

Legal Status of Joint Property that Remains Subject to Security Interests After Divorce

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Abstract. *Marriage not only creates legal bonds between husband and wife, but also has legal consequences for property, in this case joint property. In practice, joint property is often used as collateral to obtain credit from financial institutions. When a divorce occurs while the property is still pledged to a third party, legal issues arise regarding the status of joint property and responsibility for debt repayment after divorce. This study aims to determine the legal status of joint property that is still used as collateral after divorce and the responsibility for debt repayment on the collateral. The researcher applied and utilized a normative juridical method with an approach that focused on legislation and was supported by interviews with the Junior Clerk of the East Jakarta Religious Court as supporting data in the study. The results of the study show that the legal status of joint property that is still collateralized remains as joint property after divorce, but the distribution cannot be carried out before the obligations to third parties are settled because it is still bound by collateral rights. This is because collateral has the characteristics of droit de suite and the provisions of SEMA 2018. The responsibility for paying off debts is a joint obligation of the former husband and wife. If there is a refusal or even inability to pay, the settlement is carried out through an auction by the creditor, while the remaining proceeds from the auction after the debt has been paid off become part of the joint property, which will then be distributed in accordance with applicable legal provisions.*

Keywords: *Divorce; Guarantee; Joint Property; Marriage.*

1. Introduction

Humans are creatures who need interaction with other people. In the course of life, individuals need a partner to build a family. The process required to fulfill this need is marriage. Marriage is a relationship involving emotional and physical bonds formed between a husband and wife with the aim of building a family that creates a peaceful and lasting atmosphere (Nirwana, 2023). The Civil Code does not define the meaning of marriage. Article 26 of the Civil Code only mentions that marriage is viewed solely from a civil perspective. According to the Marriage Law (UUP), Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning Marriage, marriage is defined as two people who are physically and emotionally committed to becoming husband and wife. Their goal is to create a prosperous and lasting family by applying the principles of God. In the Compilation of Islamic Law (KHI), marriage is described as a firm agreement to carry out Allah's commands, which are considered a form of worship, with the hope that a household will create *sakinah*, *mawaddah*, and *warahmah*.

A legally recognized marriage not only creates rights and obligations, but also determines the status of children. In addition, marriage also has legal implications for assets and wealth (Cahyani, 2020). These assets include property acquired from business ventures prior to marriage, gifts, or inheritance. It includes not only the separate property of each spouse, but also consists of joint property or property acquired during the marriage (Cahyani, 2020). These resources are utilized to meet desires of the spouse and spouse.

In this era of economic development, it is possible that a household may need a loan. Loans in households are used to support living needs and desires. Loans can be obtained from financial institutions or non-financial institutions. Generally, people apply for loans from banks. In this regard, banks provide loans in the form of bank credit. Agreeing to Article 1 Number 11 of Law No. 10 of 1998 concerning amendments to Law No. 7 of 1992, hereinafter referred to as the Banking Law, credit is the arrangement of cash or bills based on an understanding between the bank and the borrower. A credit agreement is an agreement that establishes debts, interest, and repayment obligations between the creditor as the borrower and the bank as the debtor (Hulu, 2021). When providing credit loans, banks will follow a written agreement that regulates the rights and obligations of the parties involved. This principle determines the contractual relationship as outlined in a standard agreement and made in writing (Azura & Taupiqqurrahman, 2021). Thus, credit is the provision of funds, goods, or services that are delivered in advance and will be repaid at a predetermined time.

In the procedure, lenders often ask borrowers to prepare their property or assets as collateral. Collateral provides an obligation to the creditor to repay the loan and allows the debtor to redeem the collateral (Bahsan, 2015). Collateral is an asset used by creditors to guarantee repayment in the event of a breach of contract. Lenders assess objects that can be used as collateral legally, including the legality of the collateral, the validity of the use of the collateral, the absence of disputes over the collateral, and the existence of a permit to use the object as collateral (Bahsan, 2015).

In this case, it is common to use joint property as collateral for the loan (S aragih, 2020). The property in question can be tangible or intangible assets, immovable or movable objects, and important documents of value. Based on Article 36 of the Marriage Law, when performing legal actions during marriage, the husband/wife must obtain mutual consent. Thus, if one party wishes to apply for a loan with joint property as collateral, they must first obtain the permission or consent of their spouse.

