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Common Heritage Devision Trough Adat Institution Apparatus

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Abstract

The rules regarding the distribution of joint assets through customary devices are listed in Article 37 paragraph (1) of Law No.16 of 2019 concerning Amendments to Law No.1 of 1974 concerning Marriage (Marriage Law), it states that "When a marriage is broken up due to divorce, the assets together are governed according to their respective laws." In the elucidation of Article 37 paragraph (1) it is emphasized that each law is religious law, customary law and other laws related to the division of the joint property. Then in Article 97 of Presidential Instruction No.1 of 1991 concerning the Dissemination of Compilation of Islamic Law (KHI) it is

determined that "Widows or widowers who are divorced are each entitled to half of the joint property as long as it is not specified otherwise in the marriage agreement." In fact, the process of sharing joint assets through traditional instruments is still often disputed between ex-husbands and ex-wives, where one party does not comply with the final results of the negotiations that have been agreed before the customary apparatus so that it misuses the shared assets, one of which is by secretly selling the part that is divided so as to make the other party feel disadvantaged.

Keywords: Heritage Devision, Adat Institution

1. Introduction

Indonesia as a country is inhabited by various ethnic groups and with this diversity, Indonesia is rich in various ethnic cultures, languages, customs that vary from one region to another. These differences will always develop, always move and based on necessity, always in a state of evolution following the development of the nation. Customs that live and are related to people's traditions are an amazing source for customary law in Indonesia. Customary law from one region to another is not the same, resulting in different legal norms.

The province of Aceh with specialization in the fields of customs, culture and law is also a reflection of the diversity above, where in the field of law it applies shari'ah law and customary law which are relatively different from other regions throughout Indonesia. Thus, the law is expected to be a pioneer of change in society so that it is able to be aware of or anticipate social and cultural changes that deserve attention.

One of the areas of law referred to is Marriage Law. Marriage law is one of the laws that can show the existence of a person, because someone can say that he is a child (descendant) of another person (father and mother), because the father and mother relationship is justified by law, namely marriage law.¹

Marriage as one of the fulfillment of human needs to form a family and continue offspring is natural, that two humans with different sexes, a woman and a man, have the power to attract each other to live together.² In addition, marriage is one of the regular cultures that follows the development of human culture in people's lives. The main purpose of marriage is to form a happy and eternal family until death separates the husband and wife based on Belief in One Almighty God. Fellow family members (husband, wife and children) must be able to live happily, peacefully, safely and securely. This is what is called an eternal family until the end of his life. The eternal family will be realized if there is mutual respect, mutual understanding, mutual understanding and cooperation within the family.³

¹ Suparman Usman, *Pokok-Pokok Filsafat Hukum*, Serang: SUHUD Sentrautama, 2010. hlm. 57-58.

² R.Wirjono Prodjodikoro, *Hukum Perkawinan di Indonesia*, Jakarta: Sumur Bandung, Cet. Keempat, 1960, hlm. 7.

³ Darmawan, Suhaimi, Muhammad Natsir, T. Rasyidin, Mustakim, Relative Competence of the Sharia Court: Talaq Divorce Lawsuit and Protection of Women's Rights, *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*. 2023; 7(1): 85.

The position of the husband and wife in the marriage bond are two equal parties under the law, because maintaining the household is a joint task so that it must be carried out equally by both parties. Property acquired during the marriage is jointly owned and managed by the husband and wife, so that when the marriage is disbanded, both parties will receive the same rights to the joint property.⁴

Fahmi Al Amruzi stated that joint property is property acquired during the marriage period by the husband and wife, so included in this meaning are all assets obtained from the results of their joint efforts since the time the marriage took place, namely from the time the marriage contract was pronounced until a divorce occurred, not including the in which the assets obtained by each party originating from a grant or inheritance are addressed to the parties and the assets automatically become personal property unless the parties so desire.⁵

The existence of joint assets in a marriage does not rule out the possibility of the existence of the property of each party from the husband and wife.⁶ Talking about husband and wife assets, there are various types of assets, starting from their respective assets, prize assets that they get and certainly there are assets from the hard work of both husband and wife, regardless of whether the results obtained are balanced or not between the two.

