



## Marital Property as Debt Collateral without Spousal Consent in Indonesia: Legal Validity, Execution, and Judicial Interpretation

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### Abstract

One of the issues frequently debated in family law concerns the legal status of marital property. Conceptually, property acquired during age constitutes marital property unless otherwise stipulated in a prenuptial or postnuptial agreement. Legal problems arise when marital property is used as collateral for debt without the consent of one spouse, particularly with regard to the validity of such collateralization, the enforceability of its execution, and the settlement of marital property execution in the event of divorce. This study aims to analyze the legal status and execution of marital property pledged as collateral for debt without spousal consent, with reference to Supreme Court Decision Number 209 K/PDT/2000. This research employs a normative juridical method using a statute approach and a case approach. The findings indicate that marital property used as collateral for debt without the consent of both spouses lacks legal validity and cannot be lawfully executed by creditors, as such actions violate the principle of joint ownership and involve third-party interests. The Supreme Court decision affirms that neither spouse may unilaterally perform legal acts over marital property for the purpose of debt settlement through execution. This study contributes to the development of family and property law by clarifying the legal consequences of unauthorized collateralization of marital property and by reinforcing the principle of joint ownership protection. The findings are expected to provide normative guidance for courts and creditors, while also encouraging regulatory reform to ensure legal certainty and fairness for all parties.

**Keywords:** Dispute Resolution, Debt collateral, Family law, Marital property

### Abstrak

Salah satu isu yang sering diperdebatkan dalam hukum keluarga adalah kedudukan harta bersama. Secara konseptual, harta yang diperoleh selama perkawinan merupakan harta bersama sepanjang tidak ditentukan lain melalui perjanjian perkawinan. Permasalahan hukum muncul ketika harta bersama dijadikan sebagai jaminan utang tanpa persetujuan salah satu pihak, terutama terkait keabsahan jaminan tersebut, kemungkinan pelaksanaan



eksekusi, serta penyelesaian eksekusi harta bersama apabila terjadi perceraian. Penelitian ini bertujuan untuk menganalisis kedudukan hukum dan pelaksanaan eksekusi harta bersama yang dijadikan jaminan utang tanpa persetujuan pasangan dengan merujuk pada Putusan Mahkamah Agung Nomor 209 K/PDT/2000. Metode penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan dan pendekatan kasus. Hasil penelitian menunjukkan bahwa harta bersama yang dijadikan jaminan utang tanpa persetujuan kedua belah pihak tidak memiliki kekuatan hukum dan tidak dapat dieksekusi secara sah oleh kreditur karena bertentangan dengan prinsip kepemilikan bersama serta melibatkan kepentingan pihak ketiga. Putusan Mahkamah Agung tersebut menegaskan bahwa suami atau istri tidak dapat secara sepihak melakukan perbuatan hukum terhadap harta bersama untuk tujuan penyelesaian utang melalui eksekusi. Penelitian ini berkontribusi pada pengembangan hukum keluarga dan hukum kebendaan dengan memperjelas akibat hukum pembebanan jaminan atas harta bersama tanpa persetujuan pasangan serta menegaskan pentingnya perlindungan terhadap hak kepemilikan bersama. Temuan penelitian ini diharapkan dapat menjadi pedoman normatif bagi peradilan dan kreditur, sekaligus mendorong pembaruan regulasi guna menjamin kepastian hukum dan keadilan bagi para pihak.

**Kata Kunci:** Penyelesaian Sengketa, Jaminan utang, Hukum keluarga, Harta bersama

## Introduction

Legally, when a age occurs, rights and obligations between husband and wife automatically arise, including the pooling of marital property during the age, unless there is an agreement between the husband and wife during the age that the property of each party is not joint property, as evidenced by a age agreement.<sup>1</sup> In addition, the legal consequences of age give rise to a reciprocal legal relationship between husband and wife, a legal relationship between children born to the parents, as well as a legal relationship regarding property acquired during the age and its legal consequences.<sup>2</sup> Property acquired by a husband and wife during age is subject to property law, and marital property is as specified in the Compilation of Islamic Law and property law as stipulated in the Civil Code.<sup>3</sup>

Legal normativism related to property is regulated in three forms of legislation. First, the Civil Code. Second, Law No. 1 of 1974 on age, which refers to property in age as joint property, regulated in three articles, starting from Article 35, two paragraphs, Article 36, two paragraphs, and Article 37.<sup>4</sup> Third, Presidential Instruction No. 1 of 1999 concerning the Compilation of Islamic Law. The legal context of joint property as regulated in the KHI, which is regulated in Articles 85-97 concerning joint property, is referred to as marital

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<sup>1</sup> Asman Asman et al., "Existence of age Agreements in Islam Development Studies in the Community of Malay Border Indonesia-Malaysia," *Jurnal Ilmiah Al-Syir'ah* 19, no. 1 (2021): 16-29, <https://doi.org/10.30984/jis.v19i1.1256>.

