

A Juridical Review of The Practice of Inheritance Distribution Prior to The Division of Marital Property in East Angkola District, South Tapanuli Regency

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ABSTRACT

This paper aims to analyze the mechanism for distributing inheritance derived from marital property, identify the factors that contribute to the failure to separate such property prior to inheritance distribution, and examine this practice in light of the Compilation of Islamic Law (KHI). Marital property refers to assets acquired by a husband and wife during the course of their marriage until their separation. This study discusses the practice of dividing marital property following a death divorce (*cerai mati*) in Angkola Timur District, which deviates from the provisions of Article 96 paragraph (1) of the Compilation of Islamic Law. The article mandates that marital property must first be divided equally between the spouses upon the death of one party. The research employs a juridical-empirical method, utilizing primary data collected from the field and secondary data derived from Islamic legal literature and statutory regulations. The findings reveal several primary factors behind the failure to divide marital property: community customs that delay distribution until both parents have passed away, the reluctance of children to request distribution in accordance with the KHI, and situations in which the surviving husband remarries. According to the KHI, marital property must be separated prior to the distribution of inheritance. The absence of such separation results in injustice, familial conflict, and social disharmony within the community.

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1. INTRODUCTION

Community property refers to all assets acquired by a husband and wife during the course of their marriage, the ownership of which is collective unless otherwise regulated by a specific agreement

(Zubaidi, 2021). Both husband and wife possess equal rights in the management and utilization of these assets (Suprapti, 2024). In the context of Indonesian law, the regulation of community property is outlined in Law Number 1 of 1974 on Marriage as well as in the Compilation of Islamic Law (KHI) for Muslim couples. Article 35 paragraph (1) of the Marriage Law affirms that assets acquired during the marriage constitute community property, while personal assets are recognized only if they belonged to an individual prior to the marriage or were obtained through gifts or inheritance. Thus, the existence of community property is a legal consequence of marriage, requiring fairness, responsibility, and legal certainty in its management.

The Compilation of Islamic Law (KHI) also regulates community property. Article 85 states that “the existence of community property in a marriage does not preclude the possibility of each spouse having individual assets.” Community property is defined as assets acquired by the husband and wife after marriage until their separation. Article 96 paragraph (1) of the KHI stipulates that “in the event of a spouse’s death, half of the community property belongs to the surviving spouse.”

Although the regulation—specifically Article 96 paragraph (1) of the KHI—mandates that community property must be divided equally following divorce, including death divorce (*cerai mati*), practices within society show otherwise. In East Angkola District, when one spouse passes away, the community property is not immediately divided; instead, it remains under the control of the surviving spouse. Distribution only occurs after both spouses have died and is calculated through inheritance mechanisms. This practice contradicts the provisions of the KHI, which require immediate division of community property, whether to a widow or widower.

In cases of death divorce, the KHI establishes that community property must be divided into two equal shares—50% for the deceased and 50% for the surviving spouse (Suko & Makhali, 2025). If the surviving spouse retains all the assets and no family members object, the division may be postponed until the inheritance process without causing dispute. However, problems arise when the surviving husband remarries and has children from the second marriage. The absence of separation of community property from the first marriage causes these assets to merge with those of the second marriage, leading children from the first wife to feel disadvantaged because their mother’s share is effectively passed on to their step-siblings from the second wife.

Interview findings show that the division of community property after a death divorce in East Angkola District is generally not implemented. Many couples delay the division because the surviving spouse remarries, resulting in the property being divided only after both spouses have passed away and treated as inheritance property. This practice creates issues, particularly when the surviving husband remarries and has children from the subsequent marriage. The lack of separation of community property causes children from the first wife to feel harmed because assets acquired by their parents are inherited by their step-siblings. This condition illustrates that the legal provision on the division of community property is not effectively enforced in East Angkola society, leading to injustice and conflict among family members.

The non-implementation of community property division rules in East Angkola District represents a significant issue requiring further examination. It raises questions as to whether the community is unaware of these regulations or whether they understand them but choose not to apply them for specific reasons. Based on these issues, the author will discuss the Juridical Review of Inheritance Distribution Practices Prior to the Separation of Community Property in East Angkola District, South Tapanuli Regency.