Marriage has legal consequences not only for those who enter into marriage, but has legal consequences for the assets of the husband and wife. There are several reasons why a marriage can break up, namely because of death, divorce, and by a court decision. In accordance with the provisions of Article 39 (1) of the Marriage Law that "Divorce can only be carried out before a court hearing, after the court concerned has tried and failed to reconcile the two parties." The existence of divorce has legal consequences of breaking the bond between husband and wife, on the other hand it results in family law relations and property law relations. The relationship between family law and property law is so closely intertwined that the two are indeed distinguishable but cannot be separated. The family law relationship determines the legal relationship of his wealth and the law of marital property is nothing but the law of family wealth.⁷

The formulation of joint assets can be seen in the Compilation of Islamic Law, Article 1 letter (f) which states that marital assets or *syirkah* are assets that are acquired either individually or jointly with the husband and wife while in the marriage bond, hereinafter referred to as joint assets without questioning their registration. on behalf of anyone. As it is known that in every marriage each party from the husband or wife has assets that were brought and obtained before carrying out the marriage contract. Husbands or wives who have been married have assets acquired during the marriage called joint property.

The description of the distribution of joint assets after a divorce is regulated in Article 37 (1) of the Marriage Law,

which reads "When the marriage is broken up due to divorce, the joint assets are regulated according to their respective laws." In the elucidation of Article 37 (1) it is emphasized that each law is religious law, customary law and other laws related to the division of the joint property.

In Islam, the study of joint property has not been fully accommodated in classical legal texts, because the *fiqh* that was born in Middle Eastern patrons and culture around the 13th century AD is full of patriarchal nuances and has not yet touched on gender issues, so it is natural that classical scholars have not paid attention to this issue. This. Besides that, in terms of legality, the study of joint assets has not been textually accommodated in the Al-Qur'an and Hadith. It was only around the 16th century AD that we can trace this study of shared assets in several studies of local *fiqh*. The concept of joint property originally came from customs that developed in Indonesian society which was then supported by positive law in force in Indonesia. In Acehese society, especially in Aceh Besar District, this tradition has also been going on for a long time, which is called "seuharkat" treasure.⁸

The study on the distribution of joint assets through customary instruments in Aceh Besar District can at least be divided into two; the first is divided based on custom, usually carried out through traditional instruments by presenting the *keuchik* (village head), *teungku imum* (village priest), *tuha lapan*, *tuha peut* (a kind of village community resilience institution), and the parties. Both are divided through a formal court, namely at the district/city *Syar'iyah* Court, because in Aceh the Religious Courts are no longer known but have become the *Syar'iyah* Courts. So that the authority in the field of *ahwal al-syakhsiyah* (family law), *muamalah* (civil law) and *jinayah* (criminal law) is the authority of the *Syar'iyah* Court which is based on Islamic Sharia.⁹

In relation to the above, the authors see that the people in Aceh Besar District are an example of various kinds of indigenous peoples who have local wisdom, ethnic culture and customs that are different from other indigenous peoples, in terms of handling the distribution process. These joint assets are often disputed between ex-husbands and ex-wives, where one party does not comply with the final outcome of the negotiations that have been agreed before the customary apparatus so that it misuses the shared assets, one of which is by secretly selling the portion that has been divided.

2. Research Methods

The research method is the study of how to research the science of tools in a research. Therefore, the research method discusses the theoretical concepts of various methods, the advantages and disadvantages that exist in a scientific work. This study uses empirical juridical research methods. Empirical juridical research is a legal research

⁴ Syahrizal, *Hukum Adat dan Hukum Islam di Indonesia*, Lhokseumawe: Nadia Foundation, 2005, hlm. 277.

