely capital based on others' trust in them (Al-Syirazi, n.d.).

Thus, although the concept of joint property is not explicitly discussed in classical *fiqh*, most Islamic law experts in Indonesia strive to find justification for this concept of joint property by adopting and transforming it from the concept of *syirkāh*. In its understanding, joint property is produced and obtained after the marriage bond between husband and wife, i.e., property that is produced and obtained jointly between husband and wife so that a mixing of one property with another occurs, and they can no longer be distinguished.

The law regarding joint property has not received careful attention from legal experts, especially legal practitioners. Given that the issue of joint property is a problem that has a very significant impact on the life of a husband and wife if a divorce occurs. Typically, the issue of joint property arises once a divorce has taken place in the Religious Court.

Formally, in a juridical sense, rules about joint property have been determined in Article 35 paragraph 1 of Law No. 1 of 1974 concerning marriage, as previously described. An interesting question to pose is why the Marriage Law contains rules about joint property. This question, in my opinion, needs to be answered because Islamic *fiqh* actually does not recognize what is called joint property at all.

When linked with the title of this research, "The Contribution of Islamic Law to the Resolution of Aceh Customary Disputes Regarding the Division of Joint Property Due to Divorce", this study will use the following theories:

The theory of *maṣlaḥah* Islam views that marriage should bring *maṣlaḥah* (benefit) both for the husband-wife and society. The same applies if a divorce occurs afterward. Such is the benefit of marriage in Islam, that the goodness (*maṣlaḥah*) produced by it is greater than its disadvantages (*mudharat*) (A. Jawad, 2002). Al-Ghazali defines *maṣlaḥah* as follows: *المصلحة: فهي عبارة في الصل عن جلب منفعة أو دفع مضرة* (Muhammad Al-Ghazali, n.d.). Meaning: "Maṣlaḥah is essentially about bringing benefit or repelling harm". From the definition above, it can be understood that the *maṣlaḥah* to be realized must align with shari'ah actions and objectives. In reality, *maṣlaḥah* is not detached at all from shari'ah evidence, but rather, it is based on a number of shari'ah evidences that form a unified understanding.

Based on welfare, the understanding of the concept of joint property among the community, if viewed based on its necessity, When viewed based on its scope, the division of joint property falls into the category of personal interest/welfare. Thus, in Islam, the division of joint property is categorized into *al-Maṣlaḥah Mu'tabarah*. Meanwhile, if viewed based on the presence or absence of the division of joint property in society towards life changes, competence is included in the category of *al-maṣlaḥah dharuriyat* (Al-Khudhari, 1988). According to the researcher, the element of the division of joint property based on *maṣlaḥah* becomes an analytical tool against the research results. The purpose of marriage itself is to bring welfare for the concerned parties, even if some couples experience divorce after conducting marriage, and according to Islamic perspective, such divorce is not justified.

Theory of '*Urf* In the realm of Islamic jurisprudence (*fiqh*), the continuously practiced customs of a society are referred to by the term '*urf*, which serves as one of the foundations for establishing laws that are not explicitly mentioned in the Qur'an or Hadith. Some fuqaha (Islamic jurists) use '*urf* as a method to establish laws, while others consider it a source of law. Although Al-Shafi'i does not explicitly mention '*urf* as his method of *ijtihad* (independent reasoning), his opinions during his time in Egypt (new pronouncements) indicate the use of the '*urf* of its inhabitants as a reference for his fatwas (Mubarak, 2002). Etymologically, the word '*urf* means "something that is considered good and accepted by sound reasoning" (Khalil, 2009). '*Urf* (tradition) refers to forms of *mu'amalah* (social transactions) that have become customary practices consistently observed within a society (Zahra, 2011).