This phenomenon shows that the existence of common property in the East Angkola society is not only understood as a formal legal consequence, but is also influenced by cultural perceptions of family ownership. For most people, property acquired during marriage is seen as belonging to the nuclear family collectively, not to the individual husband or wife. Therefore, the separation of property when one of the spouses dies is considered contrary to family values that emphasize the unity and continuity of family assets. This view is in line with the findings of previous research which showed that the kinship system in various regions in Indonesia places family assets as a communal economic unit so that formal rules

regarding the separation of common property have not been fully internalized in daily practice. (Nasution, 2020)

In addition to the cultural aspect, the limitations of formal institutions in conducting legal socialization also strengthen the low implementation of the separation of common property. Many people do not get adequate information about the procedure for separating joint property, the mechanism for measuring the contribution of husband and wife, and the legal consequences if property is not separated before the division of inheritance. The lack of educational intervention from the Religious Court and the Office of Religious Affairs (KUA) has resulted in people relying more on oral traditions and hereditary habits in resolving property problems. As a result, the practice of separating joint property mandated by KHI does not run optimally and is often only realized as a necessity when there is an internal family dispute (Rahmawati, 2021).

2. METHODS

This study employs a juridical-empirical method, which is an approach that examines the application of law within society by assessing the correspondence between legal norms and actual practice. This method is used to evaluate the effectiveness of legal regulations, the level of public compliance (Ahmad, 2022), and the influence of social factors on the implementation of the law. Data were collected through the identification and analysis of inheritance-sharing practices regarding joint marital property in East Angkola District, using both field data and a review of relevant legal provisions.

In its application, the juridical-empirical approach not only focuses on normative analysis, but also explores how society understands, interprets, and responds to the applicable legal rules. Therefore, this study utilizes interview techniques with community leaders, heirs, village officials, and the Religious Court to obtain a factual picture of the practice of inseparability of joint property before the distribution of inheritance. Through this approach, the research was able to map the social, cultural, and psychological factors that influence people's behavior patterns towards formal law, including the reasons that make people more inclined to follow customs than the provisions of KHI.

In addition, this study also uses qualitative analysis to interpret field data through the process of reduction, categorization, and drawing conclusions. This analysis allows researchers to identify gaps between legal norms and social practices more systematically. The qualitative approach is important because the issue of the distribution of common property is not solely a legal issue, but is closely related to kinship structures, authority relations in the family, public perception of justice, and the influence of religious leaders in shaping social practices. Thus, the juridical-empirical method provides a comprehensive understanding of how the law works in the cultural and social context of the East Angkola community.

3. FINDINGS AND DISCUSSION

1. Joint Marital Property

The term *joint marital property* consists of two elements: *property* and *joint*. Property refers to all forms of an individual's wealth, whether tangible or intangible, including money and other assets that hold value (Zannah et al., 2024). In the Indonesian Dictionary (KBBI), property is defined as goods or wealth owned by a person.

The concept of property is also mentioned in the classical Islamic jurisprudence (Fiqh Muamalat) literature.

تَعْرِيفُ الْمَالِ: أ - لَعْنَةُ: مَاخُودٌ مِنْ «مَوْلٍ»، وَهُوَ مَا مَلَكَهُ الْإِنْسَانُ مِنْ جَمِيعِ الْأَشْيَاءِ، وَيُجْمَعُ عَلَى أَمْوَالٍ، وَيُذَكَّرُ وَيؤنثُ، يُقَالُ: هَذَا مَالٌ، وَهَذَا مَالٌ.