⁵ Agustina Dewi Putri, "Peralihan Harta Bersama Melalui Hibah Tanpa Izin Salah Satu Pihak Berdasarkan Undang-Undang Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam", *Syiah Kuala Law Journal (SKLJ)*, Vol. 3, No. 1, hlm. 6, 2019.

⁶ *Ibid*, hlm. 8.

⁷ J. Satrio, *Hukum Harta Perkawinan*, Cet. 1, Bandung: PT. Citra Aditya Bakti, 1991, hlm. 5.

⁸ Firman Wahyudi, "Interpretasi Pasal 97 KHI Tentang Pembagian Harta Bersama Dalam Perspektif Maqashid Syariah", 2020, E-Journal on-line, <<https://www.pabangil.go.id/images/ARTIKEL/pasal%2097.pdf>> [diakses 30/05/2023].

⁹ Muzakkir Abubakar, Suhaimi, Basri, Kewenangan Pemerintah Aceh Terhadap Pelaksanaan Fungsi Mahkamah Syar'iyah Dalam Sistem Peradilan Nasional (Tinjauan Tentang Kewenangan Yustisi Dalam Otonomi Khusus), *Kanun Jurnal Ilmu Hukum*. 2011; 13(1): 50.

method that is carried out by positioning law as a symptom of society, as a social institution or patterning behavior. That is done by looking at the reality that exists in practice in the field. This research is also known as research that uses a sociological approach that is carried out directly to the field. This research is analytical descriptive in nature, as stated by Soerjono Soekanto that descriptive analytical research is research that aims to make a systematic, factual and accurate description or painting of the facts, characteristics and relationships of the phenomena being investigated. Descriptive in the sense that this study aims to find out and explain the description of the facts in the distribution of joint assets through customary instruments in Aceh Besar District. Analytical in the sense that it analyzes the data that has been collected and the facts that occur in the field related to legal theories and legal principles, especially those related to the distribution of joint assets through customary instruments in Aceh Besar District.

3. Result and Discussion

3.1 Authority of Customary Devices in the Distribution of Joint Assets

In the order of life of indigenous peoples it is clear that each of them has a culture of behavior in resolving disputes, some are ceremonial/ceremonial in nature and some contain threats and sanctions. The designation remains popular with customary terms.

As in other areas in Indonesia, in Aceh, of course, there are still people who use customary values and customary laws inherited from their ancestors in resolving community problems or resolving disputes that occur between residents at the gampong level, both within a sub-district. As well as in different sub-districts, it was found that there was also the implementation of customary dispute resolution. So, in customary law communities if there is a dispute between fellow citizens, it is resolved by deliberation with a full sense of kinship, because deliberation is a means of resolving disputes, either resolved by the parties themselves, involving their respective family members or the problem is reported to customary officials local. In this settlement, the role of traditional instruments is very important so that the disputing residents can get along again.

In Aceh, traditionally a keuchik is also a traditional administrator and religious leader. His role as a justice of the peace, he is the "head of the people" whose job is to maintain the life of the law in the community, to ensure that the law runs properly. Keuchik's daily activities cover all fields of society.¹⁰ He is also assisted by other traditional instruments, in carrying out all matters directly regarding the administration of the partnership body, not only does he look after the needs of the association's household, such as watering which this task is delegated to his officials (Keujruen Blang in Aceh) village granaries, inheritance issues, wills, he also intervenes in matters of disputes that occur in the territory of his partnership, both regarding civil and criminal matters, namely such as the problem of dividing joint assets.

