

DYNAMICS OF DISTRIBUTION OF COLLECTIVE PROPERTY FROM THE PERSPECTIVE OF POSITIVE LAW AND ISLAMIC LAW IN INDONESIA

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Abstract

This study aims to examine and compare the regulations and implementation of joint property division within the context of Positive Law and Islamic Law in Indonesia, considering that these two legal systems have different approaches to the management of joint property post-marriage. The method used is doctrinal research, where systematic analysis of regulations, legal documents, and relevant literature is conducted to explore how these two legal systems regulate and practice the division of property after the end of a marriage. The research findings indicate that Positive Law in Indonesia regulates the division of joint property in detail through the Civil Code and the Marriage Law, while Islamic Law relies on Sharia principles that promote justice and peace in property division. The conclusion of this study is that both legal systems, despite differences in mechanisms and approaches, strive to achieve social justice and harmonization in the division of joint property.

Keywords: Positive Law, Islamic Law, Division of Joint Property.

INTRODUCTION

Property is used as a tool to fulfill basic needs and other supporting needs, apart from that it also functions as a marriage bond. Explicit joint assets are not found in the Al-Qur'an or Al-Hadith because the term comes from customary law (*'urf*) in communities that recognize the mixing of assets within the family, one of which is Indonesian society. Joint property in Indonesia is regulated in the Civil Code Articles 119 to Article 138, Law Number 1 of 1974 concerning Marriage Articles 35-37, KHI Articles 85 to Article 97, and so on. When compared with the description of marital assets in Law?

Number 1 of 1974 which only has 3 (three) articles, the description in the Civil Code has more than 18 (eighteen) articles. Between the two laws there are basic differences.

Article 35 paragraph (1) of Law Number 1 of 1974 states that what is meant by joint assets is property acquired during the marriage period. In Article 97 KHI it is explained that the division of joint assets is 1/2, as is also the case in the Civil Code. Articles 128 to 129 of the Civil Code determine that if the marriage between husband and wife is dissolved, the joint assets are divided in half without regard to which party the assets were previously obtained.

Law Number 1 of 1974 only regulates it briefly. In reality, the living consciousness of the Indonesian Islamic community has recognized it and implemented it continuously as a living law. Based on the theory of *maslahah-murlah*, *'urf*, and the rules of العادة محكمة, KHI takes a compromise approach to customary law. Ismail Muhammad Syah has developed an opinion that the search for wealth carried out by husband and wife

is included in *rubu mu'amalah*. It is further said that the joint assets are included in the partnership or *syirkah*.¹ Considering that the concept of joint property is not found in references to the texts of the Qur'an and Al-Hadith, it can be made qiyas with the existing *fiqh* concept, namely about *syirkah*.

One of the impacts of marriage is the existence of joint property. Assets are anything that has value (*qimah*), which allows it to be stored and can be used normally, both in the form of movable and immovable objects.² Both types of assets can be used as collateral, sold or transferred by one party with the consent of the other party. Both husband and wife have equal responsibility for looking after joint assets.³

This responsibility gives rise to certain rights whose nature is harmony and balance between the two.⁴ In practice, it seems as if there is a convention in the business sector, that every property transaction between a husband or wife always requires the consent of the partner, even though the property transaction belongs purely to one party.⁵ In such a household, a sense of togetherness is emphasized, and it is assumed that the marriage contract contains the agreement of the partnership in building the household.⁶

Mixing assets in marriage means all assets and liabilities, whether brought by each party or those that will be obtained later in the marriage.⁷ Article 119 of the Civil Code states that from the moment a marriage takes place, according to the law, joint property exists between husband and wife, as far as this is concerned, there are no other provisions in the marriage agreement. Joint assets, as long as the marriage lasts, cannot be eliminated or changed by agreement between the husband and wife.⁸ The end of the union of joint property in marriage, as follows:

1. Death of one of the parties;
2. The wife's new marriage takes place with the judge's permission, after the husband is absent;
3. Divorce;
4. Separation of table and bed;
5. Separation of assets.⁹