ب - اصْطِلَاحًا: هُوَ كُلُّ مَا يُمَكِّنُ حَيَاتَهُ وَإِحْرَارَهُ، وَيُمْكِنُ أَنْ يُنْتَفَعَ بِهِ عَادَةً

*Meaning: Definition of Property (Harta). A – Linguistically: Derived from the word *matwal*, which refers to anything possessed by a person. Its plural form is *amwāl*, and it can be used in both masculine and feminine forms. It is said: “this is *māl* (property)” for both usages. B – Technically: Anything that can be owned and acquired, and is generally usable (Amman, 1438).*

Property encompasses everything that can be owned, controlled, transferred, and holds economic value, whether tangible or intangible, movable or immovable. Meanwhile, the term *joint* refers to collective ownership. Thus, joint property refers to assets owned and utilized collectively by both parties (Butarbutar, 2024).

Joint property is defined as assets acquired after the establishment of a lawful marriage between husband and wife. Assets owned individually prior to marriage are not included in this category because they were obtained before the marital union. The basic principle is that any wealth acquired during the marriage automatically becomes joint property, or *harta Syarikat* (Wati, 2024).

Article 35 of Law Number 1 of 1974 on Marriage stipulates in paragraph (1) that “Property acquired during the marriage becomes joint property.” Paragraph (2) states that “Personal property of each spouse and any assets obtained individually as gifts or inheritance remain under their respective control unless otherwise determined by the parties.” Article 27 provides that “In the event that a marriage ends due to divorce, joint property shall be regulated according to the respective applicable laws.”

The Compilation of Islamic Law (KHI) also regulates joint property. In Chapter XIII, which discusses marital property, joint assets are outlined from Articles 85 to 97. Article 96 paragraph (1) states: “In the event of death (*cerai mati*), half of the joint property becomes the right of the surviving spouse.” Article 97 states: “A widow or widower divorced is entitled to one-half of the joint property unless otherwise specified in a prenuptial agreement.”

Classical fiqh texts do not explicitly regulate the concept of joint marital property because, at that time, social structures had not yet recognized property systems as they exist today. However, several Nusantara scholars, such as Shaykh Arsyad Al-Banjari, introduced a similar concept known as *harta perpantangan* (Fitria, 2024). The terms *joint property* or *gono-gini* are not explicitly found in the Qur’an or Hadith; rather, they developed from Indonesian customary law (*‘urf*) that acknowledges the mixing of assets within a family. In fiqh terms, this concept can be analogized to *syirkah*, because assets acquired during marriage result from the cooperation between husband and wife.

The concept of *harta bersama* (community property) is not found in classical Islamic jurisprudence because Islamic law does not recognize the commingling of assets between husband and wife. However, in Indonesia this practice is accepted through customary law, which has long acknowledged the blending of marital property within the household. Owing to its significant benefits and deep cultural roots, the concept of community property was later adopted into the Marriage Law, the Compilation of Islamic Law (KHI), and the Civil Code (Akbar & Irawan, 2024). This tradition represents a distinctive feature of Indonesian fiqh and is not found in Middle Eastern regions, which historically developed different social structures in which women generally did not participate in economic activities.

Shaykh Arsyad Al-Banjari is among the scholars who recognized the existence of community property through the concept of *harta perpantangan*. He emphasized that inheritance distribution must begin with separating the assets of husband and wife in accordance with local custom. The presence of this concept is further reflected in various local terms across different regions, such as *ghuna-ghana*, *cakara’*, *perpantangan*, *gonogini*, *harta suarang*, and *seuhareukat* (Nurdin, 2019).

Although absent from the history of classical Islamic legal doctrine, this concept can be analogized to *syirkah*, namely the cooperation between husband and wife in acquiring wealth during marriage. For this reason, Articles 85–97 of the KHI were formulated on the basis of *syirkah abdan* and *syirkah mufawadhah*, adapted to prevailing customary practices (*‘urf*). This approach reflects the social reality

that husbands and wives in Indonesia generally work together in earning income, saving, and building family assets throughout the duration of their marriage.