Gampong courts have limited authority, only regarding certain matters, customary courts/gampong peace judges are only given the authority to examine all cases which according to customary law are their authority, including

cases of customary offenses. Customary law does not distinguish between types of cases, between civil and criminal cases.¹¹

Therefore, in the application of law in the field in customary courts there are no differences in the process as is the case in general courts. In this case the organizational structure of customary justice consisting of gampong courts and mukim courts in Aceh Province has its own characteristics and is not the same as customary courts that exist outside Aceh Province.¹²

The Keuchik (head of the gampong) is the holder of general government authority at the lower level, namely as the head of the gampong, in that case the keuchik also acts as a judge, meaning that the two powers held by the keuchik (executive and judicial powers), this kind of concurrent position should not occur in general courts, this is a characteristic of customary courts. Another distinctive feature of customary/gampong courts is that the number of assemblies is not always the same, sometimes they can increase and decrease according to circumstances and needs, the absence of one or two members of the session does not result in the peace decision taken being invalid. The structure of the gampong judiciary is as follows:

1. Keuchik as chief judge concurrently a member;
2. Imeum Meunasah as member judge;
3. Tuha Peut as a member judge, consisting of elected people from government elements, religious elements, customary elements, and clever clever elements in the gampong, if necessary adjusted to the needs, member judges can be added to Keujrueng Blang, Panglima Laot, Peutua Seuneubok, Haria Peukan and Syahbanda;
4. Gampong secretary as clerk and concurrent member, whose duty is to record all events that occur during the customary court session.¹³

The Keuchik as the Head of the Gampong Government has the authority to resolve all his own household affairs both socio-cultural and legal issues. As stated in Article 14 of Qanun No.9 of 2008 concerning the Development of Customary Life and Customs, it states that the settlement of disputes/disputes that occur can be resolved in a customary way in Gampong which is carried out by traditional leaders or traditional apparatus, both problems within the family, between family and social problems that arise in society in a Gampong custom. Paragraph 3 of this article also explains that if within a period of 2 (two) months the dispute cannot be resolved in the Gampong or the parties to the dispute cannot accept the customary decision at the keuchik level, then the dispute is resolved by the Imuem Mukim at the Mukim Adat Meeting.

The goal to be achieved in the gampong customary court and the mukim customary court is peace for the two parties to the dispute, and peace can be realized if both parties willingly accept the decision taken by the gampong customary apparatus and the mukim customary apparatus.

¹¹Badruzzaman Ismail, *Eksposa Majelis Adat Aceh (MAA) Provinsi Nanggroe Aceh Darussalam*, Edisi 2, Banda Aceh, hlm. 81.

¹² Badruzzaman Ismail, *Mesjid dan Adat Meunasah sebagai Sumber Energi Budaya Aceh*, Cetakan ke 2, Banda Aceh: Majelis Adat Aceh (MAA) Provinsi Nanggroe Aceh Darussalam, 2007, hlm. 80.

¹³Badruzzaman Ismail, *Membangun Keistimewaan Aceh dari Sisi Adat Budaya (MAA) Historis dan Sosiologisnya*, Cetakan Ke 1, Banda Aceh: Majelis Adat Aceh (MAA) Provinsi Nanggroe Aceh Darussalam, 2007, hlm. 82.

¹⁰ Soerjono Soekanto, *Kedudukan Kepala Desa Sebagai Hakim Perdamaian*, Jakarta: Rajawali, 1986, hlm. 40.

after the promulgation of Law No.11 of 2006 concerning the Government of Aceh it further clarified the authority and functions of customary institutions in gampong and mukim Article 98, namely: (1) Customary institutions function and play a role as a vehicle for community participation in the administration of Aceh government and Regency/City Government in the field of security, peace, harmony and public order; (2) Settlement of social problems in a customary manner is pursued through customary institutions; (3) Customary institutions as referred to in paragraphs (1) and (2) include:

1. Aceh Traditional Council, Imeum Mukim or other names;
2. Imeum Chik or other names;
3. Keuchik or other names;
4. Tuha Peut or another name;
5. Tuha Lapan or another name;
6. Imeum Meunasah or other names;
7. Keujruen Blang or another name;
8. Panglima Laot or another name;
9. Pawang Glee (Glee Handler) or other names;
10. Peutua Seuneubok or another name;
11. Haria Peukan (Peukan Daily) or other names;
12. Syahbanda or other names.