The provision of dividing joint assets in half is based on the idea that the function and position of husband and wife are equal. Marriage in Islam is called a solid legal agreement. So, the attention and smile of a wife who welcomes her husband from work has become invaluable capital in fostering the husband's work enthusiasm in earning a living.¹⁰

The basic principles regarding marital assets as regulated in the Marriage Law are as follows:

1. Assets brought into marriage become the rights of each individual who brings these assets;
2. All proceeds from inherited assets become the personal rights of the owner of the inherited assets;
3. All assets obtained by one party as an inheritance, gift or will become personal rights;

4. All assets acquired by one party or both parties during the marriage become joint property of the husband and wife;
5. The parties can determine their own property status in the marriage agreement made before the marriage takes place.¹¹

The scope of joint assets which explains whether or not it is included in the assets being divided is in reality not that simple in its application. The religious civil cases accepted by the Indonesian Supreme Court regarding the division of joint property are not as many as divorce cases.

The division of joint assets is one of the cases that often drags on in the Religious Courts. If developments in society that give rise to new problems must first be regulated by legislation, it will take time and ongoing cases will be neglected. So there is a shortcut that can be taken, namely through jurisprudence. There are several decisions of the Supreme Court of the Republic of Indonesia relating to joint property, such as in the decision of the Supreme Court of the Republic of Indonesia Number 89K/SIP/1968, as long as a widow does not remarry and throughout her life the joint property held by her cannot be divided to ensure her livelihood. Article 156 The Islamic Law complication of dissolution of a marriage due to divorce regarding joint property is that joint property is divided according to the provisions as stated in Article 97 which contains the provision that a divorced widow or widower is each entitled to half of the joint property as long as it is not specified otherwise in the marriage agreement.

The division of marital assets/gono-gini is an interesting issue to be discussed and reviewed in depth, considering that before the marriage is carried out each party brings their own assets and then during the marriage the parties acquire marital assets which are cultivated jointly or individually. For most people who get married, they generally do not think about the impact of their marriage on their assets, because they only look at and focus more on family law.

Law no. 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage in Article 35 paragraph (1) states: "Joint property is property obtained during marriage". Meanwhile, article 35 paragraph (2) states: "Each husband's inherited assets and gifts or inheritances are under their respective control as long as the parties do not determine otherwise," and based on Law Number 16 of 2019 concerning Amendments to the Law -Law Number 1 of 1974 concerning Marriage.

Meanwhile, Article 85 of the Compilation of Islamic Law (KHI) states that the existence of joint property in a marriage does not rule out the possibility of property belonging to each husband or wife. Furthermore, Article 86 of the KHI states that basically there is no mixing between the husband's assets and the wife's assets. The wife's assets remain the property of the wife and are fully controlled by the wife, and vice versa. Article 88 states that if there is a dispute regarding joint property between husband and wife, the resolution is in court.

From the facts above, it can be said that assets included in marriage are:

1. Joint assets between husband and wife;
2. Personal assets of each husband and wife.

Legal rules in jurisprudence are legal justifications or legal objections. The position of jurisprudence in the legal system in Indonesia is a subsystem of Indonesian legal sources.¹² The cassation decision has a place as jurisprudence because it contains a

new breakthrough. Based on this description, the author in this dissertation will discuss the dynamics of the distribution of joint assets from the perspective of positive law and Islamic law in Indonesia. With research limitations, the division of assets in question is divorce.

METHOD

The doctrinal research method that will be used in this study focuses on systematic analysis of regulations, legal documents and relevant literature to understand the dynamics of the division of joint property in the context of Positive Law and Islamic Law in Indonesia. This approach involves intensive library research through primary legal sources such as laws and court decisions, as well as secondary legal materials including books, articles and expert views. This analysis aims to identify and compare the principles and applications of property division in the two legal systems, with the aim of providing an in-depth understanding of how positive law and Islamic law in Indonesia handle this issue theoretically and practically.¹³

