

THE SETTLEMENT OF DISPUTES REGARDING DIVISION OF JOINT PROPERTY AFTER A DIVORCE IN THE CENTRAL ACEH REGENCY

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Abstract

This research reviews disputes revolving around the division of joint property after a divorce in the Central Aceh Regency using the methods; discussion with family, discussion by involving the customary institution Sarak Opat, and filing a claim to the Takengon Syar'iyah Tribunal. In general, division of joint property in the Central Aceh Regency is done by discussion through the customary institution Sarak Opat. The division of joint property after a divorce in the Central Aceh Regency that is done through discussion takes into account which household the child grew up in and how much money that household makes. Although this is not in accordance with the provisions of Indonesia's Marriage Law and the Islamic law Compilation, it may be in accordance with Article 37 of Indonesia's Marriage Law and that this would not violate the rules within Islamic law nor Customary Law, since in its core within Islamic law and Customary Law there are specific rules regarding percentage of division of joint property following a divorce.

Keywords: Aceh; Sarak Opat; Joint Property

Abstrak

Penelitian ini mengkaji penyelesaian sengketa pembagian harta bersama pasca terjadinya perceraian di Kabupaten Aceh Tengah yang diselesaikan dengan beberapa cara yakni musyawarah keluarga, musyawarah dengan melibatkan lembaga adat Sarak Opat dan dengan mengajukan gugatan harta bersama ke Mahkamah Syar'iyah Takengon. Pada umumnya pembagian harta bersama pasca terjadinya perceraian di Kabupaten Aceh Tengah dilakukan secara musyawarah dengan melibatkan lembaga adat Sarak Opat. Pembagian harta bersama pasca terjadinya perceraian di Kabupaten Aceh Tengah yang dilakukan berdasarkan musyawarah dengan mempertimbangkan dengan siapa anak tinggal dan besaran kontribusi pencaharian harta bersama, walaupun tidak sesuai dengan aturan yang terdapat dalam Undang-Undang Perkawinan dan Kompilasi Hukum Islam namun mungkin berpedoman kepada Pasal 37 Undang-Undang Perkawinan dan hal ini tidak menyalahi aturan baik Hukum Islam maupun Hukum Adat. Karena pada

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dasarnya menurut Hukum Islam dan Hukum Adat tidak ada aturan khusus terkait presentase pembagian harta bersama pasca terjadinya perceraian.

Kata kunci: Aceh; Sarak Opat; Harta Bersama

مستخلص

غالباً وضع الجهاد والمتطرفيَّ جنباً إلى جنب كأنَّ الجهاد مرادف للتطرف. كذلك المعهد كأساس للتعليم الديني الإسلامي. فإن الإسلام لا يعلم التطرف، بل الإسلام هو دين السلام بدلاً من ذلك، ولا يمكن ربط مفهوم الجهاد في الإسلام بالتطرف الديني، لأن الجهاد له معنى واسع. تم إجراء هذا البحث لتحديد كيفية ارتباط نظرية المعرفة في التربية الإسلامية في المعهد بقضايا الجهاد والتطرف. تم إجراء البحث في معهد الفرقان بحج موسى الرواس. تنظم معهد الفرقان تعليماً إسلامياً متكاملًا الذي يجعل الإسلام كأساس والمرشد في تنفيذ الأنشطة التعليمية والعملية في الحياة. من نتائج البحث، تعلّم التربية الإسلامية الأخلاق والسلوكيات النبيلة وفقاً للتعاليم الإسلامية، ويُفسر الجهاد على أنه الجهد في الخير ليظهر السلام وليس بمعنى التطرف.