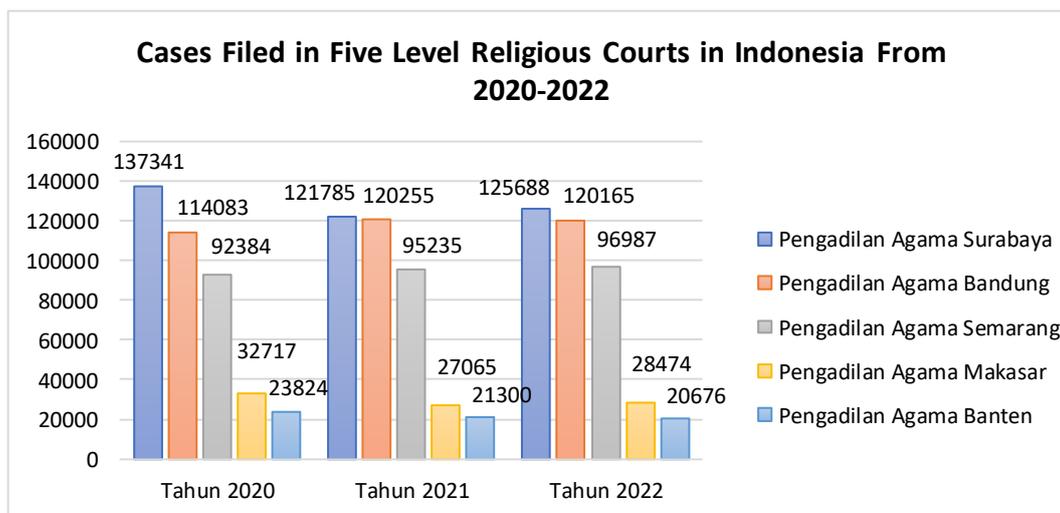
<sup>2</sup> Diah Andari et al., "Legal Consequences of Making and Changing age Agreements Made After age," *Path of Science* 9, no. 11 (2023): 5010-5020, <https://doi.org/10.22178/pos.98-25>.

<sup>3</sup> Reka Desrina Wati, "The age Agreement in Article 29 of Law Number 1 of 1974 Is Reviewed According to Islamic Law," *Al-Hurriyah: Jurnal Hukum Islam* 7, no. 2 (2022): 116-30, <https://doi.org/10.30983/alhurriyah.v7i2.4125>.

<sup>4</sup> Agus Hernoko et al., "Nuptial Agreement in Indonesia: A New Change in Indonesian age Law," paper presented at International Conference on Law, Governance and Globalization 2017 (ICLGG 2017), Surabaya, Indonesia, *Proceedings of the International Conference on Law, Governance and Globalization 2017 (ICLGG 2017)*, Atlantis Press, 2018, <https://doi.org/10.2991/iclgg-17.2018.4>.