'*Urf* is also what is widely known among humanity and always followed, both in terms of speech and action (S. Abdullah, 1995). Scholars of *Uṣul* (principles of Islamic jurisprudence) define '*urf* as "what can be understood by people (a group of people) and they practice it in terms of speech, actions, and prohibitions" (Anhari, 2008). In the discipline of *fiqh*, there are two similar terms: '*urf* and *adat* (custom). The difference between the two is that *adat* is defined as an act performed

repeatedly without a rational connection. Such acts concern personal behavior, like an individual's habits of eating or sleeping. Meanwhile, *'urf* is defined as the majority's customs, both in speech and action (Haroen, 1997).

The terminological meaning of *'urf*, according to Rahmad Dahlan, is something that becomes a human habit, and they follow it in the form of every action that is popular among them or a word they commonly recognize with a specific meaning, not in the etymological sense, and when hearing that word, they do not understand it in any other sense (A. R. Dahlan, 2011). The analysis using the theory of *'urf* within the Islamic legal system suggests that the customs occurring in society can be a basis for choosing a compatible spouse as long as it does not conflict with the marriage contract. Among the legal proofs related to this is the theory of *'urf*, namely the customary practices in society that provide a legal foundation for choosing a life partner. Thus, the term *'urf* used as an analytical tool encompasses every action performed by the society at large and acknowledged as true by sound reasoning. This differs from adat, which is specific and performed only by one or a few people within a narrow scope. *'Urf* is more specific than adat, making it part of *adillah al-aḥkam* (the proofs of rulings) in Islamic law. In this research, within the community of Pidie Regency, researchers use widely practiced customs (*al-'urf al-'am*) (Effendi & Zein, 2005). Thus, sometimes these actions transform into *'urf* containing logical welfare. This condition is an absolute necessity for authentic *'urf* to be generally accepted and not to conflict with the Qur'an and the Sunnah of the Prophet Muhammad SAW.

Model of Joint Property Division Due to Divorce According to Aceh Customary Law

In this research, the researcher limited the study area to Pidie Regency, Aceh Province. The main reason for choosing Pidie Regency is for its representation of the region in Aceh Province. This is because the customary court process in Aceh is all based on Aceh's customary law, which is one of Aceh's special features. One of the cases often handled in Aceh is the case of joint property settlement.

The concept of joint property adopted by the community of Pidie Regency adheres to a system that does not separate the husband and wife's property during the marital relationship. According to M. Yahya Harahap, there are two methods in customary law that apply in the Muslim community related to joint property in marriage. There are communities that do not separate between husband and wife's property in marriage, and the property is considered joint property. Then, there are also Muslim communities that separate each husband and wife's property. This second practice was applicable in the Muslim community of the middle ages (scholars' era). Thus, the concept of joint property at that time is not discussed in classical fiqh literature (Manan, 2006).

From the perspective of the first model, the property produced during the marital relationship becomes a joint right between husband and wife. Therefore, both husband and wife have the right to use and perform legal actions over the said property.

Generally practiced by the community of Pidie Regency, they also recognize the system of joint property between husband and wife. The term often used is *hareuta seuhareukat*. In general, Aceh's customary law regarding joint property is almost the same as practiced by the Aceh community in general. In addition, the religious court of Pidie Regency (Mahkamah Syari'ah Sigli) has also decided cases related to the division of joint property.

Regarding the community's view in Pidie Regency, the property acquired during marriage is seen as joint property of the husband and wife. As stated by one of the religious leaders in Pidie Regency, who said, joint property is the property resulting from the efforts of both husband and wife. Both are equally striving, for example, both husband and wife are civil servants. When the couple separates, by customary court the property is distributed to both husband and wife. In the division of the property, it is witnessed by religious leaders and customary leaders along with the extended family of the concerned parties. However, it must be acknowledged that the division of such joint property does not contradict the syariah law (Wahid, 2021).