الكلمات الرئيسية: الجهاد; المتطرفيَّ; التربية الإسلامية

A. INTRODUCTION

In Indonesia, the law that governs family law is not contained to only one set of rules, but is also regulated in various laws. This is known as legal pluralism. Legal pluralism is a characteristic of a modern society, that is the existence of national law on the one hand, and other sets of laws that operate in the same society. In modern societies, valid law is usually said to require democratic legitimacy, exemplified by an elected legislature. Many traditional jurists argued that custom is the only genuinely democratic mode of law making, reflecting the actual convictions of the ordinary people who practise them, people who vote by consenting to those customs. But thinkers and writers from within the sceptical tradition represented here tend also to be sceptical about suggestions that customary practices are binding and valuable because they serve ‘as a community building device for the group whose collective wisdom creates custom.’¹

Legal pluralism may explain how this diverse sets of laws simultaneously regulate multiple legal events and help settle disputes that occur in society in the context whether the individuals choose to apply certain rules and in what form the choose to apply the

¹ Amanda Perreau-Saussine and James Bernard Murphy, *The Nature of Customary Law*, ed. Amanda Perreau-Saussine and James B. Murphy (Cambridge: Cambridge University Press, 2007), 2, <https://doi.org/10.1017/CBO9780511493744>.

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mechanisms to settle the dispute.² Legal pluralism produces hybrid or mixed legal environments where state, local and non-state actors are linked and the lines between them are blurred, Security and justice actors can be viewed as 'lying along a spectrum between the state and the purely informal', where legitimacy is determined by factors including the degree of authority granted by the state.³

According to Islamic law Compilation, marriage aims to realize the life of *sakinah* (peace), *mawaddah* (love), and *warrahmah* (affection). According to Customary Law, marriage can be a matter of relatives, family, fellowship, dignity, can be a personal matter, depending on the order of the community concerned.⁴ Basically it is a legal relationship that causes legal consequences for those who carry it out. The legal consequence is the arising of rights and obligations for both husband and wife. When a marriage contract occurs, a man who becomes a husband receives various rights in the family, likewise a woman who becomes a wife in a marriage obtains various rights as well. In addition they also assume the obligations as a result of binding themselves in the marriage.⁵

In the first place this traditional customary law has been subject to a multitude of influences. The great religions and cultures of Asia-in particular Islam, Buddhism .and Hinduism, as well as what we may loosely characterize as Confucianism in its religious and ethical connotation-have had substantial impact upon, and have in turn been influenced by, customary law.⁶

According to the Compilation of Islamic law, the goal of marriage is to realize a life of *Sakinah, Mawaddah, Warahmah*. Customary Law provides that marriage can be matters of relatives, family, partnership, dignity, and may also be matters of the individual, depending on the arrangement of the society involved. Essentially, marriage is a legal relationship that arises legal effects for those who partake in it. These legal effects are the rights and obligations for the husband or bride. When a marriage contract is finalized the man which becomes the husband obtains rights in a family, same goes for the woman that becomes a wife in a marriage obtains rights as well. Besides that they also obtain obligations as a result of

² Helene Maria Kyed Peter Albrecht, *INTRODUCTION - Non-State and Customary Actors in Development Programs*, ed. Peter Albrecht et al. (Rome: International Development Law Organisation / Danish Institute for International Studies, 2011).

³ Sulistyowati Irianto, *Sejarah Dan Perkembangan Pemikiran Pluralisme Hukum Dan Konsekuensi Metodologisnya. Kumpulan Karya Ilmiah Dalam: Pluralisme Hukum, Sebuah Pendekatan Interdisiplin, Jakarta: Huma, 2005, p. 69* (Jakarta: Huma, n.d.), 11.

⁴ Imam Sudiyat, *Hukum Adat Sketsa Asas* (Liberty, 2007), 107.

⁵ Mohd . Idris Ramulyo, *Hukum Perkawinan Islam* (Jakarta: Sinar Grafika, 1995).

⁶ David C Buxbaum, *A Contemporary Legal Prespective* (Springer-Science+ Business Media, B. V., 1968), 11.