Often, the loan repayment period is longer than the duration of the marriage, so that when a divorce occurs, the joint property is still subject to collateral. Divorce is defined as a legal event in which the court declares the termination of a husband and wife's relationship and has legal consequences (Syarifudin et al., 2022). Generally, when a divorce occurs, each party wants to divide and take control of the joint property. In this case, the parties often forget that the property is still being used as collateral. Based on an interview with the Junior Clerk of the East Jakarta Religious Court, there are still cases where one party sues for the division of joint property that is still pledged to the bank. Although divorce does not eliminate the obligation to pay off joint debts, it is not uncommon for one party to be reluctant to continue making debt repayments after the divorce.

This creates a situation where legal provisions are out of sync with the reality in society. Often, the parties do not understand that assets that are still pledged cannot be immediately divided and that the responsibility for joint debt repayment is ignored after divorce. Although there are normative provisions regarding joint property in the Marriage Law, these provisions do not specifically explain the legal status of joint property that is still subject to collateral after divorce and the settlement of joint debt repayment obligations after divorce. This situation raises new issues, as there are no provisions that explicitly and specifically regulate the mechanism for the repayment of joint debts secured by joint property after divorce. This creates legal uncertainty for the parties in fulfilling their obligations.

In line with this topic, several previous studies have discussed similar themes. Research conducted by Albert Kritato and Liliana Tedjosaputro entitled *Legal Protection of Joint Assets Pledged Without the Consent of the Husband/Wife* concluded that joint assets pledged without the consent of the spouse can be canceled as a form of legal protection (Kritato & Tedjosaputro, 2020). Then, Aurora Mayawa Rissandjani, I Nyoman Putu Budiarta, and Ni Made Puspasutari also researched the same topic with the title *Joint Property as the Object of Bank Credit Agreement Collateral*. The research concluded that for the validity of collateral on joint property, the consent of the spouse is required and can be canceled if there is no consent from one of the parties (Rissandjani et al., 2022). Further research was conducted by Rice Marta, Azmi Fendri, and Delfiyanti with the title *Legal Consequences of Divorce on Joint Property Used as Collateral at Bank Nagari Bawan Branch*. This study discusses the legal consequences of divorce on joint property with a case study of a court decision. The result is that joint property cannot be divided as long as it is still bound by collateral (Marta et al., 2024).

Based on these three studies, there is something new in this research. Previous studies only discussed and highlighted joint property that was pledged during marriage. This study will focus on the period after divorce. This new study will focus on the legal status of joint property that remains collateral after divorce and the responsibility for repaying debts on such collateral after divorce. The urgency of this study lies in the need for legal clarity or provisions regarding the status of joint property that remains collateral after divorce and the determination of responsibility for repaying joint debts, as there are no specific regulations governing this matter. This research is expected to contribute to strengthening legal certainty in the settlement of disputes over joint property that remains subject to collateral after divorce and to provide direction for determining fair joint debt repayment responsibilities for the parties. In addition, this paper is expected to provide recommendations for policymakers and law enforcement officials in terms of strengthening legal certainty regarding the status of collateral and the imposition of joint debt repayment responsibilities after divorce in order to achieve justice for the parties.

2. Research Methods

Based on the topic raised, the researcher applied the normative juridical method. In this regard, the study referred to and examined positive law and legislation that were consistent or relevant to the research (Waluyo, 2008). This study applied a statute approach, which used legislation and regulations as the basis of analysis (Marzuki, 2014). The data sources in this study were secondary data, with primary legal materials taken from the Marriage Law, the Security Rights Law, the Banking Law, and the Compilation of Islamic Law. The secondary legal materials used consisted of law books, scientific journals, articles, and interviews conducted with the Junior Clerk of the East Jakarta Religious Court as supporting data. In addition, information obtained from the internet served as tertiary legal material. The researcher applied a literature study technique, which involved reviewing various sources of literature related to the research issue (Ali, 2014). Furthermore, the collected data were analyzed using a qualitative descriptive

approach, in which the researcher examined the legal sources and interview results to draw descriptive conclusions.