A property in marriage can only be said to be joint property when it is solely produced during the marriage. In this case, the property can be obtained from each individual's capital or from the capital of one of the partners that existed before the marriage. Or often termed as dowry, whether from their own efforts or property obtained from inheritance or gift. As acknowledged by one of the Religious Figures of Tangse District, Pidie Regency, who stated that, joint property only exists or is produced during the marriage. This acquisition can be the result of joint efforts, or from the capital of one of the partners, husband or wife. Sometimes before they got married, but both already had their property. The property united after they got married and the property was obtained from the profit of the business. If divorce occurs, they separate which is the dowry and which is from joint efforts" (Al-Yamani, 2021).

It can be concluded that the community views that *hareuta* joint property is property acquired during the marriage. Regarding each of their dowries, if a divorce occurs, then the property is first separated between the dowry and joint business property.

From the interviews, it can be understood that joint property is the joint ownership of husband and wife produced from joint efforts. Even if one of the partners is more active in striving. Like the majority of the population of Pidie

Regency who work as farmers cultivating the fields, it is mostly women who work more in the fields.

In Pidie Regency, women's participation in fieldwork is more active than men's. This is because in Pidie Regency, the process of weeding in rice stems is done by women. Therefore, it is not surprising if a divorce occurs, the division of property is still divided equally (Razali, 2021).

It can be understood that in the context of joint property, the more one party works, it does not affect the division of joint property at all. Therefore, it is rare to find cases where one party gets a larger share, although the division is very flexible and changes.

Based on statements from several communities in Pidie Regency, it can be concluded that the community views that the property existing during the marriage is the joint property of the husband and wife. Each of them may use their property. And it is also understood that when a divorce occurs, the property that was originally seen as dowry and the result of efforts during the marriage, but the property is still divided jointly even though sometimes the wife does not have a job and only sits at home. The decision is considered to support their needs after they separate. This opinion is also supported by Mr. Ibrahim, who states that joint property can be produced during the marriage and can also come from the dowry of both. When the marriage has taken place, their property does not separate again between the dowry and the property from joint efforts. Even there are wives who are willing to use the dowry for the husband to be used as business capital or other needs. After divorcing the property is directly divided between the husband, wife, and their children. Because in Aceh it is very rare to make a prenuptial agreement. If a case occurs after marriage, it is immediately resolved customarily through joint deliberation between husband and wife, children, and village officials (H. I. Abdullah, 2021).

The essence of the interviews with the customary figures in Pidie Regency, joint property is the property that exists in the marriage. The husband may use the wife's property, and vice versa. However, if a divorce occurs, then the property is divided into three parts, each part for the husband, wife, and children.

However, the wife is entitled to a share from her husband if a divorce occurs. Even if the wife does not have a job outside the home. But the wife plays a very important role in maintaining family integrity, such as managing the household, caring for children, providing for the husband's needs. With the wife's diligence at home, it becomes support and encouragement for the husband to work outside the home. Thus, the wife's role greatly contributes to producing joint property during the marriage (Maryam, 2021).

After interviewing about the community's understanding of joint property. Next, the researcher will interview several sources to find out how the technical

division of joint property occurs after a divorce between husband and wife. For this, there are several cases practiced by the village apparatus (village officials) and the community regarding the technical division of joint property. Where in this condition, for some cases, the property originally viewed as joint property, but after divorce, the property must be divided between each of the partners.

The first step taken by the community in resolving the division of joint property after divorce is to pursue a familial path. If it cannot be resolved familiarly, then the next step is through the Village Customary Court. If both of these paths are unresolved, only then is the Sharia Court approached.

Village officials have the authority to divide joint property if the disputing parties agree to settle it through mediation and the results of the village apparatus's deliberation. Then, the case does not need to be resolved by the Sharia Court. This means that the village apparatus at that time acts as a mediator. After the division, an agreement letter is made by the village head, which is then forwarded to the district level (Isnaini, 2021b).

Thus, it can be concluded that in matters of joint property, civil law applies that is binding. Every decision made by the village community needs to be signed by the village head and witnesses to obtain legality in the community if a sale and other transactions occur later on.