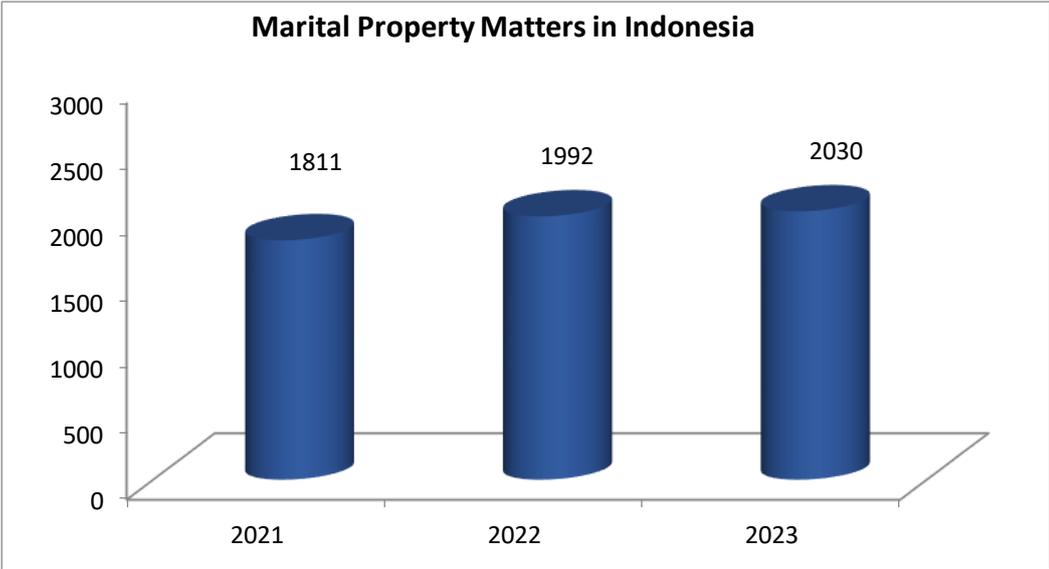
property. The term “joint property” as regulated by Law No. 1 of 1974 concerning age and the Compilation of Islamic Law has no difference in meaning from the terms “property in age” and “wealth in age”.<sup>5</sup>

According to the provisions of Article 124 of the Civil Code, in the case of joint property management, only the husband has the right to transfer and assign property in the form of sale and purchase with collateral without the assistance of the wife, except as stipulated in Article 140 of the Civil Code.<sup>6</sup> The same applies to joint property given in the form of a grant, whether movable property in part or in whole or a specific part, except for children born from the age.<sup>7</sup> Article 124 of the Civil Code explicitly states that the provisions regarding joint property in age are as follows: *First*, the authority to manage joint property lies with the husband. *Second*, the authority granted to the husband may include the transfer or sale of joint property without the assistance of the wife, except as provided under Article 140 of the Civil Code. *Third*, the husband is not permitted to grant joint property as a gift to living persons, whether movable or immovable, either in part or in whole. He is also prohibited from determining a share of joint property through gifts of specific assets intended for his own benefit, including the right to use or enjoy the proceeds derived from such assets. This research was conducted based on the types of joint property cases most frequently resolved in all Religious Courts in Indonesia.



- <sup>5</sup> Bakti Ritonga et al., “Islamic Family Law Reform in Indonesia: A Review of the Supreme Court’s Decision on the Postponement of the Distribution of Joint Property,” *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 2 (2024): 292–311, <https://doi.org/10.32505/qadha.v11i2.9667>; Dwanda Julisa Sistyawan et al., “The Position of the Van Dading Deed in the Settlement of Joint Property Disputes: Study of Decision 901/Pdt.G/2023/PA. Tmg,” *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 1 (2024): 49–67, <https://doi.org/10.32505/qadha.v11i1.8811>.
- <sup>6</sup> Nurunnisa Nurunnisa et al., “Implications of Annulment of age on the Distribution of Joint Assets According to the Compilation of Islamic Law and National Law,” *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 1 (2023): 1–23, <https://doi.org/10.18592/sjhp.v23i1.9523>.
- <sup>7</sup> Eko Rial Nugroho et al., “Granting of Property During age as an Inherited Property in Indonesia,” *El-Usrah: Jurnal Hukum Keluarga* 7, no. 1 (2024): 310, <https://doi.org/10.22373/ujhk.v7i1.22875>.

The primary data above shows that disputes over joint property in five Religious Courts in Indonesia from 2020 to 2022 fluctuated. In 2018, the number of cases received by courts of first instance throughout Indonesia was 625,268. There were 76,330 cases remaining from 2017, bringing the total number of cases handled in 2018 to 701,598. There were 588,226 cases decided in 2018 and 39,863 cases were withdrawn by the parties, resulting in 73,509 cases remaining at the end of December 2018. The following are details of first-level cases concerning joint property in Religious Courts in Indonesia from 2020 to 2022.



The purpose of the data provided is to analyze court decisions related to the execution of joint property, whether the legal basis for the execution is valid or not, so that the number of executions of joint property can be determined. The types of cases filed in all first-level Religious Courts fluctuate, meaning that civil cases in all Religious Courts in Indonesia experience ups and downs. However, looking at the data above, it is clear that divorce by lawsuit and divorce by decree are the most common cases settled through the Religious Court, followed by age validation requests. Disputes over the settlement of joint property are in the seventh most common category after guardianship disputes. This will be even more interesting to study comprehensively and in depth, because divorce lawsuits and divorce by repudiation filed with the Religious Court do not necessarily involve joint property claims.