RESULTS

1. Joint Property Concept

The term joint property in Western Civil Law (Civil Code) is expressed as "gemeenschap". This Gemeenschap will end if the marriage ends, either through divorce or death. If the gemeenschap is declared to have ended, it will be divided into two equal parts, regardless of the origin of the goods/assets one by one. Only items that are closely related to one party can be given to the person concerned, taking the price into account in the distribution.¹³

Since the issuance of Law Number 1 of 1974 concerning Marriage. Article 35 of the Marriage Law states:

- (1) Property acquired during marriage becomes joint property;
- (2) The inherited assets of each husband and wife and the assets obtained by each as a gift or inheritance, are under their respective control as long as the parties do not determine otherwise.¹⁴

Based on the formulation of Article 35 of the Marriage Law above, it can be understood that from the time the marriage occurs and during the duration of the marriage, the mixing of assets between husband and wife legally begins to apply to assets acquired since the marriage, whether in the form of movable, immovable, tangible or intangible property. tangible, whether it already exists or will exist in the future, as long as the husband and wife do not regulate it expressly in a written marriage agreement agreed to by both parties. However, this does not apply to inherited or acquired assets, such as: assets obtained from gifts or inheritance.

Regulations regarding joint assets in positive law before the enactment of Law Number 1 of 1974 concerning Marriage are contained in Book One, Chapter Six of the Civil Code concerning the Association of assets according to law and their management, starting from Article 119 to Article 128. According to Article 119 it is emphasized that "From the moment of marriage, by law the unification of all assets of the husband and wife applies, as long as a marriage agreement is not entered into or made that provides other provisions."¹⁶ During the marriage, joint assets may not be eliminated or changed by other agreements between husband and wife.

Article 122 of the Civil Code stipulates that all income and income, along with all profits and losses obtained during marriage, will become profits and losses (assets and liabilities) that will be enjoyed and borne jointly.

Next, Article 37 of the Marriage Law states that "if a marriage breaks up due to divorce, joint property is regulated according to respective laws." Likewise, in the Elucidation to Law Number 1 of 1974, Article 35 states that if a marriage breaks up, joint assets are regulated according to respective laws. If the marriage is dissolved due to divorce, then half of the joint assets become the right of the spouse who survives longer. The assets obtained by each husband and wife before marriage, namely inherited assets (original assets), will be inherited by each family if the husband and wife die and have no children.

The respective laws referred to in the Elucidation to Law Number 1 of 1974 are religious law, customary law and other laws, as explained in the Elucidation to Article 37 of Law Number 1 of 1974. In general, joint property dispute resolution is adopted by society uses the provisions of customary law or positive law where each party gets half of the total joint assets.

2. Joint Property in Islamic Law

In essence, the existence of joint property in Islamic law can be traced through the concept of *'urf* contained in the study of ushul fiqh and can also be traced through the basic values or aspirations of Islamic law, and the universal principles contained in Islamic law itself. As is known, Islamic Sharia only regulates problems of social life globally, not in detail, and contains teachings in the form of moral messages, general principles and basic teachings that are very universal. These principles are eternal and cannot change, such as: the principles of upholding justice, benefit, balance, truth, compassion and peace. If the rules in the social sector were detailed, concrete and binding at all times and places, they would certainly clash with the dynamics of society. The technical laws of muamalah are temporary and contextual because they were formed based on considerations of Arab customs or culture at the time the verse was revealed.¹⁵ These general principles are used as a reference in answering joint property legal problems that arise in society. Customs or traditions, which in Islamic legal literature are called *'urf*, have contributed a lot to the development of law itself.

The concept of property in Islam is a very broad topic and covers various aspects, from ownership rights, responsibilities, to the use and distribution of assets. Islam views wealth as a gift from Allah and a trust that must be managed wisely and responsibly. According to Islamic teachings, all wealth in this world essentially belongs to Allah. This is stated in the Al-Qur'an surah Al-Baqarah verse 107:

نَصِيرٍ وَلَا وَلِيٍّ مِّنَ اللَّهِ دُونَ مَن لَّكُمْ وَمَا وَالَّأَرْضِ السَّمَوَاتِ مَلِكُ لَهُ اللَّهُ أَلَمْ تَعْلَمِ أَلَمْ

