



Original Research Article

Volume-1 | Issue-1 | April-2023 |

SUBSTITUTE WIFE'S INHERITANCE RIGHTS TO HUSBAND'S INHERITED PROPERTY

Douglas Gasva

Quality Assurance Coordinator/Senior Lecturer, Zimbabwe Open University, Zimbabwe

ABSTRACT

The method used in writing this research is the normative method, namely by looking at the provisions of the applicable laws and regulations. Based on the results of the study, it shows that Law No. 1 of 1974 concerning Marriage Compilation of Islamic Law as a manifestation of legal uniformity in Indonesia emphasizes that legal provisions regarding innate property. Based on the provisions of Article 85 of the Compilation of Islamic Law, it is expressly stated that the existence of joint property in a marriage does not rule out the possibility of the existence of property owned by each husband or wife. Furthermore, in the provisions of Article 86 of the Compilation of Islamic Law, it is also stated that basically there is no mixing of husband's assets and wife's assets due to marriage. The wife's property remains the right of the wife and is fully controlled by her, as well as the husband's property remains the right of the husband and is fully controlled by him. The results of the study also concluded that the position of the inheritance rights of the husband's inheritance over the surrogate wife was based on the provisions of the Compilation of Islamic Law that the surrogate wife had absolutely no right to the position of the property brought/acquired by her husband before the marriage was held for her with the stipulation that the substitute wife only has the right to inherit the property that they got during their marriage without questioning whose income the property came from.

Keywords: *Inheritance Rights, Substitute Wife, Husband's Inheritance;*

INTRODUCTION

Marriage has legal consequences not only for the individuals who enter into the marriage, rights and obligations that bind the husband and wife personally, but more than that it has legal consequences for the property of the husband and wife. The family law relationship and the property law relationship are so closely intertwined that the two can indeed be distinguished but cannot be separated. In the life of a family or household, in addition to the issue of rights and obligations as husband and wife, the issue of property can also be the root cause of various disputes or tensions in the life of a marriage, because property is the material basis of family life. So that if there is a problem involving property, it might be able to eliminate the harmony between husband and wife in their household life. It is not impossible if in society it is found that

8 of 51 Pages

sometimes married life, for some reason or several reasons, the condition of the household becomes bad or is no longer harmonious. In fact, sometimes because the situation is too bad, there are frequent disputes/squabbles between husband and wife which causes their household life to go into shock, and it is felt that it cannot be repaired and can be continued.

From a formal juridical point of view, provisions regarding joint assets have been regulated in article 35 paragraph (1) of Law Number I of 1974 concerning Marriage which explains that joint assets are property or proceeds of wealth obtained during a marriage. Even though the property is obtained from the work of the husband only, the wife still has the right to joint property. So, joint property includes assets obtained from the business of both the husband and wife or the business of one of them. This means that both husband and wife have the same rights and obligations on joint property and all legal actions on joint property must be approved by both parties.

Based on the provisions of article 35 of the Compilation of Islamic Law, it is stated that: (1): Property acquired during marriage becomes joint property (2): Inheritance of each husband and wife and property each of them acquires as a gift or inheritance, is under mastery of each as long as the parties do not specify otherwise. Furthermore, the provisions of Article 36 (1) also state that the joint property of a husband and wife can act upon the agreement of both parties. (2): With regard to innate property, each husband and wife has the full right to carry out his actions. Article 37 of the Compilation of Islamic Law states "If a marriage is broken up due to divorce, joint assets are regulated according to their respective laws".

Joint property is not found in Islamic society where it is customary to separate the husband's property from the wife's property in a household relationship. Assets that are fully owned by each prior to the marriage or assets acquired by each party during the marriage period that are not joint ventures, for example: receiving inheritance, grants, gifts, and so on.

Judging from its origin (Soemiyati, 2004) assets in the marriage can be classified into three groups:

1. The property of each husband and wife which was owned by him before being married, whether he obtained it because he received an inheritance or other businesses, is called innate property.
2. The assets each husband and wife acquired while they were in a marital relationship, but obtained not because of their efforts together or individually, but obtained because of grants, inheritance or wills for each of them.
3. Assets acquired after they are in a marital relationship due to the efforts of both of them or one of their parties are called income assets.