The various Religious Court decisions above will immediately result in legal action in the event of divorce, whether the joint property that is guaranteed can be separated based on the principle of legal interest, setting aside the principle of unity in joint property.<sup>8</sup> Collateralization is a legal action whereby movable or immovable assets are used as

<sup>8</sup> Ermi Suhasti Syafei and Siti Djazimah, "Mediation In Settlement of Joint Marital Property Disputes: Study At Tanjung Karang Religious Court, Lampung," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021): 867, <https://doi.org/10.22373/sjhk.v5i2.9039>; Muhazir Muhazir et al., "Legal Institutions in Resolving Divorce Cases in Aceh," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (2024): 211-230; Muhazir Muhazir and Azwir Azwir, "Divorce Bureaucracy in the Sharia Space: Examining Practices in Langsa City, Aceh," *At-Ta'fikir* 17, no. 1 (2024): 44-55, <https://doi.org/10.32505/at.v17i1.9491>.

collateral for debt repayment, thereby providing legal certainty to creditors that if the debtor fails to fulfill their obligations, the creditors can sell the assets used as collateral to repay the debt. In addition to the issues mentioned above, a crucial issue is how joint property that is used as collateral exists and how the execution and seizure process works when there is a legal dispute. The above issues are not only related to whether or not joint property can be encumbered.

To find answers to the problems raised, it is necessary to use appropriate research methods so that systematic and measurable answers can be found. This study uses a normative juridical research method by analyzing the problem using a regulatory approach.<sup>9</sup> The analysis of joint property data is based on legal principles and norms, both laws contained in regulations and laws as court decisions.<sup>10</sup> This study uses primary and secondary data on the settlement of disputes over the execution of joint property used as collateral for debt. Primary data was obtained through the decisions of the Religious Courts in Indonesia, while the secondary data used in this study consists of legal materials that provide explanations of the primary legal materials.<sup>11</sup> The analysis process was carried out by inventorying and identifying secondary data, including primary legal materials, secondary legal materials, and relevant tertiary legal materials. Then, all legal materials were systematized for in-depth, objective, and logical analysis. This made it possible to identify the philosophical basis and issues to be studied.<sup>12</sup>

### **Positive Legal Approach to the Regulation of Joint Property in age**

Sayuti Thalib, in his book *Hukum Kekeluargaan Indonesia (Indonesian Family Law)*, states that joint property is wealth acquired during age, excluding gifts or inheritance. This means assets acquired through their joint or individual efforts during the age.<sup>13</sup> Abdul Manan defines joint property as assets acquired during the age, regardless of whose name they are registered under. Abdul Kadir Muhammad presents joint property as wealth that can be examined from a legal and economic perspective, where the two have a relationship and connection. The economic perspective of joint property is related to value and usefulness, while the legal perspective is related to legal regulations on joint property.<sup>14</sup>

The management of joint property acquired during age is regulated in various laws and regulations in Indonesia. Conceptually, there are no significant differences between the provisions governing joint property in these laws and regulations; rather, they complement each other.<sup>15</sup> Even in cases where disputes over joint property are settled through litigation, the material source used as a benchmark and reference is Law No. 1 of 1974 on age and the

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<sup>9</sup> Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (Russell Sage Foundation, 1975). 6

<sup>10</sup> Lawrence M. Friedman, *American Law in the Twentieth Century* (Yale University Press, 2008).6

<sup>11</sup> I. Gusti Ketut Ariawan, "Metode Penelitian Hukum Normatif," *Kertha Widya* 1, no. 1 (2013): 21-30, <https://doi.org/10.37637/kw.v1i1.419>.

<sup>12</sup> Muhammad Ramdhan, *Metode Penelitian* (Surbaya: Cipta Media Nusantara, 2021).109

<sup>13</sup> Thalib Sayuti, *Hukum Kekeluargaan Indonesia* (Jakarta: UI Pres, 1986). 89

<sup>14</sup> Abdulkadir Muhammad, *Hukum Harta Kekayaan* (Citra Aditya Bakti, 1994).9

<sup>15</sup> Desi Fitrianti, "Harta Bersama Dalam Perkawinan Poligami Menurut Undang-Undang Nomor 1 Tahun 1974 Dan Hukum Islam," *Jurnal Intelektualita: Keislaman, Sosial Dan Sains* 6, no. 1 (2017): 83-102, <https://doi.org/10.19109/intelektualita.v6i1.1302>.