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being bound by the marriage.⁷ A legal marriage arises legal effects for both the husband and wife including the child that is born from the marriage, and also for the wealth and property that is made throughout the marriage. An example of a legal effect from a marriage is the creation of marriage property. This wealth or property fulfills the needs and requirements in a family life.⁸

Joint property/wealth is governed by Article 35 (1) of the Marriage Law. Juridically, it can be understood that joint wealth is wealth that is gained by the husband and wife in a marriage, and can be gained either together or individually. It is not determined on who gains the wealth, but that the wealth is gained within the marriage.

The Marriage Law regulates the procedure of conducting a divorce and the legal consequences from the divorce. Regulations regarding divorce have great weight, and this is elaborated more in Government Regulation No. 9 year 1974 regarding Implementation of Law No. 1 year 1974 regarding Marriage. Islam also provides elaboration and defines that divorce according to fikih expert is talak or *furqoh*. Talak is derived from the word *Itlak*, that means to “let go” or “to leave”.

Customs and traditions in the Province of Nanggroe Aceh Darussalam have diversity in accordance with their respective sub-ethnic groups. The diversity shows the wealth and treasures of these sub-ethnic groups. Therefore, the fostering of traditional life and customs must be able to realize the preservation and development of local customs and traditions.⁹ Aceh is known as a special territory that not only applies national law but also Islamic law and customary law that is regulated by specific rules named *qanun*. In the Aceh community, settlement of disputes by most of the community is done through custom institutions. The goal of this is to create peace and harmonization in the community, and not to decide on whether who wins or loses.

According to Article 98 (2) of Law No. 11 year 2006 regarding Aceh Government, settlement of social disputes are done through the Customary Institutions. Furthermore in Article 13 (3) of Qanun Aceh No. 9 year 2008 regarding Customs and Traditions, the enforcement body is given the chance so that the dispute is settled first and foremost in accordance with tradition in *gampong* or other names.

⁷ Sudiyat, *Hukum Adat Sketsa Asas*, 107.

⁸ Sonny Dewi Judiasih, *Kajian Terhadap Kesetaraan Hak Dan Kedudukan Suami Dan Istri Atas Kepemilikan Harta Dalam Perkawinan* (Bandung: PT. Refika Aditama, 2015), 23.

⁹ Jamhir, “Revitalisasi Hukum Adat Di Aceh,” *Jurnal Justisia* 1, no. 1 (2016): 2.

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According to yearly data provided by Takengon Syar'iyah Tribunal over the last three years, in 2015 there were 173 talak divorce proposals, 307 divorce claims 6 claims regarding joint wealth filed towards the Takengon Syar'iyah Tribunal. Whereas in 2016 there were 162 talak divorce proposals, 321 divorce claims 6 claims regarding joint wealth filed towards the Takengon Syar'iyah Tribunal. In 2017 there were 178 talak divorce proposals, 298 divorce claims 7 claims regarding joint property filed towards the Takengon Syar'iyah Tribunal.¹⁰

Problems arising from the division of joint property in the Central Aceh Regency is discussed since on the one hand Aceh is a territory which implements Syariat Islam and in the settlement of disputes uses Islamic law, and on the other hand Aceh also regards highly customary law and in the settlement of disputes prioritizes customary law. According to the aforementioned, the researchers want to know more about the procedure of dividing joint property in divorce within the Central Aceh Regency. This research to analyze dispute settlement regarding division of joint property in a divorce conducted in the central Aceh regency, applying Islamic law and Gayo customary Law

B. DISCUSSION

1. Dispute Settlement Regarding Division of Joint Property in a Divorce Conducted in The Central Aceh Regency, Applying Islamic law and Gayo Customary Law

According to Article 49 of Law No. 3 year 2006 regarding Changes to Law No. 7 year 1989 regarding Religious Court, the Religious Court is tasked with and mandated to examine, decide, and settle cases in the first instance between individuals of Islamic faith in the field of marriage, inheritance, wills, grants, wakaf, zakat, infak, shadaqah and syari'ah economy. According to said article, the settlement of disputes concerning division of joint property in a divorce where both the husband and wife are muslim fall under the jurisdiction of the Religious Court.