In these provisions, customary officials have the authority to resolve disputes/problems that occur in the gampong, both problems within the family, between families, social problems that arise in the community such as the problem of sharing joint assets in a Gampong Traditional Apparatus Meeting.

The laws and regulations mentioned above clearly give authority to the implementation of customary justice in Aceh, especially in Aceh Besar District, although not in the form of carrying out a judicial function in state life, however, as a form of social institution and as a customary institution, customary justice has the potential to solve various social problems, and its existence is formally recognized and has the authority to implement it. The Aceh Government Law and the Aceh Qanun are part of positive law,¹⁴ because with special autonomy the Government of Aceh can make its own policies regarding empowerment, development and preservation of law, including customary law and customary institutions in the Aceh region based on Islamic Sharia.¹⁵

3.2 Distribution of Joint Assets Based on the Marriage Law and Compilation of Islamic Law (KHI)

Subsequent effects arising from a divorce apart from the determination regarding the status of child custody, maintenance, also regarding the distribution of joint assets, which not infrequently also creates new conflicts between husband and wife after the divorce. Therefore, ideally husband and wife must understand each other's rights and obligations, especially regarding marital assets. Normatively, if we look at the regulations governing marital

assets, we can examine several articles in the Marriage Law and the KHI.

Joint property according to Article 35 of the Marriage Law, property in marriage includes:

1. Property acquired during the marriage becomes community property.
2. The property that each married couple inherits and that each receives as a gift or inheritance is controlled by each married couple unless the parties decide otherwise.

Pursuant to Article 86 paragraphs (1) and (2) of the KHI: (1) in principle no commingling of property between husband and wife due to marriage; (2) remains in the wife's right and under her complete control, and vice versa.

Common assets include:

1. Property acquired during the marriage relationship;
2. Debts incurred during the continuation of the marriage relationship do not include debts belonging to the personal property of both husband and wife;
3. Property acquired as gift/donation or inheritance (if specified).

The consequences or legal consequences of divorce can be seen specifically in Article 97 of the Compilation of Islamic Law which states that the divorced widow or widower each has the right to half of the joint property as long as it is not specified otherwise in the marriage agreement. Meanwhile, the Marriage Law provides more flexible rules by providing freedom to ex-husbands and ex-wives to arrange the distribution of joint assets in accordance with the legal beliefs that they adhere to. As stated in Article 37: If a marriage is broken up due to divorce, joint assets are regulated according to their respective laws. Furthermore, in the elucidation of Article 37 it is stated that what is meant by "law" respectively is religious law, customary law and other laws.

According to the indigenous people in Aceh Besar District, the distribution of joint assets is movable or immovable property which is the result of searching for assets during the marriage process until the end of the divorce, however, the most common divorce among people in Aceh Besar District is divorce without going through the courts. Because of the notion that divorce arranged in court costs a lot of money.

Customary law in general is not only a habit that lives in a social environment, but also influences religious customs. As part of a community unit, customary law also has specific religious characteristics in certain areas. So there are traditional-religious community units according to old beliefs, there are community units with specific religions such as Hindus, Muslims, Christians/Catholics, and some are mixed in nature. In a community environment dominated by certain beliefs and religions, its members apart from being unitary citizens in one village according to the law, are also traditional adat citizens and members of the religion they each adhere to.

Adat in Aceh cannot be separated from Islamic religious law, because adat in Acehnese society has been heavily influenced by Islamic teachings for a long time, so that belief in this religion has so strongly influenced the mindset, attitudes and behavior of the people so that people live as much as possible in their daily lives. Adapted to Islamic principles. This combination of customary law and Islamic teachings is not only reflected in daily social life, but is also reflected in the field of government, especially the gampong and mukim governments, where the gampong government is

¹⁴ Herinawati, "Sistem Peradilan Adat Aceh Dalam Sistem Hukum Indonesia", *Journal Of Law Government Science*, Vol 4, No 2 Oktober 2018, hlm. 1, 2018.