In addition, the development of the concept of common property in Indonesia is also inseparable from the historical process that shows how customary law and fiqh of the archipelago interact with each other. A number of studies have shown that the practice of wealth distribution in Indonesian society since the pre-colonial period has placed wives as economic partners who have a significant contribution to household activities and increase family assets. Therefore, in many indigenous communities, wives gain a strong position in property management, including the right to some assets acquired during marriage (Assyafira, 2020). This mixture of custom and fiqh ultimately encourages local scholars to formulate a more contextual legal approach, so that the concept of common property develops as a mechanism of justice in accordance with the social reality of Indonesian society. In line with that, several contemporary studies also affirm that the recognition of the economic contribution of the wife—both directly and indirectly—is in line with the values of *maqāṣid al-syarī'ah*, especially in maintaining property (*ḥifẓ al-māl*) and maintaining the family (*ḥifẓ al-nasl*) (Kurniawan, 2022).

2. Inheritance

Inheritance in Islamic law refers to the rules governing the transfer of a deceased person's property to their heirs (Assyafira, 2020). These rules determine who is entitled to inherit and the share each heir is entitled to receive, in accordance with the provisions of the Sharia.

The *Kompilasi Hukum Islam* (KHI/Compilation of Islamic Law) also provides a definition of inheritance. Article 171 letter (a) states that inheritance law is the body of law regulating the transfer of ownership rights over the estate (*tirkah*) of the deceased, determining who is entitled to become heirs, and the proportion each is to receive.

The pillars of inheritance in Islamic law consist of three elements: the deceased (the *pewaris*), the heirs (*ahli waris*), and the estate (*harta waris*). The deceased is the person who has passed away and leaves behind property; the heirs are those who are still alive at the time of the deceased's passing and are entitled to receive a share of the inheritance. The estate (*al-maurūth*) refers to the property left behind that is ready to be distributed after deducting funeral expenses, debts, and bequests. The conditions of inheritance include: the deceased must have truly passed away—either factually, through a court ruling, or due to presumed death; the heirs must be alive at the time of the deceased's death; and there must be no impediments to inheritance, such as the killing of the deceased by an heir, difference in religion, or enslavement within historical contexts (Hakim & Rozy, 2024).

Inheritance law is closely connected to the management of joint marital property acquired during marriage. Under the KHI, joint property must first be separated before being distributed as inheritance to ensure a fair division among heirs. If this separation is not carried out—especially in cases involving a second marriage—the rights of children from the first marriage may be neglected because their rightful property becomes mixed with that of the new family.

The principle of justice emphasized in Qur'an Surah *An-Nisa* verse 32 underlines that both husband and wife have rights over the fruits of their labor. Consequently, the portion of property belonging to the deceased must be distributed as inheritance in accordance with Sharia requirements. Article 96 of the KHI also mandates that joint property be separated prior to the distribution of inheritance. This separation is crucial to avoiding disputes and ensuring that inheritance rights are granted solely to those who are legitimately entitled.

Shaykh Muhammad Arsyad al-Banjari developed a progressive fiqh perspective that pays attention to justice and equity, particularly through the concept of *harta perbantangan*—property acquired jointly by husband and wife during marriage. According to him, such property does not automatically become part of the husband's estate, because within it lies the wife's rightful share, which must first be separated. Unlike Middle Eastern scholars who generally regard the husband's and wife's property as entirely separate, Shaykh Arsyad emphasized that before inheritance is distributed, joint marital property should first be divided into two portions: one half for the surviving spouse, and only

the remaining half considered the estate of the deceased. Thus, the surviving spouse not only receives half of the joint property but also continues to receive a *farā'id* (prescribed) share from the deceased's portion of the estate (Fitria, 2024).