Specifically in Aceh, this Religious Court is the Syar'iyah Tribunal. The Syar'iyah Tribunal is a judicial institution that was created in accordance with Qanun No. 11 year 2002 regarding Syariat Islam Justice and also to implement Syariat Islam in the Aceh Province. In the event of a divorce, Article 37 of the Marriage Law hands over the division of joint property to each law. In this case, if a divorce occurs then issues regarding the division of property is handed over to religious law, customary law and other applicable laws. This is

¹⁰ Mutiara Rembune Payu, "Pembagian Harta Bersama Pasca Terjadinya Perceraian Di Kabupaten Aceh Tengah Menurut Hukum Islam Dan Hukum Adat." (Universitas Padjadjaran Bandung, 2015).

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since the law that governs family law in Indonesia is not found in one source of law, but is regulated in many sources arising from legal pluralism.

The settlement of disputes concerning the division of joint property in the Central Aceh Regency may be done through discussion, through any Syariah Tribunal or through customary Institutions. The division of joint property in the Central Aceh Regency, if done through discussion is in accordance with the agreement of both parties, if done through the Syariah Tribunals then it is in accordance with the Marriage Law and the Compilation of Laws, and if done through the customary Institutions then it is in accordance with Law No. 11 year 2006 regarding Aceh Government, Qanun Aceh No. 9 year 2008 regarding The Development of Traditional Life, and Qanun Central Aceh Regency No. 10 year 2002 regarding Gayo Customary Law.

We must identify that the philosophy behind the settlement of disputes is the effort to restore the relationship of the parties in dispute to the originating condition, where the parties will carry out a positive relationship, as a social relationship or a legal relationship between one and another.¹¹ The division of joint wealth in a divorce is a civil dispute, where the most optimal method is through negotiation and discussion, not only outside courts but also where the dispute has been submitted to court there is still a chance to mediate in order to reach a middle ground between the parties.

One method to settle disputes regarding division of joint wealth in the Central Aceh Regency is through discussion. Discussion is conducted by both parties by involving the family to discuss together the division of joint wealth. This is usually attended by the parents or uncles of both parties. Where the discussion is successful in determining the amount and status of the joint wealth, then the next step is to determine how much goes to each party. Where the discussion conducted by both parties and their families is unsuccessful, in general the parties approach a community figure, usually the Sarak Opat institution. In general the settlement of disputes that is conducted through the customary institutions is applied in all of Aceh, and the name differs in each region.

In coastal Aceh it is named Tuha Peut, whereas in the Central Aceh Regency it is named Sarak Opat. In the Gayo community, this customary institution functions as to regulate and maintain life in the community. The Gayo Customary Law does not differentiate between criminal and civil law, where all disputes that occur within the community that are settled in

¹¹ Salim HS and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi* (Jakarta: Rajawali Pers, 2013), 135.

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accordance with customary law are settled through Sarak Opat.¹² Specifically in Article 9 (1) of Qanun Central Aceh Regency No. 10 year 2002 regarding Gayo Customary Law, Sarak Opat is positioned as a Government Apparatus Gelung Preje (Regency), Sub-District and Village Government as a place to discuss and reach an agreement that consists of Reje, Imem, Petue, and Rakyat Genap Mupakat.¹³

In the community of the Central Aceh Regency, where there exists a dispute then Sarak Opat functions as the institution to settle disputes, and this tradition has been conducted from generation to generation, where there exists a dispute in the community it is settled through the customary institution Sarak Opat. In the case of the division of joint property, if a settlement cannot be reached through discussion by the husband, wife and family. The dispute will be submitted to the Sarak Opat. Sarak Opat also handles disputed concerning the division of joint property, and the community trusts their disputes to be settled by Sarak Opat. The settlement of disputes through Sarak Opat is more in accordance to the familial aspect through discussion to reach an agreement. On the other hand usually Sarak Opat is prudent to the origins of the wealth that was obtained by husband and wife during the marriage, whether individual and joint wealth, since Sarak Opat itself is a village apparatus.