3. Results and Discussion

3.1. The Legal Status of Joint Property that Remains Subject to Security Interests After Divorce

A marriage is considered substantial in the event that it is conducted in understanding with significant laws and convictions that have been set up. In addition, a marriage is valid if it is registered in accordance with established and enforced regulations, as stated in Article 2 of the Marriage Law. A lawfully substantial marriage has legitimate results. The results of a substantial marriage incorporate the rights and commitments between husband and wife, the status of children, and the ownership of assets (Cahyani, 2020).

Marital property refers to all property owned by the husband and wife, both before and after they were married. Marital property includes joint property and inherited property, as mentioned in Article 35 of the Marriage Law. Inherited property refers to items that were already owned by the husband or wife before the marriage, as well as inherited or gifted items that remain the property of each spouse, unless there are other provisions stating otherwise. Joint property becomes the property of both parties regardless of the name listed on the document (Asnawi, 2020).

Joint property in marriage includes assets and liabilities (Asnawi, 2020). In general, all property acquired during the marriage is referred to as assets. Assets can be movable or immovable, tangible or intangible, obtained legally during the marriage. Examples include houses, land, vehicles, business profits, and other forms of assets. Meanwhile, liabilities are obligations or debts that arise during the marriage. These liabilities can be loans from financial institutions, personal debts, or joint business obligations.

Joint property is not only for fulfilling household needs. In the current economic situation, joint property has economic value that can support the family economy (Saragih, 2020). One way is by making it collateral in a credit agreement. In this regard, both husbands and wives can use joint property such as houses, land, or other valuable assets as collateral to obtain loans from financial institutions. Based on Article 1 Number 11 of Law No. 10 of 1998, which amended Law No. 7 of 1992 concerning Banking, credit can be defined as the provision of funds or debt based on an agreement between a bank and a borrower. A credit agreement is a form of agreement that creates a debt-credit relationship, including the determination of interest and repayment obligations between the bank as the creditor and the customer as the debtor (Hulu, 2021).

In this case, it is common for joint property to be utilized as collateral for the credit advance (Saragih, 2020). Agreeing to Article 36 Section 1 of the Marriage Law, joint property can only be used for legal purposes with the consent of both spouses. Based on this, in case joint property

is utilized as collateral for a credit, the assent of one of the life partners must be gotten for the activity to be considered substantial. The consent of both parties when performing legal actions provides legal protection for the couple to avoid actions that could potentially eliminate joint property (Rissandjani et al., 2022). If one party applies for credit and pledges joint property without the knowledge or consent of the other spouse, the action can be stopped because the element of agreement as referred to in Article 1320 of the Civil Code is not fulfilled. The object of collateral is an asset used by the creditor to guarantee repayment in the event of a breach of contract (Mozin, 2024). Thus, joint property used as collateral imposes an obligation on the creditor to repay the loan and allow the debtor to redeem the collateral.

Frequently, the advance reimbursement period is longer than the length of the marriage, so that when a separate happens, the joint property is still subject to collateral. Separate is characterized as a legitimate occasion in which a court announces the end of a spouse and wife's relationship and has legitimate results (Syaifuddin et al., 2022). By and large, when a separate happens, each party has the crave to carry out the division and control of joint property. The division of joint property after divorce is directed in Article 37 of the Marriage Law. Within the occasion of separate, the conveyance of joint property will be balanced in agreement with the appropriate laws. Based on this, the division of assets will follow existing regulations, namely customary law, religious law, or other regulations. The division of joint property after separate can be done through agreement, court decision, or a prenuptial agreement that separates the property (Utami & Dalimunthe, 2023). Article 97 of the KHI states that each party to a separate is entitled to $\frac{1}{2}$ of the overall joint property.

Problems arise when joint property is still tied to credit guarantees when divorce occurs. Based on Supreme Court Circular Letter (SEMA) Number 3 of 2018 concerning the Enforcement of the 2018 Supreme Court Plenary Session Results, lawsuits regarding joint property pledged to third parties are not accepted because the rights of third parties must be settled or resolved first. SEMA serves as a reference for Religious Courts in handling cases involving joint property that is still subject to collateral (Irawan et al., 2024). According to an interview with the Junior Clerk of the East Jakarta Religious Court, there are still many parties who insist on filing a lawsuit for the division of joint property even though the property is still pledged to the bank. The lawsuit can still be filed, and the judge will still accept and examine the lawsuit.