Furthermore, with joint property cases being handled only at the village level, the resolution process is quickly completed. So, it is not necessary to submit to the Sharia Court. The resolution of the division of joint property after a divorce that occurs is not done based on familial relations, nor is there a lawsuit to the Sharia Court. Thus, the division of joint property is only divided by the village customary institution comprising community elders, village heads, religious leaders, and other religious figures. After a decision from the customary village institution's deliberation, the village head issues a valid letter that is then continued to the district level (Boyhaqi, 2021).

The same explanation was also given by Mr. T. Mahmud, one of the Traditional Leaders in Pidie District, who stated that usually joint property is distributed at the customary court level, where joint property not resolved based on positive legal provisions is due to the community's lack of understanding about the resolution of joint property according to positive law (Mahmud, 2021).

It can be understood that the community prefers customary institutions as the body to resolve the division of joint property. Because the community does not fully understand positive law, what is important for the community is to obtain justice and willingness. The division of joint property resolved at the Sharia Court becomes a dynamic for the community because it requires preparing the administration. And for the community, it prefers to resolve it at the village level (Saddam, 2021).

Furthermore, the researcher interviewed one of the contract employees at the Sharia Court of Sigli, he said, the resolution of joint property resolved at the Sharia Court is binding, so the husband usually prefers to resolve it directly by giving part of the property to his wife. In the Sharia Court, the division of joint property requires *ijtihad* and the judge's concern, that is, considering the sense of justice (Rafsanjani, 2021).

In addition, there are parties who do not receive a portion of the inheritance because they tend to be dominated by the party who is notably active in gathering wealth. In this case, there is no lawsuit from the other party, and the case is already known to the village community to be a witness. Where the wife more readily allows the husband to control the property. However, what is important is that the husband can fulfill their children's needs (Isnaini, 2021).

From the interviews, it can be understood that joint property generated during the marriage is not distributed at all, either familially or legally. Where the property is controlled by the husband for their children's needs. However, the customary institution only knows and acts as a witness so that no problems occur in the future.

According to one opinion from another figure, the factor influencing the community not to differentiate and less in working is a social factor, he said, the influence of society not to compare jobs is greatly influenced by social and cultural order. Women in Pidie culturally and socially participate and contribute to working in the fields. Thus, it can be understood if the division of joint property in Pidie will be equal between wife and husband. Without the principle that the more one party works, the more share they receive (Nazar, 2021).

Based on research on the division of joint property in Pidie Regency, it is understood that the community of Pidie Regency views that wealth in marriage is considered as joint property of husband and wife. Both are entitled to get the property in case of divorce. However, obtaining this property must go through a clear division process within the family, the customary institution of the *gampong*, and finally the Sharia Court.

Therefore, generally, the resolution of the division of joint property is carried out through the Aceh customary court by the *gampong* and *mukim* institutions, the same applies to the entire Aceh community in resolving customary disputes, although in certain areas such as Aceh Tamiang and Aceh Tengah they use different terms. However, their function remains the same, that is, as an institution for resolving disputes or customary cases.

The existence of the customary court is a *musyawarah adat* (customary council) or *adat meusapat* institution that functions to perform duties and authority to judge/resolve customary disputes/cases that occur in the community peacefully

to build balance, so that the community becomes peaceful, harmonious, and prosperous.

The Keuchik (village head) is the head of the gampong's executive body in the administration of the gampong (village) government. The customary court officials are not appointed or officially elected, because their positions as keuchik (village head), imum meunasah (village imam), tuha peut (Four Elders), and ulei jurong (head of the hamlet), then they automatically become the operators of the customary court. They officially become the operators of the customary court precisely because they are trusted by the community. Currently, the membership of the customary court is limited to men, but it must also involve women. They are involved in the process of the customary court through the tuha peut; there must be a female representative.