Joint property or gono-gini can also be divided in the event of a divorce in a marriage. However, the division of joint property or gono-gini both in the 1974 Marriage Law and the Compilation of Islamic Law divides it equally, namely half for the husband and for the wife. The Marriage Law No. 1 of 1974, the Civil Code and the

Compilation of Islamic Law, contain several articles which regulate the distribution of joint assets. Islamic law experts have different opinions regarding the legal basis of joint assets as mentioned above. Some of them say that the Islamic religion does not regulate joint property in the Qur'an, therefore it is entirely up to them to regulate it. This opinion was expressed by Hazairin, Anwar Harjono and Andoerraoef and followed by his students. Some other Islamic law experts say that it is impossible if the Islamic religion does not regulate joint property.

Furthermore, based on the provisions of Article 48 of the Compilation of Islamic Law, it is stated that if a marriage agreement is made regarding the separation of joint assets or company assets, then the agreement may not eliminate the husband's obligation to fulfill household needs. The amount of contribution in marriage becomes a question, how to assess and measure the amount of contribution in marriage which results in the distribution of joint assets after divorce. Husband and wife have the right to use the joint property they have acquired while for the benefit of their household, of course with the agreement of both parties. And this is different from innate property where both have the right to use it without having the consent of both of them or each has the right to control it as long as the parties do not specify otherwise, as stipulated in Article 35 of Law no. 1 of 1974 concerning Marriage. Marriage Law No. 1 of 1974 also states that the inheritance of each husband and wife is fully the right of each to use it.

The Marriage Law Number 1 of 1974 and the Compilation of Islamic Law have strictly regulated property in marriage. Regarding the types of property in marriage, legally there are two types of property in marriage, namely congenital property and joint property. Inherited assets are property owned by each husband or wife that was obtained before the marriage took place or that was obtained as an inheritance or gift. Article 35 paragraph (2) of the Marriage Law Number 1 of 1974 stipulates that "Inherited property of each husband and wife and assets obtained by each as a gift or inheritance, are under the control of each as long as the parties do not determine otherwise."

Dalam hal lain, jika harta bawaan dari masing-masing suami atau isteri hendak If it is included in the marital joint property, it is advisable that a marriage agreement is made beforehand or at the time the marriage takes place. As explained in Article 29 paragraph (1) of the Marriage Law Number 1 of 1974, both the Marriage Law Number 1 of 1974 and the Compilation of Islamic Law have explicitly explained that assets acquired during marriage become joint property. Inheritance of each husband and wife and property obtained by each as a gift or inheritance, are under the control of each as long as the parties do not specify otherwise. This provision has been stated in article 35 of the Marriage Law Number 1 of 1974. The importance of the marriage agreement as a protector in the event of a divorce which requires the distribution of joint assets and or in the event of a divorce and death which will usually cause conflict over the assets left behind. For this reason, based on the description that has been stated above, it is important to carry out an assessment of the position of innate assets, which the authors then set forth in a research study entitled: "INHERITANCE RIGHTS OF A SUBSTITUTE WIFE AGAINST HUSBAND'S INHERITED ASSETS".

RESEARCH METHODS

The research method used in this study is a normative legal research method, namely by analyzing the problems based on the analysis of legal principles and norms, as well as statutory regulations. Peter Mahmud Marzuki explained that normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal problems at hand. In this normative legal research, three types of approaches are used to discuss existing problems, namely: the statutory approach, the legal concept approach, the comparative law approach. To answer the problems mentioned above, this research will explore the principles and norms relating to the Inheritance Rights of a Substitute Wife for Her Husband's Inheritance and how to examine literature review materials or secondary data.

RESULTS AND DISCUSSION

1. Legal Provisions Regarding Innate Assets Based on the Provisions of Legislation

The Marriage Law Number 1 of 1974 and the Compilation of Islamic Law have strictly regulated property in marriage. Regarding the types of property in marriage, legally there are two types of property in marriage, namely congenital property and joint property. Inherited assets are property owned by each husband or wife that was obtained before the marriage took place or that was obtained as an inheritance or gift. Article 35 paragraph (2) of the Marriage Law Number 1 of 1974 stipulates that "Inherited property of each husband and wife and assets obtained by each as a gift or inheritance, are under the control of each as long as the parties do not determine otherwise."