Meaning: *Do you not know that Allah has the kingdom of the heavens and the earth? (Know that) you have no protector or helper except Allah. (QS Al Baqarah: 107)*

Wealth (*al-mâl*), according to Mustafa Ahmad al-Zarqa, one of the scholars from the Hanafi Mutaakhirin group, is something that has material value among society.¹⁶ In the Qur'an, wealth is something that is needed to fulfill human life's needs and is something that humans really like, such as: gold, silver, vehicles, rice fields, houses, and so on. Wealth will be good if it is used and utilized according to the rules outlined in the Qur'an, or conversely it will be bad if it is used not in accordance with the rules. Likewise, in married life, wealth is one of the pillars of maintaining a prosperous

household. The husband and wife can work together in obtaining and producing assets in marriage according to their respective capacities.

In essence, the philosophical value of joint assets is in line with the philosophical principles and values in Islamic law. The Qur'an confirms that:

عَلِيظًا مَّيْنًا مِنْكُمْ وَأَخَذْنَ بَعْضُ إِلَى بَعْضِكُمْ أَفْضَىٰ وَقَدْ تَأْخُذُونَهُ وَكَيْفَ
سَبِيلًا وَسَاءَ وَمَقْتًا فَحِشَّةً كَانَ إِنَّهُ سَلَفَ قَدْ مَا إِلَّا النِّسَاءَ مَنْ ءَابَاؤُكُمْ نَكَحَ مَا تَنَكَّحُوا وَلَا

Meaning: *And if you want to replace your wife with another wife, while you have given one of them a lot of wealth, then do not take back anything from them. Will you take it back by means of false accusations and by (bearing) real sins? How will you take it back, even though some of you have mixed (mixed) with others as husband and wife. And they (your wives) have taken from you a strong covenant. (QS: Al-Nisa': 20-21).*

Furthermore, QS: Al-Baqarah: 228 provides guidance on the balance between the rights and obligations of husband and wife as follows:

وَالْيَوْمَ بِاللَّهِ يُؤْمِنُ كُنَّ إِنْ أَرْحَمِهِنَّ فِي اللَّهِ خَلَقَ مَا يَكْتُمْنَ أَنْ لَهِنَّ يَجِلُّ وَلَا فُرُوعٍ ثَلَاثَةَ بِأَنْفُسِهِنَّ يَبْرَبَّصْنَ وَالْمُطَلَّاتُ
دَرَجَةً عَلَيْهِنَّ وَلِلرِّجَالِ بِالْمَعْرُوفِ عَلَيْهِنَّ الَّذِي مِثْلُ وَلَهُنَّ إِصْلَاحًا أَرَادُوا إِنْ ذَلِكَ فِي بَرَدِّهِنَّ أَحَقُّ وَبُعُولَتُهُنَّ ۗ أَلْءَاخِرُ
حَكِيمٌ عَزِيزٌ وَاللَّهُ

Meaning: *"Women who are divorced should refrain (wait) three quru times. They should not hide what Allah created in their wombs, if they believe in Allah and the Hereafter. And her husbands have the right to refer to her during the waiting period, if they (husbands) want islah. And women have rights that are balanced with their obligations in a meaningful way. However, husbands have one level of advantage over their wives. And Allah is All-Mighty, All-Wise." (QS Al Baqarah: 228)*

The only discussion regarding marital assets in the Munakahat fiqh books is the term dowry,¹⁷ living, muth'ah, breastfeeding wages, iwadh and tirkah. In the provisions of KHI Article 32,¹⁸ states that "the dowry is given directly to the prospective bride and from then on it becomes her personal right". So the dowry is not joint property because the dowry is given by the prospective groom to the prospective bride before the marriage bond is valid or given and said at the time of the marriage proposal and qabul of the prospective groom with the marriage guardian of the prospective bride. Therefore, the dowry is property that belongs entirely to the wife, and the use of this property is entirely the wife's right and the husband has no right to interfere with it, in fact the husband is not allowed to take back what he has given, whether in the form of dowry, maintenance, mut'ah or iwadh. Regarding the obligation to make a living, it is confirmed in QS: Al-Baqarah' : 233.