The existence of the customary court is a musyawarah adat (customary council) or adat meusapat institution that functions to perform duties and authority to judge/resolve customary disputes/cases that occur in the community. Thus, in a mukim, there are customary institutions that do not exist in other mukims. For example, a sea customary institution only exists in mukims located in coastal areas. Similarly, a forest customary institution only exists in mukims with forest areas. However, there are also mukims that have both forest and sea customary institutions if in those mukims there are sea and mountain areas.

Fundamentally, the Aceh society as an ethnic group that has customs with legal force, that is, a customary rule that has legal force and has legal sanctions against violations of these customary rules. That is why customary law is still valid and becomes a behavioral pattern within the Aceh society to this day. Customs in the Aceh society survived and developed during the reign of Sultan Iskandar Muda, hence the saying "Adat bak poteumeureuhom, hukum bak syiah kuala.". Therefore, violating customs is essentially violating the legal order of the sultanate. Among the Aceh society, customs hold a strong position as a regulator of community behavior, allowing them to survive and develop to this day, even though the existence of customs cannot be separated from the influence of Islamic teachings. In the history of the Aceh society, Islam is the only religion embraced. Therefore, Islam has been made a worldview for the Aceh society. Islam is a religion that not only regulates the pattern of human relationships with Allah SWT but also regulates the pattern of human relationships with each other. Therefore, the customs that developed in the Aceh society cannot be separated from Islamic law, especially when the Pasai Kingdom as the first Islamic kingdom to emerge in Aceh practiced these customs (Syahrizal, 2004).

In distributing joint property, the mukim or gampong party led by the keusyik, calls the concerned party, that is, the divorced husband and wife. In this division pattern, the mukim and *keusyik* resolve it through mediation and

deliberation, thus distributing the property according to the agreement, whether equally, more to the wife, and also divided into three, for the husband, wife, and their children. After that, a valid letter from the keusyik is issued to be followed by an official letter at the Regency level.

The Contribution of Islamic Law in the Resolution of the Division of Joint Property in Aceh Customary Disputes

To implement a compromise between Islamic law and customary law is not only limited to adopting customary law values to be raised and made into provisions of Islamic law. The compromise also includes the development of existing Islamic law values with customary law values. This attitude and step can be expressed in the phrase "Islamizing customary law while simultaneously bringing customary law into Islam (Bisri, 1999)."

Based on cases of joint property division after divorce, such as those occurring in Pidie Regency society, it can be viewed from the perspective of Islamic law. In Islamic law, as presented in the first chapter, scholars initially did not discuss joint property. However, in general, it does not mean that Islam does not provide space in establishing joint property law. Substantially, scholars include joint property as *syirkāh* property. From the realm of property, then *syirkāh* can be associated with *maslahāh* (public interest) and 'urf (custom) that do not contradict syariah (Islamic law).

In this case, the *maslahāh* that can be associated with community practice is *maṣlaḥah* *hajiyat*, which is *maslahāh* for the ease of humans in living their lives. This *maslahāh*, if absent, does not result in total destruction as caused by *maṣlaḥah* *dharuriyat* (necessities). To realize this *maslahāh* in the field of religion, for example, *rukhsah* (concessions) is legislated when there is difficulty in implementing the basic law (*'azimah*) (Khallaf, 1990).

Therefore, the customary court system practiced by the Aceh society is a judiciary that can provide ease for the community to resolve their cases. Thus, for the community, it is not necessary to directly resolve their cases at the Religious Court (*Mahkamah Syari'ah*). In addition, in resolving their cases, the Aceh customary court prioritizes peace.

From the perspective of 'urf, the customary court practiced by the Pidie Regency society is a custom that is considered valid (*al-'urf al-sahih*), which is a custom prevailing among the community that does not contradict *nash* (the Qur'an and hadith) and does not eliminate the welfare for the community, nor does it bring harm.