The division of joint wealth in the Central Aceh Regency in the settlement of disputes through tradition, is in accordance with Gayo Customary Law in the Central Aceh Regency. It can be considered to be in accordance since it is conducted pursuant to the procedure and through discussion to achieve agreement. Settlement through Gayo also adopts the principles of simple, quick and cheap, where in settling disputes it prioritizes discussion to agree that the property received by each party is equitable, to avoid a party that wins or loses.

The settlement of disputes regarding division of joint wealth is under the jurisdiction of the customary institution. This is in conformity with the Joint Decision of the Aceh Governor, and Leader of Customs Tribunal Aceh No. 189/677/2011, No. 1054/MAA/XH/2011, No. B/121/1/2015, That the settlement of disputes regulated in Articles 13, 14 and 15 Qanun Aceh No. 9 year 2008 must be settled beforehand through the village customary institutions and residents. This means that the division of joint property in a divorce in the Central Aceh Regency, before submitting to litigation must first be settled in the customary institution.

¹² Darmawan, "Penyelesaian Pembagian Harta Bersama Dalam Hal Terjadinya Perceraian Pada Masyarakat Gayo Di Kabupaten Aceh Tengah" (Universitas Sumatera Utara, 2015), 206.

¹³ Mutiara Rembune Payu, "Pembagian Harta Bersama Pasca Terjadinya Perceraian Di Kabupaten Aceh Tengah Menurut Hukum Islam Dan Hukum Adat."

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From the above discussion, it is summarized that in the division of joint wealth in the Central Aceh Regency, there are alternative dispute settlements, including discussion with the family, discussion with the customary institution Sarak Opat or by submitting a claim of joint property to the Takengon Syarriyah Tribunal.

2. The Procedure of Dividing joint Wealth after a Divorce in the Central Aceh Regency Applying Islamic law and Gayo Customary Law

Eugene Ehrlich said in his book the title *Fundamental Principles of the Sociology of Law*: "At the present as well as at any other time, the center of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decision, but in society itself." Ehrlich, however, recognized the element of command or "state norms" although he did not foresee the extensive role this aspect of the law was to play in industrialized society. Nevertheless he helped to show that the norms, or "customary law," observed by the family, commercial institutions and religious bodies are of substantial importance in determining people's behavior, and in fact in determining what he called law. In pre-industrial society, where political power and authority are generally relatively weak, Maine has shown that there was heavy reliance upon customary and religious law and institutions.¹⁴

The definition of joint property within Indonesian customary law greatly differs. joint wealth that is gained by the husband and wife during the marriage in Aceh is called Hareuta Seuhareukat, in Bali Druwe-Grobo, in Kalimantan it is wealth that is Berpantang, in Java Barang Gana or Gono Gini, in Minangkabau it is named Suarang wealth, in Madura Ghuna-Bhana, in Sunda it is called Gua-Kaya and in South Sulawesi (Bugis and Makasar) Ma'aruf it is named Cakkra wealth. In Gayo, wealth that is obtained during marriage is termed as wealth poh roh.

Article 35 (1) of the Marriage Law or jurisprudence has determined that wealth that is gained individually during a marriage is joint wealth in the eyes of the law. To more easily identify whether wealth is considered as joint property, the following can be examined:

1. Wealth or property that is purchased during the marriage: All wealth or property purchased during the marriage is automatically according to the law is joint wealth of the husband and wife, and also applies for wealth or property registered under the name of either the husband or wife, then the wealth registered under any of their names is considered as joint wealth.

¹⁴ Eugene Ehrlich, *Fundamental Principles of the Sociology of Law* (Cambridge, 1936), 16 Walter Moll, translator, Foreword.