Selain itu, perkembangan kajian kontemporer menunjukkan bahwa masalah waris dalam konteks masyarakat Indonesia tidak hanya berkaitan dengan ketentuan normatif syariah, tetapi juga sangat dipengaruhi oleh dinamika sosial dan struktur keluarga. Dalam banyak komunitas Muslim di Nusantara, pembagian warisan kerap tidak dilakukan segera setelah salah satu pasangan meninggal dunia, melainkan ditunda hingga seluruh orang tua wafat, sehingga harta yang seharusnya dipisahkan terlebih dahulu menjadi tercampur dan menimbulkan ketidakpastian status kepemilikan. Penundaan ini tidak hanya bertentangan dengan prinsip-prinsip *farā'id* yang menekankan kepastian hukum, tetapi juga berpotensi menghilangkan hak-hak ahli waris tertentu ketika terjadi perkawinan kedua atau ketika aset keluarga telah dibagi tanpa prosedur resmi (Wahid, 2018). Dalam konteks ini, berbagai studi hukum keluarga Islam menegaskan bahwa pemisahan harta bersama sebelum pembagian waris bukan sekadar tuntutan administratif, tetapi bagian dari prinsip keadilan yang menjadi tujuan utama hukum waris Islam (*maqāsid al-syarāh*), khususnya dalam menjaga harta (*ḥifz al-māl*) dan mencegah sengketa antar keturunan (Hidayat, 2021).

3. Factors Behind the Absence of Joint Property Distribution

The phenomenon of not dividing joint marital property prior to the inheritance process in East Angkola District not only reflects a discrepancy between local practice and the Compilation of Islamic Law (KHI), but also reveals sociocultural dynamics that shape legal compliance. The community's habit of delaying the division of assets until both parents have passed away is not merely a tradition; it functions as a social strategy to maintain family harmony and avoid the stigma of being perceived as children who are greedy for property. This attitude illustrates that kinship norms hold greater authority than adherence to formal legal norms.

Moreover, the reluctance of children to request the separation of assets from parents who are still alive demonstrates a form of generational subordination to parental authority, which renders regulations on joint property sociologically ineffective. This cultural influence leads to KHI provisions not being internalized as binding legal obligations, but rather perceived as negotiable options.

Another contributing factor is the remarriage of husbands without prior separation of marital assets, resulting in the mixing of property from two different households. This situation is not merely an administrative oversight; it represents a form of **legal ambiguity** that creates uncertainty regarding the ownership status of the assets. Under such circumstances, children from the first wife face vulnerability in claiming their rights, as they are no longer able to clearly identify the portion of the estate that belonged to their mother.

Lastly, the community's limited understanding of the legal structure of the KHI reveals a gap between law as it exists normatively and law as it operates in reality. The community remains more strongly influenced by classical fiqh, which does not recognize the concept of joint marital property, leading to the perception that asset separation is not obligatory. This condition indicates that the effectiveness of positive Islamic law depends heavily on local religious authority and socialization – both of which, in this case, have not functioned optimally.

In addition to these factors, the strong influence of local customs is also the main cause of the non-implementation of the KHI provisions regarding the separation of common property. In many Batak Angkola communities, the patrilineal kinship structure places men, especially fathers, as the center of family economic control. This relational model causes family assets to be socially considered to be under the authority of the head of household, so the separation of property when the wife dies is seen as an act that is not in accordance with local cultural values. Customary law research shows that customary-based inheritance practices often give priority to the sustainability of extended families rather than positive legal certainty (Simanjuntak, 2017). Therefore, even though the KHI norm is

binding, the community prefers to follow the traditional value structure that has been passed down from generation to generation.

On the other hand, non-compliance with the rules for the separation of common property is also influenced by the low legal literacy of the community. A number of studies show that most citizens only understand Islamic inheritance law to the extent of the division of *farā'id*, without knowing administrative procedures such as the separation of common property before division (Suarga, 2020). This condition causes people to consider all assets left after a wife dies automatically belong to the husband, even though legally only half of it is his right. The lack of access to legal counseling from religious institutions and religious courts exacerbates this ignorance, so that local practices continue even in conflict with formal legal provisions.

This phenomenon also shows that local religious authorities have a central role in determining whether the provisions of the KHI will be accepted or rejected by the community. In the context of East Angkola, some religious leaders still refer to the view of classical *fiqh* that strictly separates the property of the husband and the property of the wife, so that the concept of joint property is considered a legal innovation that has no basis in the books of *turats*. In fact, many contemporary scholars have emphasized that the existence of common property is the result of *ijtihad* based on *'urf* which is valid according to *shari'i* because it reflects the justice and social reality of Indonesian society. The non-involvement of religious leaders in the process of legal awareness makes it increasingly difficult for people to accept rules that are different from the *fiqh* traditions that they have previously understood.