In the tradition of dividing joint property, the community generally divides it fairly, dividing it equally between the divorced wife and husband. However, there is also a division that favors one party more, but that is based on the husband's

willingness considering the fate of his former wife who does not work. In addition, it is also distributed to all children solely for the needs of the children.

From this analysis, Islamic law greatly influences the formation of the family system in Pidie Regency, but the customary family system also plays a significant role in the formation of the Aceh society's family system based on Islamic law. This can be seen from the division of joint property that is divided as fairly as possible and considers the welfare of the community.

Author's Analysis

The customary court is an institution of the *gampong* (village) or mukim that resolves disputes or customary cases. The existence of the customary court is a customary council (*musyawarah adat*) or adat meusapat institution that functions to perform duties and authority to judge/resolve customary disputes/cases that occur in the community, held by the customary elders led by the keuchik, assisted by tuha peut, tuha lapan, keujruen blang, ulei jurong, syahbandar, keujruen gle, panglima laot, hariya peukan, Peutua Seuneubok, all supported by the ulama, each performing their duties according to the geographic location of their mukim.

In the life of Aceh society, legal values, both the Constitution, Islamic law, and customary values play a significant role. This proves that these three laws have a very integral relationship attached to the substance in the material of customary law, state law, and Islamic law, thus being able to meet the legal needs of society and able to adapt to various changes.

Customary law and the 1945 Constitution's legal material depend greatly on the ability of traditional leaders and judges in interpreting these legal materials, as well as Islamic law depending on the mujtahids in their ijtihad towards the Qur'an and Hadith as the main sources of Islamic law.

The distribution of joint property according to custom has been carried out by Muslims in Aceh. In its implementation, the factors of place and time always determine the establishment of law. As long as it does not deviate from Custom, the 1945 Constitution, and the principles of the implementation of Islamic sharia in Aceh. Customary Law, the 1945 Constitution, and Islamic law have penetrated the life of Aceh society, so the community lives in tranquility, peace, and prosperity.

However, regarding previous cases, when viewed from the perspective of positive law, indeed the Religious Court or Mahkamah Syari'ah cannot do much. That is, the Mahkamah Syari'ah cannot resolve civil cases in society. The issue of joint property, which is one of the civil cases, must be preceded by a lawsuit or application. So that the Mahkamah Syari'ah can resolve it legally. But not with the customary court, the resolution process is through mediation, by calling all involved parties. The results of the discussion and mediation become a decision.

As for the cases mentioned, none were sued by the partner who felt aggrieved. Although, legally, they have the same rights as their partners. The imbalance in the resolved cases should certainly be the government's attention, especially at the district level, so that in every community issue can be resolved fairly.

Based on cases of joint property division after divorce, such as those occurring in Pidie Regency society, it can be viewed from the perspective of Islamic law. In Islamic law, as presented in the first chapter, scholars initially did not discuss joint property. The customary court system practiced by the Aceh society is a judiciary that can provide ease for the community to resolve their cases. Thus, for the community, it is not necessary to directly resolve their cases at the Religious Court (Mahkamah Syari'ah). In addition, in resolving their cases, the Aceh customary court prioritizes peace.

CONCLUSION

The administration of the Aceh Customary Court is conducted by the gampong and mukim institutions. In distributing joint property, the mukim or gampong party led by the keusyik, summons the divorced husband and wife. In this division pattern, the mukim and keusyik resolve it through mediation and deliberation, thus distributing the property according to agreement, whether equally, more to the wife, or even divided into three.

From the perspective of Islamic law, the division of joint property conducted by the Aceh customary court can be associated with *maslahāh* (public interest) and *'urf* (custom) that do not contradict sharia. In this case, the *maslahāh* that can be associated with community practice is *maṣlaḥah hajiyyat*, which is a custom considered valid (*al-'urf al-sahīh*), and in distributing the property, a system of justice and willingness from both parties is applied.

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