Regarding the position of assets in marriage which has been regulated in Law Number 1 of 1974, it is again strengthened in the Compilation of Islamic Law. Where it is described in Article 1 letter f of the Compilation of Islamic Law that: "All property acquired by a husband and wife during their marriage becomes joint property, whether the property is acquired individually or jointly without questioning whether it is registered or acquired in the name of anyone".

So regarding assets acquired by a husband and wife while in a marriage bond, they are shared property, whether each works at the same place or at a different place, whether the income is registered as the income of the wife or husband, also the storage is registered as savings. It doesn't matter whether it's the husband or the wife who has income, or both have their own income while in marriage.

Dalam hal lain, jika harta bawaan dari masing-masing suami atau isteri hendak If it is included in the marital joint property, it is advisable that a marriage agreement is made beforehand or at the time the marriage takes place. As explained in Article 29 paragraph (1) of the Marriage Law Number 1 of 1974, both the Marriage Law Number 1 of 1974 and the Compilation of Islamic Law have explicitly explained that assets acquired during marriage become joint property. Inheritance of each husband and wife and property obtained by each as a gift or inheritance, are under the control of each as long as the parties do not specify otherwise. This provision has been stated in article 35

of the Marriage Law Number 1 of 1974. The importance of the marriage agreement as a protector in the event of a divorce which requires the distribution of joint assets and or in the event of a divorce and death which will usually cause conflict over the assets left behind. Joint assets may not be separated or divided while the marriage is still ongoing. If the husband and wife are separated due to death or as a result of divorce then it can be divided. If the husband and wife divorce at the time or one of them dies without children, then all the joint property is divided in half after expenses for the funeral and payment of the husband and wife's debts are paid. If this couple has children, the heir is the husband or wife who has lived the longest and is with their children.

The Islamic Law Compilation has substantially placed the marriage agreement as regulated in Chapter VII articles 45 to 52 concerning marriage agreements. Article 45 of the Compilation of Islamic Law (KHI) states that "both bride and groom can enter into a marriage agreement in the form of Ta'lik divorce or other agreements that are not contrary to Islamic law. Other agreements that do not conflict with Islamic Law are regulated in Articles 47-50 KHI, among others regarding property, for example mixing or separating each other's livelihood assets as long as they do not conflict with Islamic law. If the agreement concerns the separation of joint assets, then it may not eliminate the husband's obligation to meet household needs (Article 48 paragraph (1) KHI). The agreement on mixing personal assets can cover all property, both brought and obtained jointly in marriage (Article 49 paragraph (1) KHI), but can also be a marriage agreement.

Regarding joint property, husband or wife can act with the agreement of both parties. Furthermore, regarding their respective assets, husband and wife have the full right to carry out legal actions regarding their property. Legal experts in Indonesia have explained that what is meant by joint assets are all assets acquired during the marriage, regardless of which of the husband and wife are looking for them and also without questioning in whose name the assets are registered (Manan, 2008: 108). According to Articles 35 and 36 of Law Number 1 of 1974 concerning Marriage which in full reads as follows:

Article 35

- 1) Property acquired during marriage becomes joint property.
- 2) The inherited assets of each husband and wife and the assets each received as a gift or inheritance are under the control of each recipient, the parties do not specify otherwise.

Article 36

- 1) Regarding joint property, husband and wife can act with the agreement of both parties.
- 2) Regarding their respective assets, husband and wife have the full right to carry out legal actions regarding their property.

Property acquired during marriage must be interpreted as the result of cooperation between husband and wife. The word cooperation must be interpreted broadly, there are 2 (two) possible forms of cooperation between husband and wife. First, both husband and wife work to earn a living, so that there is a mix of assets between the income of the husband and the income of the wife. Second, only the husband works to make a living. This is still seen as a form of cooperation, even though cooperation is not physically visible there. However, a husband is at work of course for the enthusiasm, support and preparation that has been made by his wife who acts as a housewife.

As long as a marriage between husband and wife is still going well and in harmony, there will be no problem with the legal consequences of the marriage on the joint property/assets in it, because they consider their joint property/assets to still be a single unit to be used together. -as long as it is agreed by both parties. As explained in the Marriage Law Number 1 of 1974, Article 36 paragraph (1) that "Regarding joint property, the husband or wife can act with the agreement of both parties".