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2. Property that can be proven to be obtained during the marriage: For example wealth that is adopted/endeavoured and the registry has been changed to be under the name of the husband's brother, if the wealth/property can be proven to be obtained during the marriage, then such wealth must be considered as joint property.
3. Property that is purchased and built up after divorce that is funded through joint property: property a house that is built or purchased after divorce is considered as joint property if the construction expense or the purchase of such property is derived from the joint property during the marriage.
4. Income from joint property and individual property: income that is derived from joint property automatically becomes the object of joint property. However, not only income that is derived from joint property, but also income that is derived from individual property. In this instance the property cannot be claimed, but the income that is derived from such wealth is considered as an object of joint property.

The division of joint property must be conducted equitably, so that injustice does not arise between the husband and wife. Article 37 of the Marriage Law elaborates that the procedure in conducting division of joint property is settled using the applicable law that is religious law, customary law or other applicable laws agreed upon by the husband and wife. Joint property in Islam is similar to *Syirkah abdan mufawwadhah* or the partnership in effort to gain joint wealth must defined in a wide manner than just physical effort. According to this definition, where the wealth is gained by one of them, for example the husband's income, it is considered as a joint effort although physically there was no cooperation. A husband works to prepare a wife as the housewife.¹⁵

In Islam there is no specific rule regarding how to divide joint wealth in the case of a divorce. Ahmad Sabiq in the *Al-Furqon Magazine* Vol. 55 states that from the view of Islamic law joint wealth has no possibility to be divided except through *sulh*, *'urf* or *qadha*. The explanations are in the following:

1. *Sulh* is an agreement between husband and wife on the basis of discussion where the two parties are *ridha*. The proposition of peace between husband and wife from *Katsir bin Abdillah bin Amr bin Auf Al-Muzani*, from his father passed down from his grandfather, that *Rasulullah shallallahu 'alaihi wa sallam* stated: "Peace can be achieved within the muslim community, unless it is peace that harams what is halal or makes halal what is considered haram. And the muslim community depends on their

¹⁵ Hilman Hadikusuma, *Hukum Perkawinan Adat* (Jakarta: Citra Aditya Bakti, 2003), 113.

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requirement, unless it is a requirement that makes haram what is halal or makes halal what is haram.” (HR. Tirmidzi no.1370, Ahmad 2:366, dan Abu Dawud no. 3594). From the hadist proposed by Amr bin Auf al-Muzani, if a married couple separates and is hesitant to divide the joint wealth between, then they may conduct peaceful settlement (*ash-shulh*). Through these peaceful means, the division of joint property is dependent upon discussion between husband and wife. It may be that the husband receives 50% and the wife 50% also or the husband only receives 30% and the wife 70%, it may also occur that the husband receives 70% and the wife 30%, and along with other percentages that may be used. All the aforementioned is justified *syara'*, as long as it was derived from peaceful means without coercion between both parties.

2. *Urf* is the tradition that is recognized in all societies, and forms the law of said society. Scholars agree that *'urf* can be considered as a source of law. Fikih jurisprudence states that a tradition may be a source of law, with the requirement that it applies generally, does not contradict *syariah*, has been applied for an extended amount of time and does not contradict *tashrih*. That means, in the case that division of joint property cannot be agreed then we may take recourse to if custom/tradition (*'urf*) exists in the community regarding division of joint property.
3. *Qadha*, if there exists no *sulh* and *'urf*, then we may rely on the last system, that is *qadha*. *Qadha* itself is a decision that is made by a judge in a certain area regarding a problem submitted to it. In this condition the judge must observe the situation of the husband and wife in order to decide how to divide the joint property equitably. In this condition also the judge may rely on civil law that exists in courts as long as it does not contradict with *islamic syariat law*.