Meaning: *"Mothers should breastfeed their children for two full years that is, for those who want to perfect breastfeeding. And it is the father's obligation to feed and clothe the mothers in a virtuous manner. Someone not burdened but according to ability levels. Let not a mother suffer misery because of her child nor a father because of his child, and the heirs are also obliged to do so. If both of them want to wean (before two years) with their consent and deliberation, then there is no sin on either of them. And if you want your child to be breastfed by someone else, then there is no sin for you if you pay according to what is appropriate. Fear Allah and know that Allah is All-Seeing of what you do." (QS: Al-Baqarah': 233)*

There are no specific rules for dividing joint property in Islamic law, but only provide general guidelines for resolving joint property problems without causing disputes. The

best possibility for dividing joint property is to do it by means of peace, or by using customs that apply in society (*'urf*), or the final way is by *qadha* (judge's decision). An agreement or agreement between husband and wife is the first step in resolving the division of joint assets. This agreement in the Qur'an is called "Ash Shulhu", namely an agreement to make peace between the two parties (husband and wife) after they have a dispute. As described in the following Hadith of the Prophet:

Meaning: From Amr bin Auf al-Muzani, that the Messenger of Allah sallallaahu 'alaihi wa sallam said: "Making peace is permissible between Muslims, except for a peace that forbids what is halal or makes lawful what is haram. And the Muslims depend on their conditions, except conditions that prohibit what is halal or allow what is haram." (HR. Tirmidhi no. 1370, Ahmad 2:366, and Abu Dawud no. 3594)

The above hadith was further explained by Imam Al Shan'ani with the following description:

Meaning: "Ulama have divided al-shulhu (peace) into several types; peace between Muslims and infidels, peace between husband and wife, peace between a righteous group and a just group, peace between two people who obey the qâdhi (judge), peace in matters of acts of injury such as forgiveness for property sanctions that should be given, and peace to give a certain amount of property to the opponent in a dispute if it occurs over jointly owned property (amlaak) and rights. "This division is what is meant here, namely the division mentioned by the fuqoha in the chapter al-shulhu (peace)."¹⁹

Based on the explanation above, it can be understood that a husband and wife who divorce will then divide the joint assets formed during the marriage between them and may resolve this peacefully. One form of peace is peace between husband and wife, or peace when there is a dispute related to joint property. Husband and wife can consult to determine the division of assets, both regarding the ratio (percentage) and management. This is actually highly recommended so that both parties are equally happy with their respective parts. Usually in an agreement regarding joint property there is a party who has to give up his rights, the wife has to give up her rights to her husband, and vice versa, the husband has to give up his rights to his wife for the sake of harmony between the two parties after the divorce.

CONCLUSION

The following is the conclusion regarding the division of joint assets from the perspective of positive law and Islamic law in Indonesia:

1. Positive Law: In Western Civil Law (KUH Perdata) which is applied in Indonesia, the concept of community property ("gemeenschap") is regulated as property acquired during marriage and automatically divided equally between husband and wife when the marriage ends, either due to divorce or death. Law Number 1 of 1974 concerning Marriage confirms that property acquired during marriage becomes joint property, except for property obtained as a gift or inheritance, which remains under the control of each individual unless another agreement is agreed.
2. Islamic Law: The concept of community property in Islam is not defined in detail in classical texts, but is seen from the general principles governing muamalah (transactions between people). Islam provides general guidelines that respect customs (*'urf*) and peace in resolving community property disputes, suggesting that the division of property should be done in a manner that respects justice and

balance, often through peaceful negotiations between husband and wife. This division usually depends on mutual agreement, where both can determine the proportion and management of joint assets without creating conflict.

3. Comparison and Interaction: Both positive and Islamic law provide a framework for managing joint assets accumulated during marriage, although with different nuances. Positive law is more rigid and formal in its distribution, while Islamic law is more flexible and prioritizes mediation and harmonious mutual agreements. Both recognize the importance of understanding the origins of property to determine individual rights, but Islam places greater emphasis on harmony and justice that can be adapted to changing social and cultural conditions.