From a legal point of view, joint assets owned by husband and wife are regulated in articles 35 and 36 of the Marriage Law number 1 of 1974 concerning marriage. The provisions of article 35 stipulate that property acquired during marriage becomes joint property as well as the inheritance of each husband and wife and the property each receives as a gift or inheritance is under the control of each recipient, the parties do not specify. Actions on joint assets are further regulated in article 36 of the Marriage Law number 1 of 1974 concerning marriage which states that regarding joint assets husband and wife can act with the agreement of both parties and regarding their respective assets, husband and wife have full rights to take legal action regarding his property.

In chapter VIII of the Compilation of Islamic Law, it is explicitly stated regarding marital assets. In this chapter, in accordance with the provisions of Article 85 of the Compilation of Islamic Law, it is explicitly stated that the existence of joint property in a marriage does not rule out the possibility of the existence of property owned by each husband or wife. Furthermore, in the provisions of Article 86 of the Compilation of Islamic Law, it is also stated that basically there is no mixing of husband's assets and wife's assets due to marriage. The wife's property remains the right of the wife and is fully controlled by her, as well as the husband's property remains the right of the husband and is fully controlled by him.

The provisions mentioned above illustrate that each party has full rights to their respective inherited assets that were found before the marriage took place (innate assets). Likewise, each party will be legally responsible for their respective assets that were found before the marriage took place. Husband or wife has the right to spend their respective assets. However, if the husband and wife determine otherwise, for example by means of a marriage agreement, the possession of inherited property is carried out in accordance with the contents of the agreement. Likewise, in the event of a divorce, the inheritance is controlled and carried by the respective owners, unless otherwise specified in the marriage agreement.

As long as a marriage between husband and wife is still going well and in harmony, there will be no problem with the legal consequences of the marriage on the joint property/assets in it, because they consider their joint property/assets to still be a single unit to be used together. -as long as it is agreed by both parties. As explained in the Marriage Law Number 1 of 1974, Article 36 paragraph (1) that "Regarding joint property, the husband or wife can act with the agreement of both parties".

From a legal point of view, joint assets owned by husband and wife are regulated in articles 35 and 36 of the Marriage Law number 1 of 1974 concerning marriage. The provisions of article 35 stipulate that property acquired during marriage becomes joint property as well as the inheritance of each husband and wife and the property each receives as a gift or inheritance is under the control of each recipient, the parties do not specify. Actions on joint assets are further regulated in article 36 of the Marriage Law number 1 of 1974 concerning marriage which states that regarding joint assets husband and wife can act with the agreement of both parties and regarding their respective assets, husband and wife have full rights to take legal action regarding his property.

In chapter VIII of the Compilation of Islamic Law, it is explicitly stated regarding marital assets. In this chapter, in accordance with the provisions of Article 85 of the Compilation of Islamic Law, it is explicitly stated that the existence of joint property in a marriage does not rule out the possibility of the existence of property owned by each husband or wife. Furthermore, in the provisions of Article 86 of the Compilation of Islamic Law, it is also stated that basically there is no mixing of husband's assets and wife's assets due to marriage. The wife's property remains the right of the wife and is fully controlled by her, as well as the husband's property remains the right of the husband and is fully controlled by him.

The provisions mentioned above illustrate that each party has full rights to their respective inherited assets that were found before the marriage took place (innate assets). Likewise, each party will be legally responsible for their respective assets that were found before the marriage took place. Husband or wife has the right to spend their respective assets. However, if the husband and wife determine otherwise, for example by means of a marriage agreement, the possession of inherited property is carried out in accordance with the contents of the agreement. Likewise, in the event of a divorce, the inheritance is controlled and carried by the respective owners, unless otherwise specified in the marriage agreement.