4. Review of the Islamic Law Compilation on Inheritance Distribution Not Preceded by the Division of Joint Property in East Angkola District

Islamic law in Indonesia regulates joint marital property through the Islamic Law Compilation (KHI), including in cases of death as a form of marital dissolution. In the context of inheritance, the KHI stipulates that before the deceased's estate is distributed to the heirs, the joint property acquired during the marriage must first be separated. This separation is essential to distinguish the share that belongs to the surviving spouse from the portion that truly constitutes the estate.

The issue in East Angkola District arises because the joint property was not separated when the first wife passed away. Consequently, the property that should have been inherited by the children of the first wife became mixed with the assets from the husband's subsequent marriage to the second wife. This situation generates injustice, as part of the property belonging to their mother could indirectly be inherited by the children of the second wife.

The KHI affirms that the inheritance consists of the heir's personal property and the portion of joint property belonging to the deceased, after deducting medical expenses, funeral costs, debts, and any valid bequests. Therefore, the inheritance distribution process cannot commence before these obligations are fulfilled and the joint property is properly separated.

In the case of death as a cause of marital dissolution, Article 96 of the KHI asserts that half of the joint property belongs to the surviving spouse, while the remaining half constitutes the estate to be distributed among the heirs. Had this procedure been implemented from the outset, the rights of the first wife's children over their mother's property would have been clearly defined and would not have been conflated with the father's assets that would later be inherited by children from the second marriage.

Because the joint property was not separated, a misconception emerged that children from the second wife had rights to the property accumulated during the first marriage. In fact, under Islamic inheritance law, they have no right to the first wife's estate. Children from the second wife are only entitled to inherit from their father, not from the first wife, whose estate should have been distributed to her heirs at the time of her death.

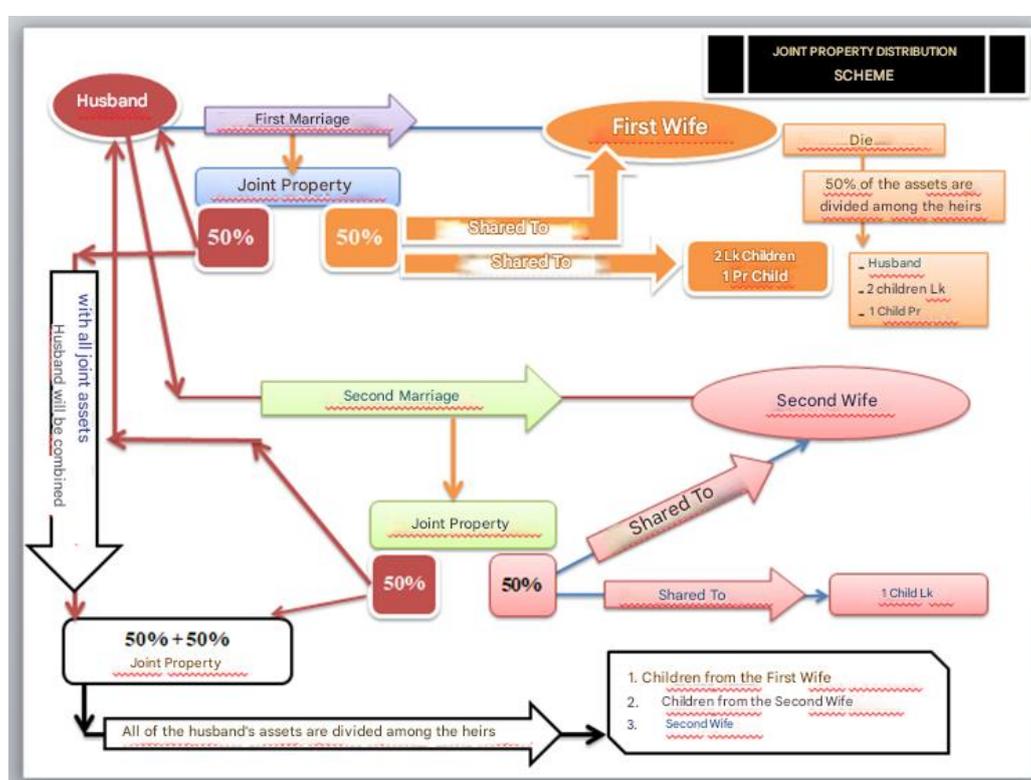
To ensure fairness, the joint property from the first marriage must be separated and distributed first to the heirs of the first wife. Only after this distribution is completed should the husband's remaining assets be treated as his personal property, eligible for inheritance by the children of the