Finally, through this research I underline that although the two legal systems have different approaches in regulating the distribution of joint property, both try to achieve justice and order in society by considering the conditions and needs of individuals and society more broadly.

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Footnote

- 1) Yahya Harahap, Position of Authority and Procedures in Religious Courts Law Number 7 of 1989, (Jakarta: Sinar Pangganga, 2009), p. 44
- 2) Fauzi, Theories of Rights, Property, and Istislahi and Their Applications in Contemporary Jurisprudence, (Jakarta: Kencana, 2016), p. 4.
- 3) Tihami, and Sohari Sahrani, Fikih Munakahat, (Jakarta: Rajawali Pers, 2013), p. 179
- 4) M. Quraish Shihab, Insights into the Qur'an, 1st Printing, (Bandung, Mizan, 2013), p. 174
- 5) Ahmad Tholabi Kharlie, Indonesian Family Law, (Jakarta: Sinar Grafa, 2013), p. 257
- 6) Satria Effendi, Problems of Contemporary Islamic Family Law, (Jakarta: Kencana, 2010), p. 60
- 7) PNH Simanjutak, Indonesian Civil Law, (Jakarta: Kencana, 2015), p. 43
- 8) Subekti, and Tjitrosudibio, Civil Code, (Jakarta: Pradnya Paramita, 2008), p. 29
- 9) PNH Simanjutak, Op.Cit., p. 44
- 10) Khaeron Sirin, Indonesian Madzhab Marriage: The Struggle between State, Religion and Women, (Yogyakarta: Deepublish, 2016), p. 52
- 11) Munir Fuady, Concept of Civil Law, (Jakarta: Rajawali Pers, 2015), p. 22
- 12) Fauzan, Rules for the Discovery of Jurisprudential Law in the Field of Civil Law, (Jakarta: Kencana, 2014), p. 15 13Soejono and H. Abdurrahman. Legal Research Methods, (Jakarta: PT Rineka Cipta), p. 37.
- 13) R. Subekti, Principles of Civil Law, (Jakarta: Intermasa, 1996), p. 35
- 14) Permata Press Team, Law Number 1 of 1974 concerning Marriage, (Jakarta: Permata Press, 2015), p. 14. 16Subekti, and Tjitrosudibio, Civil Code, (Jakarta: Pradnya Paramita, 1990), p. 31
- 15) See in Satria Effendi M. Zein, "Munawir Sjadzali and the Reactulization of Islamic Law in Indonesia," ed. Muhammad Wahyuni Nafis in the Contextualization of Islamic Teachings, 70 Years Munawir Sadzali, Cet. 1, (Jakarta: PT. Temprint, 1995), p. 294-295.
- 16) Musthafa Ahmad al Zarqa", Al Madkhal ila Nazriyat al Itizam al Ammah fi al Fiqh al Islam, (Damsyiq: Dar al Qalam, 1999), p. 127.

- 17) Dowry is an obligatory gift from the husband to the wife in the form of something of value, and belongs to the wife and not to the guardian as was the case in pre-Islamic traditions. See : Ibn Mas'ud al Kasani al Hanafi, Bada'i al Shana'i, (Beirut : Dar al Politik al Ilmiyah, n.d.), IV, p. 15.
- 18) Instruction of the President of the Republic of Indonesia Number 1 of 1991, Compilation of Islamic Law in Indonesia, (Jakarta: Directorate of Development of Religious Courts, Director General of Development of Islamic Religious Institutions, Ministry of Religion of the Republic of Indonesia, 2000), p. 24
- 19) Imam al Shan'ani, Subulus Salam, Juz IV, p. 247