2. Position of Inheritance of Husband's Inherited Assets Against Substitute Wife Based on Compilation of Islamic Law and Civil Code

Talking about the position of the husband's innate property to the surrogate wife in substance has been regulated in chapter VIII of the Compilation of Islamic Law regarding assets in marriage. In this chapter, in accordance with the provisions of Article 85 of the Compilation of Islamic Law, it is explicitly stated that the existence of joint property in a marriage does not rule out the possibility of the existence of property owned by each husband or wife. Furthermore, in the provisions of Article 86 of the Compilation of Islamic Law, it is also stated that basically there is no mixing of

husband's assets and wife's assets due to marriage. The wife's property remains the right of the wife and is fully controlled by her, as well as the husband's property remains the right of the husband and is fully controlled by him.

In the previous discussion, it was discussed about the position of inherited assets, which based on the provisions of the Compilation of Islamic Law explicitly stated that the inherited assets of each husband and wife and the assets obtained by each as gifts or inheritance were under the control of each, as long as the parties do not specify otherwise in the marriage agreement. In the provisions of article 87 paragraph (1) of the Compilation of Islamic Law explains that "Innate assets of each husband and wife and assets obtained by each as a gift or inheritance are under the control of each, as long as the parties do not specify otherwise in the marriage agreement" .

Likewise with the source of assets found by each husband and wife in the form of grants, gifts, *sodaqah* or others. The provisions of article 87 paragraph (2) of the Compilation of Islamic Law explain that "Husband and wife have the full right to carry out legal actions on their respective assets in the form of grants, gifts, *sodaqah* or other things".

The provisions mentioned above illustrate that each party has full rights to their respective inherited assets that were found before the marriage took place (innate assets). Likewise, each party will be legally responsible for their respective assets that were found before the marriage took place. Furthermore, the Compilation of Islamic Law has also expressly stated that the inheritance of each husband and wife and the assets obtained by each as a gift or inheritance are under the control of each, as long as the parties do not specify otherwise in the marriage agreement. In the provisions of article 87 paragraph (1) of the Compilation of Islamic Law explains that "Innate assets of each husband and wife and assets obtained by each as a gift or inheritance are under the control of each, as long as the parties do not specify otherwise in the marriage agreement" .

Likewise with the source of assets found by each husband and wife in the form of grants, gifts, *sodaqah* or others. The provisions of article 87 paragraph (2) of the Compilation of Islamic Law explain that "Husband and wife have the full right to carry out legal actions on their respective assets in the form of grants, gifts, *sodaqah* or other things".

Based on the provisions of Article 97 of the Compilation of Islamic Law stipulates that: "A 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. Thus, regarding the inheritance rights of a substitute wife for the husband's inherited property, then with reference to the legal concept of causes for someone to inherit, that must be based on one of the following reasons, namely:

- 1) Kinship, namely the relationship of fate with the person who inherits (*muwaris*) with the person who will receive the inheritance because of blood ties, inheritance because this lineage includes:

- a. Children, grandchildren both male and female (furu).
 - b. Father, grandfather, mother, grandmother (suggestion).
 - c. Brothers or sisters, uncles and sons of uncles, aunts (hawasy).
- 2) Marriage, a valid marriage causes a legal relationship of mutual inheritance between husband and wife, if one of them dies, the wife or widow inherits her husband's property. Likewise, if a wife dies, her husband inherits his wife's property. The validity of the inheritance relationship between husband and wife is based on: There is a valid marriage contract and both are still married when one of them dies, including the wife who is in the iddah period after being divorced raji'i.
 - 3) Wala, namely the legal relationship, a relationship established by Islamic Law, because the master has given pleasure to live freely and returned human rights to his slaves. Strictly speaking, if a master frees his slaves, then there is a family relationship called wala' itqi. With this relationship, a master becomes the heir of the slave he frees, provided that the slave in question has no heirs at all, either because of kinship or because of marriage.
 - 4) From the provisions of the articles described above, in terms of legal provisions, the surrogate wife has absolutely no right to the status of the property brought/obtained by her husband before the marriage was held for her, provided that the surrogate wife is only entitled to inherit the property that they found. during marriage without questioning whose income these assets come from