¹⁵ Supriadi Supriadi, Syahrizal Abbas, Iman Jauhari, Suhaimi, The practice of land pawn in Aceh Besar customary law, *Opción*. 2019; 35(Especial 22): 791-806. <https://produccioncientificaluz.org/index.php/opcion/article/view/29509>.

led by a pair of leaders, namely the keuchik and imuem meunasah/mosque.¹⁶

Article 13 (3) of Qanun Aceh No.9 of 2008 Concerning Development of Customs and Customs states that law enforcement officials provide an opportunity for disputes/disputes to be settled in a customary manner through customary instruments. So that the Government of Aceh through Qanun Number 9 of 2008 concerning Fostering Traditional Life and Customs, in article 13 paragraph 1 states that, there are 18 cases or disputes that can be resolved according to custom, including disputes over sehareukat assets (joint property).

Dispute settlement mechanisms for the distribution of joint assets through customary courts use standard systems, procedures and principles. The completion system follows the principles of thesis (preliminary idea) and antithesis (criticism of the thesis). Each party is given the same right to present arguments and reject the opposing party's arguments as thesis and antithesis. Decisions are made by taking into account the principle of harmony. Compromise, appropriate, and proper, because of that every decision on a dispute is expected that the law can be enforced as it should be, but with that decision it is hoped that the harmony of society will not be damaged.

In Acehese society in general and the people of Aceh Besar District in particular, if there are problems that they cannot solve on their own, then there is always a third party who takes part in resolving the problems they face, namely complaining to their immediate family such as their parents, uncles/aunts, brothers/sisters and if the problems raised cannot be resolved by the close family, they will usually submit reports/complaints to the Gampong Customary Officials, namely the Keuchik/Village Secretary, Imum Meunasah, Tuha Peut.¹⁷

As stated by a respondent Mr. Irham as the Keuchik in the Aceh Besar District area, who said there were several things the Keuchik did in the dispute resolution process at the gampong level, namely:

1. Listen to the problems expressed by the complainant.
2. Meet with the reported whether the problems conveyed by the complainant actually exist and are in accordance with the facts on the ground.
3. Receiving information from other third parties such as neighbors, relatives or family members.
4. Then decide whether the Keuchik needs to solve the problem alone or needs the intervention of other gampong officials.¹⁸

If the problem or case being faced is quite severe and complicated, the steps taken by the Keuchik are:

1. Consult with the Village Secretary, Imum Meunasah, Tuha Peut, and community leaders who are elders in the gampong.
2. Consult with existing gampong officials to find the best format or way to solve the problem.
3. Before being brought into a deliberative assembly, the Keuchik first orders the gampong apparatus to approach

the conflicting parties to resolve the dispute among themselves without having to be resolved by the gampong apparatus, but if this method does not get results then the matter is processed through village council council.

4. After the stages have been carried out but there is no settlement, the Keuchik determines the day, date, time and place to be completed by the gampong deliberation assembly.
5. The Keuchik summoned traditional officials, namely the Village Secretary, Tuha Peut, Imum Meunasah and community leaders who are elders to attend a deliberation to resolve community issues according to a predetermined day, date, time and place.
6. Calling the conflicting parties to sit together to resolve the issue through deliberation and consensus.
7. The parties are usually also attended by their respective relatives or closest family.

If the Keuchik and other traditional officials consider that it is clear enough about the issues being complained about, they will immediately determine the appropriate and fair form of settlement or customary sanctions to be applied in resolving the dispute. In seeking a resolution, each member of the customary justice deliberation tries to remember old cases that have occurred and the forms of settlement or sanctions applied, whether in cases involving them or not, which occurred in their gampong or not to be used as a guideline for resolving cases that arise. Faced.

If there is a similar case that has occurred that he knows, then it is presented to the assembly. The Assembly considers that if the model resolves the case at hand, then both the form of settlement and the type of sanction are immediately approved by all members of the customary apparatus functionaries to be applied to the disputed cases being tried. If no such cases have occurred yet, the functionary members of the customary apparatus try to form a new custom by continuing to look for a basis similar to the existing custom.