Compilation of Islamic Law, in addition to jurisprudence and other regulations.<sup>16</sup> The regulation of joint property in the Civil Code BW no longer applies since the enactment of Law No. 1 of 1974 concerning age, but this does not mean that the Civil Code BW can be simply disregarded. Article 66 of Law No. 1 of 1974 concerning closing provisions states that regulations concerning age and matters related to age through Law No. 1 of 1974, since the enactment of Law No. 1 of 1974, the provisions governing age in the Civil Code (Burgerlijk Wetboek), the Indonesian Christian age Ordinance (Huwelijks Ordonantie Christen Indonesiers S.1933 No. 74), the Mixed age Regulations (Regeling op de gemengde Huwelijken S. 1898 No. 158), and other regulations governing age to the extent that they have been regulated in this Law, are declared invalid.<sup>17</sup>

The interpretation of Article 66, particularly the phrase “other regulations governing age to the extent that they are regulated in this Law, are declared invalid” means that all matters relating to age shall be governed by Law No. 1 of 1974, and when no regulations relating to age are found in Law No. 1 of 1974 and other regulations, the Civil Code (KUHPdata BW) may be used as a reference.<sup>18</sup> This is reiterated in Article 5 paragraph (2) of the explanation of Law No. 1 of 1974 to guarantee the legal status and certainty of age, so that ages conducted before Law No. 1 of 1974 on age in accordance with existing laws are valid. If this law does not regulate a particular matter, the existing provisions shall apply.<sup>19</sup>

Perspective Law No. 1 of 1974 regulates joint property in Chapter VII on property in age through Article 35, which consists of paragraphs (1 and 2), Article 35 paragraphs (1 and 2) and Article 37. Law No. 1 of 1974 on age stipulates that assets acquired during age are considered joint property, regardless of whether both spouses work or only one of them works. Conversely, whether the husband earns more or the wife earns more, when the property is acquired during the age, it falls into the category of joint property, unless there is a age agreement regarding the separation of property.<sup>20</sup> To determine whether property acquired before age falls into the category of joint property or not, Article 35 paragraph (2) explicitly states that property acquired by the husband and wife in the form of gifts, bequests, or even inheritance is not included in the category of joint property. Therefore, the personal property of each spouse remains under their respective control, and each party has

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<sup>16</sup> Putri Maharani and Lauditta Humaira, “Royalti Sebagai Harta Bersama Dan Akibat Hukumnya Dalam Perceraian,” *Lex Patrimonium* 4, no. 1 (2025), <https://scholarhub.ui.ac.id/lexpatri/vol4/iss1/3>.

<sup>17</sup> Dwi Anindya Harimurti, “Perbandingan Pembagian Harta Bersama Menurut Hukum Positif Dan Hukum Islam,” *Jurnal Gagasan Hukum* 3, no. 02 (2021): 149–71, <https://doi.org/10.31849/jgh.v3i02.8908>.

<sup>18</sup> Hafizha Harts, “Perspektif Ulama Kota Langsa Terhadap Pembagian Harta Bersama Bagi Istri Yang Tidak Bekerja,” *El-Ussrah: Jurnal Hukum Keluarga* 5, no. 2 (2022): 374–87, <https://doi.org/10.22373/ujhk.v5i2.11929>.

<sup>19</sup> Etty Rochaeti, “Analisis Yuridis Tentang Harta Bersama (Gono Gini) Dalam Perkawinan Menurut Pandangan Hukum Islam Dan Hukum Positif,” *Jurnal Wawasan Yuridika* 28, no. 1 (2013): 650–61, <https://doi.org/10.25072/jwy.v28i1.61>.