CONCLUSION

Based on the description Based on the description of the previous chapters, it can be concluded that Law No. 1 of 1974 concerning Marriage Compilation of Islamic Law as an embodiment of legal uniformity in Indonesia confirms that the Legal Provisions regarding innate property based on the Provisions of Article 85 of the Compilation of Islamic Law expressly states that The existence of joint assets in a marriage does not rule out the possibility of having property owned by each husband or wife. Furthermore, in the provisions of Article 86 of the Compilation of Islamic Law, it is also stated that basically there is no mixing of husband's assets and wife's assets due to marriage. The wife's property remains the right of the wife and is fully controlled by her, as well as the husband's property remains the right of the husband and is fully controlled by him. Based on the description Based on the description of the previous chapters, it can be concluded that Law No. 1 of 1974 concerning Marriage Compilation of Islamic Law as an embodiment of legal uniformity in Indonesia confirms that the Legal Provisions regarding innate property based on the Provisions of Article 85 of the Compilation of Islamic Law expressly states that The existence of joint assets in a marriage does not rule out the possibility of having property owned by each husband or wife. Furthermore, in the provisions of Article 86 of the Compilation of Islamic Law, it is also stated that basically there is no mixing of husband's assets and wife's assets due to marriage. The wife's property remains the right of the wife and is fully

controlled by her, as well as the husband's property remains the right of the husband and is fully controlled by him.

BIBLIOGRAPHY

Books :

- Damanhuri HR, *Segi-segi Hukum Perjanjian Perkawinan Harta Bersama*, Bandung : CV Mandar Maju, 2007.
- Hasbi Ash. Shiddieqy, *Falsafah Hukum Islam*, Jakarta : Bulan Bintang, 1975), h. 477
- Hilman Hadi Kusuma, *Hukum Perkawinan Adat*, Bandung: PT. Citra Aditya Bakti 1995.
- Ibnu Rusyd Al Qurtuby Al andalusy, *Bidayatul 'l-Mujtahid Juz 2*, Beirut : Darul Fikr, tt.
- Idris Ramulyo, *Hukum Perkawinan Islam*. Jakarta: PT Bumi Aksara, 1996.
- Idris Ramulyo, *Hukum Perkawinan Islam: suatu analisis dari Undang-undang No. 1 tahun 1974 dan Kompilasi Hukum Islam*, Jakarta: Bumi Aksara 2004.
- Indahwati, *Pembagian Harta Bersama*, Surabaya : UNAIR, 2008.
- Ismuha, *Pencaharian Bersama Suami Isteri di Indonesia*, Jakarta : Bulan Bintang, 1978.
- J. Satrio, *Hukum Harta Perkawinan*, Bandung : PT. Citra Aditya Bakti, 1991.
- KHI Seri Perundangan, Yogyakarta : Pustaka Widyatama, 2004.
- M. Yahya Harahap, *Kedudukan Kewenangan dan Acara Peradilan Agama UU No. 7 tahun 1989*, Jakarta: Pustaka Kartini, 1993.
- M.K., Anshary, *Hukum perkawinan di Indonesia*, Yogyakarta : Pustaka Pelajar 2010.
- Manan, Abdul, *Aneka masalah hukum perdata islam di Indonesia*, Jakarta : Kencana, 2006
- Mohd. Idris Ramulyo, *Hukum Perkawinan Islam*, Cet. II, Jakarta : Bumi Aksara, 1999.
- Muhamad Isna Wahyudi, *Harta Bersama: Antara Konsepsi dan Tuntutan Keadilan*, Yogyakarta : UIN Sunan Kalijaga, 2004.
- Projohamijoyo, Martiman, *Tanya jawab mengenai Undang-undang perkawinan dan peraturan pelaksanaan*, Jakarta : Pradnya Paramita, 1991.
- Roihan A. Rasyid, *Hukum Acara Peradilan Agama*, Edisi III Cet. X; Jakarta: PT. Raja Grafindo Persada, 2003.
- Satrio. J, *Hukum Harta Perkawinan*. Bandung : Citra Aditya Bakti, 1991.
- Soemiyati, *Hukum Perkawinan Islam dan Undang-undang Perkawinan no.1 tahun 1974* (Yogyakarta: Liberti , 2004.
- Yusuf, Muhammad, Sitregar, *Hukum Perkawinan di Indonesia* (Medan: Yayasan Universitas Labuhanbatu, 2015.

Legislation, namely:

Undang-undang Nomor 1 tahun 1974 tentang perkawinan.

Inpres No. 1 Tahun 1991 tentang KHI.

Kitab Undang-Undang Hukum Perdata.