With respect to demands for the division of joint property that's still subject to collateral, such claims are considered untimely. This implies that the presence of uncertain commitments to creditors comes about within the recording of claims for the division of joint property being untimely, since the parties ought to begin with settle their commitments to lenders some time recently separating the joint property. As long as the question is still related to the rights of third parties, the division of joint property cannot be carried out.

Mortgage rights emerge against the joint property that's utilized as collateral. Agreeing to Article 1 Number 1 of Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to

Land, hereinafter referred to as the Mortgage Rights Law, a mortgage right could be a shape of collateral joined to the proper to arrive and all objects associated to that arrive. With a contract, the lender has full specialist over the collateral, so that this right remains and can be maintained against anybody.

A mortgage has the nature of *droit de suite* in accordance with Article 7 of the Mortgage Law, which means that the right accompanies the collateral to whomever the property is transferred (Arba & Mulada, 2020). This means that as long as the debt has not been paid, the creditor's rights remain attached to the collateral without being affected by changes in ownership status or changes in the legal relationship between the debtor and other parties. Thus, divorce does not automatically remove obligations to third parties because the legal relationship between the debtor and creditor is a separate agreement that does not depend on marital status. Therefore, divorce cannot eliminate a spouse's obligations to creditors. Jointly owned property that has been pledged as collateral remains jointly owned, but the division of ownership rights between husband and wife is postponed until the obligation to repay the debt to the creditor has been settled.

The settlement of debt repayment obligations is part of efforts to protect creditors as third parties (Soebagio & Ratna, 2025). Third parties have the authority to collect repayment from creditors under credit agreements without being affected by changes in marital status. The object used as collateral is still encumbered by the debt obligation as long as it has not been repaid (Utama & Sahrudin, 2022). If the division of property is carried out before the debt is cleared, it will cause legal injustice between the parties (Irawan et al., 2024). The division has the potential to cause new problems with the former spouse and even the creditor because the collateral is not yet wholly theirs.

Thus, the legal status of joint property that is still used as collateral after divorce remains joint property that cannot be divided before the debt is repaid or third party rights are settled. As long as there are still obligations to creditors, the division of joint property is considered premature and the lawsuit cannot be accepted, as confirmed in the Supreme Court Circular Letter (SEMA) Number 3 of 2018. Indeed in spite of the fact that separate closes the lawful relationship between spouse and spouse, the creditor's property rights stay joined to the collateral due to the *droit de suite* nature of the contract.

3.2. Responsibility for Debt Repayment After Divorce Based on Joint Property Guarantee

In the Civil Code, the civil relationship between husband and wife also binds them regarding their assets throughout their marriage. Article 119 of the Civil Code stipulates that once a marriage is declared valid, all assets owned by each spouse become joint property, unless there is an agreement stating separation of property. All assets of each spouse form a single legal entity that covers all forms of profit and loss (Raissafitri & Taupiqqurrahman, 2023).

The incurrance of debt is a normal and common occurrence in household life as an effort to meet the economic needs of the family. Based on Article 35 paragraph (1) of the Marriage Law, joint property includes all property accumulated and collected during the marriage, where the husband and wife have equal rights and responsibilities to the property acquired during their marriage. This includes not only assets such as money, land, houses, vehicles, etc., but also liabilities, which are obligations or debts incurred during the marriage (Limbong et al., 2023).

Joint debt occurs when a debt is incurred during the marriage and used for family purposes such as basic needs, children's education, or joint ventures, in which case the debt is categorized as joint debt (Syaerozi & Maesuroh, 2022). This means that the responsibility to pay off the debt is not only the burden of one party but is the joint responsibility of the husband and wife. If the debt was incurred by only one party for personal reasons that are not related to the household or even activities that are detrimental to the family, then the debt is a personal debt and cannot be categorized as a joint debt. The party responsible for its repayment is the party who incurred the debt (Limbong et al., 2023).

Article 85 of the Compilation of Islamic Law does not run the show out the plausibility that joint property is portion of each party's property. Joint property moreover incorporates rights and commitments emerging amid marriage. Article 91 Section (3) of the Compilation of Islamic Law places rights and obligations as part of intangible joint property. This arrangement sets up the rule that obligations brought about amid marriage are joint obligations. Joint obligations caused amid marriage allow rise to joint duty for those obligations.