<sup>20</sup> Besse Sugiswati, “Konsepsi Harta Bersama Dari Perspektif Hukum Islam, Kitab Undang-Undang Hukum Perdata Dan Hukum Adat,” *PERSPEKTIF: Kajian Masalah Hukum Dan Pembangunan* 19, no. 3 (2014): 201–11, <https://doi.org/10.30742/perspektif.v19i3.22>.

the right to dispose of such personal property in any form, whether through sale, gift, endowment, or otherwise, unless the parties agree otherwise.<sup>21</sup>

The provisions and terms relating to joint property from a positive law perspective are regulated in Article 119 of the Civil Code, which states that from the moment of age, the law applies to the complete union of the husband and wife's assets, or joint property between husband and wife, insofar as no other provisions are stipulated in the age agreement. Joint property, during the age, cannot be eliminated or changed by agreement between the husband and wife.<sup>22</sup> The interpretation of Article 119 of the Civil Code can be understood to mean that all property of the husband and wife becomes joint property after the age takes place, regardless of whether it is separate property or joint property acquired during the age. One of the legal consequences of age is the mixing of property between husband and wife, so that the husband's property is the wife's property and the wife's property is the husband's property. The interpretation of joint property is movable and immovable objects owned now or in the future, profits earned together during the age, debts of the husband and wife before and after the age, and losses incurred during the age.<sup>23</sup>

This is different from Article 35 paragraphs (1 and 2) of Law No. 1 of 1974 on age. Property acquired during age becomes joint property, while property brought by the husband and wife and property acquired through inheritance, gifts, and grants remains under the control of each spouse. Property acquired through the efforts of each husband and wife during the age falls into the category of joint property. There is no significant difference between Law No. 1 of 1974 concerning age and the explanation of the Compilation of Islamic Law (KHI); in fact, they complement and reinforce each other. In general, joint property as regulated in the Compilation of Islamic Law begins in Chapter XIII concerning property in age.<sup>24</sup> From the perspective of the KHI, normatively, age does not cause the mixing of the husband's and wife's property, but it does not rule out the possibility that age may result in the complete unification of joint property acquired during the age. Referring to the general provisions of Chapter I, Article 1, letter (f), it is explicitly stated that property in age can be categorized as joint property, whether the property is acquired individually or jointly, regardless of whether the property is registered in the husband's name or the wife's name.<sup>25</sup>

Property acquired by a husband and wife during their age may be owned and controlled by the wife, husband, parents of the bride and groom, and may also be distributed to relatives of the bride and groom, which is referred to as dowry. As for the joint property acquired by the husband and wife during the age, it is jointly owned and controlled by the husband and wife, therefore this property cannot be divided, and shall continue to be jointly

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<sup>21</sup> Safira Maharani Putri Utami and Siti Nurul Intan Sari Dalimunthe, "Penerapan Teori Keadilan Terhadap Pembagian Harta Bersama Pasca Perceraian," *JURNAL USM LAW REVIEW* 6, no. 1 (2023): 433–47, <https://doi.org/10.26623/julr.v6i1.6899>.

<sup>22</sup> Neng Yani Nurhayani, *Hukum Perdata* (Bandung: CV Pustaka Setia, 2015), 151

<sup>23</sup> Zaeni Asyhadie, *Hukum keperdataan: dalam perspektif hukum nasional KUH Perdata (BW), hukum Islam, dan hukum adat* (Jakarta: Rajawali Pers, 2018).153

<sup>24</sup> Heppy Hyma Puspytasari, "Harta Bersama Dalam Perkawinan Menurut Hukum Islam Dan Hukum Positif," *JATISWARA* 35, no. 2 (2020), <https://doi.org/10.29303/jtsw.v35i2.252>.

<sup>25</sup> Muhammad Tigas Pradoto, "Aspek Yuridis Pembagian Harta Bersama Dalam Perkawinan (Tinjauan Hukum Islam Dan Hukum Perdata)," *Jurnal Jurisprudence* 4, no. 2 (2017): 85–91, <https://doi.org/10.23917/jurisprudence.v4i2.4208>.

controlled, owned, and utilized unless the age is dissolved, regardless of whether the dissolution is due to divorce, death, or a court ruling. In the event of dissolution of the age due to death, before the property is distributed, it must first be separated into joint property and personal property.<sup>26</sup>

In line with Law No. 1 of 1974, the Compilation of Islamic Law regarding the division of joint property stipulates in Article 96 paragraph (1) that in the event of divorce due to the death of one of the spouses, half of the joint property becomes the right of the wife, whereas the husband will receive half of the joint property if the wife dies. Conversely, if no agreement can be reached in the process of dividing joint property, then based on Article 88 of the Compilation of Islamic Law, the matter can be resolved through a lawsuit filed with the Religious Court.<sup>27</sup> The division of joint property due to the death of one of the spouses will be postponed until there is legal certainty that the husband or wife has died, whether legally or actually, and/or based on a court decision. A wife who is left by her husband will receive half of the joint property, while a husband who is left by his wife will receive half of the joint property. The division of joint property includes all profits and losses from the business activities of the husband and wife during their age.<sup>28</sup>