The mechanism for sharing joint assets through customary instruments in Aceh Besar District is in principle no different from what is stated in the Marriage Law and the Compilation of Islamic Law. If the marriage is broken up due to divorce, then each husband and wife are entitled to half of the joint assets as long as nothing else is determined. The description of the practice of sharing joint assets through customary instruments in Aceh Besar District tends to be unsuccessful. From several cases, the author took two cases that did not carry out the final decision of the distribution of joint assets which had been decided before the customary apparatus, this happened because the ex-husband was dissatisfied with the distribution of joint assets which were divided in half equally, the ex-husband was of the view that the assets obtained during marriage is the result of their hard work and is more dominant in earning a living. Therefore, the ex-husband transferred the rights to the joint property without the ex-wife's knowledge. But here, the ex-wife just gave in to the ex-husband's actions because the ex-wife was unable to file a lawsuit in court.¹⁹ Indeed, at a very basic level, the Qur'an and Hadith do not discuss joint property between husband and wife. Therefore, this matter is left to the ijihad institution or to customary law, in line with the rule of al-Adat al-Muhkamah (customs

¹⁶ Darmawan, "Kedudukan Hukum Adat Dalam Otonomi Khusus", *Kanun No.51, edisi Agustus 2010*, hlm. 328.

¹⁷ Ilyas, "Eksistensi dan Kekuatan Penyelesaian Sengketa Secara Adat Pada Tingkat Gampong", *Kanun No. 50 Edisi April 2010*, hlm. 148.

¹⁸ Irham, Keuchik di Wilayah Kabupaten Aceh Besar, *wawancara*, tanggal 8 Juli 2023.

¹⁹ Aisyah, Bekas Istri, *wawancara*, tanggal 12 Juli 2023.

can be used or have the authority to determine law or customs are seen as law).

Due to the various opinions regarding joint property of husband and wife in marriage, and the absence of the views of previous scholars discussing this matter specifically, discussion of the issue of joint property of husband and wife in marriage continues to be an interesting issue. Today's reality in general, the assets of husband and wife during marriage in the people of Aceh Besar District in particular are in the hands of the husband, and the distribution of joint assets at the time of divorce is very difficult and complicated and causes many problems.

The lack of firmness in verses and hadiths and the absence of the opinion of the Imam of the Madhab regarding joint assets in a marriage also creates multiple interpretations, so that some husbands do not recognize that there are 50% of the wife's rights in joint assets, as a result many husbands control joint assets, and not a few husbands who spend joint assets with the excuse of paying debts, and there are also husbands who transfer (sell) joint assets, and many husbands defend their.

4. Conclusion

The mechanism for sharing joint assets through customary instruments is in principle no different from what is stated in the Marriage Law and the KHI. If the marriage is broken up due to divorce, then each husband and wife are entitled to half of the joint assets as long as nothing else is determined. Then the division focuses more on deliberation for consensus from the parties, and customary officials tend to be passive parties as well as the role of the mediator to communicate the wishes of the parties. Traditional instruments are prohibited from imposing their will on one party or on the parties.

Traditional instruments in Aceh Besar District make optimal efforts to reconcile the disputing parties. So, the decision is not to lose and win, but to be peaceful and win together. It is important to develop customary justice by indigenous peoples, especially by customary officials so that this becomes a filter to minimize the number of cases in formal courts. Thus, legal justice can be more down-to-earth and closer to the people's reach.

5. Suggestion

It is hoped that the disputing parties in the effort to implement the distribution of joint assets through the customary apparatus, would be better off in good faith complying with every decision that has been discussed before the customary apparatus.

It is suggested to the community in Aceh Besar District, if one of the parties among you finds it difficult to control his behavior in protecting the joint property as expected, ask the Syar'iyah Court to place material confiscation over the joint property so that this gets legal protection.

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