References

- 1) Abdul Al-Jabbar. (1965). *Sharh al-Ushul al-Khamsa*. Egypt: Maktabah al Wahlah.
- 2) Abu Hamid al Ghazali. (1983). *Al Mustashfa min 'Ilm al Ushul*. Beirut: Dar al Politik al-'Ilmiyah.
- 3) Abu Hamid al Ghazali. (1997). *Al Mustashfa min al Ilmi al Ushul*, Volume I. Beirut: al Risala.
- 4) Abu Isa al-Tirmidhi. Sunan al-Tirmidhi, *Al-Jami' al-Kabir*. Beirut: Dar al-Gharbi al-Islamy.
- 5) Abu Ishaq al-Shathibi. *Al Muwafaqat fi Ushul al-Syari'ah*. Beirut: Dar al Kutuh al Ilmiyah.
- 6) Ahmad Fahmi Abu Sunnah. (2004). *Al-'urf wa al-'Adah fi Ra'yi al-Fuqaha*. Cairo: Dar al Bashair.
- 7) Ahmad Rifa'i. (2010). *Legal Discovery by Judges in a Progressive Legal Perspective*. Jakarta: Sinar Graphics.
- 8) Al Kasani, Ibn Mas'ud al Hanafi. (nd). Bada'i al Shana'i. Beirut: *Dar al Politik al Ilmiyah*, IV, p. 15.
- 9) Al Shan'ani, Imam. (nd). Subulus Greetings, Juz IV.
- 10) Al Zarqa', Musthafa Ahmad. (1999). *Al Madkhal ila Nazriyat al Iltizam al Ammah fi al Fiqh al Islam*. Damsyiq: Dar al Qalam.
- 11) Avraham, R., & Kohler-Hausmann, I. (2017). *The entity theory of marriage*. University of Chicago Law Review.
- 12) Bambang Sutiyoso. (2010). *Justice Reform and Law Enforcement in Indonesia*. Jakarta: UII Press.
- 13) Bu'ud, A. (2005). *Al-Ijtihad baina Haqa'iq at-Tarikh wa Mutatallibat al-Waqi*. Egypt: Dar al-Salaam.
- 14) Compilation of Islamic Law (KHI).
- 15) Directorate of Development of Religious Judicial Bodies, Director General of Development of Islamic Religious Institutions, Ministry of Religion of the Republic of Indonesia. (2000). RI Presidential Instruction Number 1 of 1991, Compilation of Islamic Law in Indonesia. Jakarta.
- 16) Effendi, Satria. (2010). *Problems of Contemporary Islamic Family Law*. Jakarta: Kencana.
- 17) Fauzi. (2016). *Theories of Rights, Property, and Istislahi and their Applications in Contemporary Jurisprudence*. Jakarta: Kencana.
- 18) Fuady, Munir. (2015). *Civil Law Concept*. Jakarta: Rajawali Press.
- 19) Indonesia. (1974). Law Number 1 of 1974 concerning Marriage.
- 20) Kharlie, Ahmad Tholabi. (2013). *Indonesian Family Law*. Jakarta: Sinar Graphics.
- 21) Law Number 4 of 1979 concerning Judicial Power.
- 22) Law of the Republic of Indonesia no. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts.
- 23) Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage.
- 24) Permata Press Team. (2015). Law Number 1 of 1974 concerning Marriage. Jakarta: Permata Press.
- 25) Please, Yahya. (2009). *Position of Authority and Procedures in Religious Courts Law Number 7 of 1989*. Jakarta: Sinar Graphics.

- 26) Quraish Shihab, M. (2013). *Insights into the Qur'an*, 1st Printing. Bandung: Mizan.
- 27) Simanjutak, PNH. (2015). *Indonesian Civil Law*. Jakarta: Kencana.
- 28) Soejono & Abdurrahman, H. (nd). *Legal Research Methods*. Jakarta: PT Rineka Cipta.
- 29) Subekti, R. & Tjitrosudibio. (1990). *Code of Civil law*. Jakarta: Pradnya Paramita.
- 30) Subekti, R. (1996). *Basics of Civil Law*. Jakarta: Intermasa.
- 31) Tihami & Sahrani, Sohari. (2013). *Munakahat Fiqh*. Jakarta: Rajawali Press.
- 32) Zein, Satria Effendi M. in Nafis, Muhammad Wahyuni (ed.). (1995). *Contextualization of Islamic Teachings, 70 Years of Munawir Sjadzali*. Jakarta: PT. Tempprint.