### **Analysis of Dispute Resolution in the Execution of Joint Assets as Collateral for Debt in Indonesia**

The issue of execution against joint property will be difficult, especially if the losing party does not accept the court's decision and does not carry out the obligations imposed on them.<sup>29</sup> Several reasons and obstacles encountered that prevent the execution of joint property include: (a.) The object of execution is outside the jurisdiction of the court that decided the case. (b.) Opposition to the execution by one of the parties to the case or opposition from a third party. (c.) There are two conflicting decisions with the same object. (d.) The object of execution cannot be carried out because the assets have been depleted and no longer exist. The object of execution is in the possession of a third party or the decision is declaratory. The process of executing a court decision on joint property due to divorce is carried out in the following stages: (1) petition by the winning party, (2) estimation of execution costs, (3) issuance of a warning (aanmaning), (4) issuing an execution order, and (5) carrying out the execution in two stages, the first stage against movable property, while the second stage against immovable property.<sup>30</sup>

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<sup>26</sup> Linda Firdawaty et al., "Semanda Lekok in the Sai Batin Community, Lampung: Wife's Domination of Marital Assets from Maqāsid al-Shari'ah Perspective," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (2024): 1734–62, <https://doi.org/10.22373/sjhk.v8i3.19894>.

<sup>27</sup> Zaiyad Zubaidi, "Masalah Dalam Putusan Hakim Mahkamah Syar'iyah Di Aceh Tentang Perkara Harta Bersama," *El-Usrah: Jurnal Hukum Keluarga* 4, no. 1 (2021): 198–215, <https://doi.org/10.22373/ujhk.v4i1.10080>.

<sup>28</sup> Abidin Nuridin, "Pembagian Harta Bersama Dan Pemenuhan Hak-Hak Perempuan Di Aceh Menurut Hukum Islam," *El-Usrah: Jurnal Hukum Keluarga* 2, no. 2 (2019): 139–52, <https://doi.org/10.22373/ujhk.v2i2.7652>.

<sup>29</sup> Denys Sydorenko, "Rights and Obligations of the Wife: Concepts in the Doctrine of Family Law and Features of Implementation in Legal Practice," *Actual Problems of Law*, no. 3 (December 2024): 70–74, <https://doi.org/10.35774/app2024.03.070>.

<sup>30</sup> Sulaikin Lubis et al., *Hukum Acara Perdata Peradilan Agama Di Indonesia*, 1st ed., with Universitas Indonesia (Kencana : Fakultas Hukum, Universitas Indonesia, 2005).161

In principle, the purpose of enforcement is to obtain justice and rights from all forms of losses from other parties. Enforcement against joint property used as collateral for debt can be carried out by the court, including the Religious Court. Based on Law Number 3 of 2006 amending Law Number 7 of 1989 concerning Religious Courts, Religious Courts can carry out all of their own decisions without having to go through the district court. The legal consequences of the enactment of the Religious Court Law are as follows: First, the provisions regarding eksekutorial verklaring and confirmation by the District Court no longer apply. Second, every Religious Court has a bailiff to enforce its decisions.<sup>31</sup>

The following is data on the settlement of joint property disputes at the first level of the Religious Court and the Religious High Court from 2020-2022 based on the Religious Court Annual Report Book.

Table 1. Marital Property Case Settlements

No	Types of Cases	First Level Settlement of Marital Property			Settlement of Marital Property Appeal Level		
		T.2020	T.2021	T.2022	T.2020	T.2021	T.2022
1	Marital Property Litigation	1811	1992	2030	227	307	336
Total Cases		5833			870		

Unlike other disputes, specifically cases involving joint property, data shows an increase in disputes from 2018 to 2020, as well as an increase in joint property disputes in appeals. One form of debt settlement or financing with joint property as collateral can be done by determining the property in the age and then grouping the joint property according to its purpose.