second marriage. Applying these provisions is crucial to prevent disputes and to guarantee that each heir receives their rightful share according to Islamic law.

An analysis of the joint property distribution case in East Angkola District indicates that, upon the death of the first wife, the joint property should have been divided equally: 50% for the surviving husband and 50% for the heirs of the first wife. After the husband remarries, the property acquired with the second wife also becomes joint property, which must likewise be divided equally—50% each in the event of death.

If the husband dies, all property belonging to him including the remainder of his personal assets and his portions of joint property from both marriages must be distributed as inheritance to all eligible heirs, including children from both the first and second wives. However, if the second wife dies, only 50% of the joint property from the second marriage constitutes her estate. Her heirs are her own children, her husband, and her parents; the children from the first wife are not included, as they have no familial relationship with the second wife.

Below is the Scheme of Joint Property Distribution.



Stages of Distribution

a. Separation of Joint Property (Before Inheritance Distribution)

The assets acquired during the marriage (joint property) must be divided into two parts:

- a) ½ for the husband (the surviving spouse)
- b) ½ for the wife (the deceased) → this portion becomes the estate to be inherited

b. Distribution of the Estate (the Wife’s ½ Share)

- 1. The estate is calculated and distributed to the wife’s heirs in accordance with Islamic inheritance law.
- 2. The wife’s heirs generally include:

- a) The husband (entitled to $\frac{1}{4}$ of the wife's estate if she is survived by children)
- b) Children from the first marriage (the remainder is divided in a 2:1 ratio between male and female heirs)
- c. Second Marriage
 1. New assets acquired during the second marriage constitute a new joint property with the second wife.
 2. Assets inherited from the first wife must not be mixed with the new joint property.
 3. If a mixture occurs, separation and tracing of the original assets must be carried out.
- d. If the Husband Dies
 1. The joint property with the second wife is divided equally (50:50).
 2. All assets belonging to the husband – whether originating from the first wife, the second wife, or any other sources become his estate to be distributed among his heirs, which include the children from both the first and second marriages.

4. CONCLUSION

The issue of distributing joint property in cases of death-related divorce (*cerai mati*) in East Angkola District arises because the community fails to separate the joint property at the time of the first wife's death, as required under the Compilation of Islamic Law (KHI). As a result, all assets are considered to belong to the surviving husband and are subsequently mixed with assets acquired in the second marriage. This creates ambiguity regarding inheritance rights and triggers conflicts between the children of the two marriages. Contributing factors include the common practice of postponing asset division until both parents have passed away, children's reluctance to claim their rights while a parent is still alive, the husband's remarriage without prior separation of assets, limited understanding of KHI, and the dominance of classical *fiqh* perspectives.

Article 96 of the KHI stipulates that when one spouse dies, the joint property must first be separated: 50% for the surviving spouse and 50% for the deceased. In East Angkola District, this procedure is not carried out, which contradicts KHI provisions. The deceased wife's 50% share should be used to cover funeral expenses, with the remainder distributed as inheritance to eligible heirs. Meanwhile, the husband's 50% share remains his personal right. If he remarries, the joint property with the second wife must also be divided equally (50:50) in accordance with Article 96. Once the husband dies, all his assets are then distributed to his heirs—including children from both marriages—in accordance with Islamic inheritance law.

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