Issues emerge when joint property is still utilized as collateral when a separate happens. Based on interviews with the Junior Clerk of the East Jakarta Religious Court, there are frequently parties who record for the division of joint property but disregard that the joint property is still utilized as collateral for credit. The division can as it were be carried out in the event that the commitments to third parties have been satisfied or the obligations have been paid off. Based on the arrangements of Article 35 section (1) of the Marriage Law, all property possessed and procured amid the marriage is joint property. In expansion, Articles 85 and 91 Section (3) of the Compilation of Islamic Law position rights and commitments as portion of intangible joint property. This arrangement implies that obligations caused amid marriage are a joint obligation. Be that as it may, this arrangement does not unequivocally clarify the component for obligation reimbursement after divorce. Often, one party denies to proceed or reimburse the obligation on the grounds that they now not feel capable for the resources that are still swore. In the event that there's no assentation between the previous spouse and spouse, the bank may possibly sell off the resources. From the results of an interview with the Junior Clerk of the East Jakarta Religious Court, in a circumstance where one party denies to reimburse the obligation, the division of joint property cannot be carried out and can as it were be done on the off chance that the obligation has been reimbursed or an sell off has been held as a frame of obligation settlement.

This certainly creates a situation where one party often refuses to continue or settle their debt obligations on the grounds that they no longer feel responsible for the assets that are still pledged as collateral. The absence of an agreement between the former husband and wife means that the bank has the potential to hold an auction. Based on an interview with the Junior Clerk of the East Jakarta Religious Court, in a situation where one party refuses to settle the debt obligations, the division of joint assets cannot be carried out and can only be done if the debt obligations have been settled or an auction has been held as a form of debt settlement.

An auction is a way of selling goods openly to the public, where participants compete to offer the highest price, and the entire process is witnessed and led by an auctioneer (Usman, 2015). In common, barter is carried out as a step to execute the collateral rights of lenders if the debtor fails to fulfill their commitments. In collateral law, auction is a form of exercising separate execution rights as directed in Article 6 of Law No. 4 of 1996 concerning Collateral Rights. This control gives the holder of the essential collateral right the control to offer the collateral question by open sell off.

Within the case of joint property that's the subject of collateral, sell off gets to be the ultimate step on the off chance that the previous spouse and spouse don't have an understanding to pay off or are incapable to pay off their obligation commitments to lenders. The position of creditors is higher than the personal interests of former spouses because the property has been encumbered with collateral rights. Collateral rights are *droit de suite*, meaning that the rights follow the collateral object wherever it moves (Arba & Mulada, 2020). Therefore, as long as the debt has not been paid in full, the joint property cannot be divided. Through the auction process, creditors such as banks or financial institutions are entitled to repayment of their receivables based on the proceeds from the sale of the collateral. If the debt has been paid in full but there is still a surplus from the auction proceeds, it can be considered as part of the joint property (Chaerani et al., 2024). The surplus from the auction proceeds is then distributed in accordance with the provisions on the division of joint property.

Thus, the obligation to repay debts after divorce on joint property collateral remains the responsibility of both the husband and wife. However, because there are no explicit regulations governing the mechanism for debt repayment after divorce, the settlement is carried out through repayment to creditors or auction of collateral objects based on the provisions of the Law on Mortgage Rights. This also shows that the position of creditors in this matter is given priority.

4. Conclusion

Overall, this study found that the legal status of joint property that remains subject to collateral after divorce remains as joint property, but it cannot be divided before obligations to third parties are settled. Usually based on the arrangements of Supreme Court Circular Letter Number 3 of 2018. In addition, the property is still bound by a *droit de suite lien*. The responsibility for

paying off debts secured by joint property after divorce remains a joint obligation of the former husband and wife as long as the debt was incurred for the benefit of the family during the marriage. In the event that the parties are unable to pay off the obligation, settlement can be made through auction by the creditor and the remaining proceeds after payment become part of the joint property to be divided in accordance with the provisions of the law. Normatively, provisions regarding joint property have been confirmed in legislation. However, the regulations do not explicitly explain the legal status of joint property after divorce if it is still collateralized, nor the procedures for debt repayment after divorce on joint property collateral, so a confirmation of the norms is needed to provide certainty and legal justice for the parties.

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