Based on Article 36 paragraphs (1 and 2) of Law No. 1 of 1974 and Article 87 paragraphs (1 and 2) of the KHI, The legal construct that can be used as an argument that joint property and personal property can be used as collateral for debt must obtain the consent of both parties, except for personal property, because personal property is independent, and each husband and wife can use it as collateral without first seeking consent. Likewise, joint property can be used and utilized by both husband and wife because in joint property, each party has reciprocal rights and obligations, considering that the rights and position of the husband are equal to the rights and obligations of the wife, including in terms of performing legal actions on joint property. If one of the spouses does not agree to the joint property being sold, transferred, or used as collateral, in accordance with Article 92 of the KHI, then it is legally invalid and has no legal force.

Based on Supreme Court Decision Number: 209 K/PDT/2000, dated February 26, 2002, regarding the imposition of collateral on joint property used as collateral for debt or financing, it is declared invalid and has no legal consequences arising from the imposition of such collateral. The imposition of collateral on joint property without the consent of one of the spouses is null and void, because the subjective requirements in the agreement as stated

<sup>31</sup> Sulaikin Lubis et al., *Hukum acara perdata peradilan agama di Indonesia*, Edisi 1, Cetakan 1, (Kencana : Fakultas Hukum, Universitas Indonesia, 2005).166

in Article 1320 of the Civil Code, namely that one of the requirements for the validity of an agreement is mutual consent, have not been met.

Supreme Court Decision Number: 82 K/PDT/2004, dated May 22, 2007, concerning the sale and purchase of land that is inherited property, states that the agreement to sell and purchase inherited land is null and void because the inherited property, in this case land, has not been divided among the heirs. In addition, the inheritance included joint property. The two Supreme Court decisions above state that any legal action regarding joint property to transfer it in the form of debt collateral or financing, sale and purchase, wills, grants and bequests, whether movable or immovable, requires agreement as an absolute condition that must be fulfilled in the encumbrance of joint property as collateral.

Legal facts show that the execution of joint property used as collateral cannot be carried out if one of the spouses is unaware of and does not consent to the imposition of such collateral. As a consequence, the lender cannot seek repayment of the debt through execution, because the status of the collateral is still in dispute. The existence of joint property in the event of a dispute between husband and wife over whether the property is joint property or separate property can be resolved in advance through litigation or non-litigation. Based on Supreme Court Circular Letter No. 3 of 2008 concerning the Enforcement of the 2018 Supreme Court Plenary Session Results as a guideline for the implementation of court duties. If the object of the dispute is still used as collateral for debt, then joint property that is still used as collateral for debt or whose ownership is disputed due to a second or subsequent transaction must be declared inadmissible.

The settlement of disputes over joint property between husband and wife may take the following forms: (1). Determination of the objects of joint property between husband and wife. (2). Maintenance and utilization of joint property between husband and wife. (3). Determination of the respective shares of husband and wife. (4). Division of joint property between husband and wife. If the joint property involves a dispute over ownership, as long as it does not concern the determination of whether the disputed property is joint property acquired during the age or the personal property of the husband and wife, the settlement process will be carried out through the Religious Court. However, if it concerns the ownership rights of a third party, or if a third party is involved, the dispute must first be resolved in a General Court, which has absolute jurisdiction.<sup>32</sup> Even in this situation, the rights of the husband and wife to control the joint property will be limited, because in a situation of uncertainty regarding the object of the collateral, the rights of the third party cannot be protected. On the one hand, the joint property has been pledged as collateral, while on the other hand, the joint property has been used as collateral without the knowledge and consent of one of the spouses.

## **Conclusion**

The legal norm governing joint property as collateral can in principle be recognized and justified in accordance with applicable provisions and procedures. The legality of joint property in age is an integral whole that cannot be separated from the owners of the joint property, namely the husband and wife. Therefore, the transfer of joint property in the form

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<sup>32</sup> A. Mukti Arto, *Praktek perkara perdata pada pengadilan agama*, Cet. 1 (Yogyakarta: Pustaka Pelajar, 1996).248

of sale and purchase, grants, wills, including debt collateral or financing, cannot be carried out without the consent of both parties. Such consent is not legal if it is only given by one party. Similarly, in the case of joint property being used as debt collateral, it cannot be divided but must remain in one whole and unified entity. Therefore, a husband and wife cannot use joint property as collateral for any reason without the consent of both parties, and only personal property can be used as collateral if joint property cannot be used as collateral. Regarding the execution of joint property used as collateral for debt, it cannot be carried out if one of the spouses does not agree to the release, so that the other spouse can demand accountability for the repayment of the debt through execution.

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