Itjihad is a source of Islamic law besides Al-quran and Hadist. The Compilation of Islamic law is the result of *itjihad* that consists of rules of Islamic law that has been adjusted with the needs of the law and awareness from the Islamic community in Indonesia. Concerning the division of joint property in the Central Aceh Regency that has been settled in the *Syariah Takengon*, is already in conformity with the positive Islamic law that is applicable in Indonesia. Since in general the judges are guided by the Compilation of Islamic law. The provisions in the Compilation of Islamic law is not a strict legal decision, if the

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husband and wife agree to divide their wealth to a certain percentage, then their agreement will be prioritized.¹⁶

The settlement of disputes regarding division of joint property in the Central Aceh Regency in general is done by discussion or through the involvement of the customary institution Sarak Opat. Dispute settlement through Sarak Opat emphasizes more on the familial aspects to achieve an agreement through discussion, so that no party feels like they have won or loss. Furthermore Sarak Opat is prudent to the origins of the property that was gained by the couple during the marriage, and which one is individual wealth and the other joint property. This is in accordance with Article 13 (1) Qanun Aceh No. 9 year 2008 regarding The Development of Traditional Life which states that the jurisdiction of the customary institution to settle disputes includes:

1. Disputes within the household
2. Disputes between families and concern faraidh
3. Disputes between individuals
4. Immoral perversion
5. Disputes regarding right of ownership
6. Theft within the family (minor theft)
7. Disputes regarding joint wealth
8. Minor theft
9. Theft of livestock
10. Violation of tradition regarding livestock, farming or forests
11. Disputes in the sea
12. Disputes in the market
13. Minor assault
14. Forest arson (in a minor scale that affects the traditional community)
15. Libel
16. Polluting the area (minor scale)
17. Threats (dependent upon the type of threat)
18. Other disputes that violate tradition and customs

According to Gayo customary law, there are no provisions regarding the percentage of the wealth that is to be obtained by a party in the case of a divorce. In its implementation, the division of joint property in a divorce in the Central Aceh Regency is divided according to many factors, sometimes by taking into account where the child will stay after the divorce and sometimes by taking into account the amount of contribution within the marriage, or may be done through discussion and agreement.

A social norm is a customary mode of behaviour-it is what people in a given society are expected by their fellow members to do, not only because such behaviour is usual but also

¹⁶ Abdul Manan, *Aneka Masalah Hukum Perdata Islam Di Indonesia*, Cet III (Jakarta: Kencana, 2012), 129.

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because it is deemed good. The man who upholds the norms will be rewarded by his fellows with approbation, honours and the like; these are positive sanctions. The man who does not uphold the norms will be punished by negative sanctions. These may take many different forms ranging from minor social sanctions, such as ridicule and refusal to interact with him, to the most extreme--that of ostracism by the community. Economic sanctions such as refusal to cooperate in economic activity and political sanctions such as the depriving of an elected person of one's support and vote may be applied. Legal sanctions are those in which force may be used by a recognized authority. For example, in the case of division of joint wealth of Mr. X. During his marriage, Mr. X and Mrs. Y gave birth to two children. Other than that, they own joint wealth. In their household, Mr. X works as a civil servant and the head of the family responsible put bread on the table, and Mrs. Siti is a household mother responsible for taking care of the house and the children. In their divorce, they opt to settle it in the Syariah Tribunal, whereas in the division of joint property, they choose to settle it through agreement by discussion attended by the Sarak Opat institution.

Their discussion, Mr. X and Mrs. Y attended by Sarak Opat, was documented in a written documents regarding division of joint property (Gono Gini), the joint property of Mr. X and Mrs. Y is divided where Mr. X obtains a higher percentage since he contributes more to the joint property. This division is based upon the agreement of both parties and decided by Sarak Opat Paya Tumpi I Village. The respondent (in this case Mrs. Y) receives a smaller portion since within the marriage the person who works and gains income is Mr. X and Mrs. Y is a household mother, where both parties agree without coercion or duress. From the above, the division of joint property between Mr. X and Mrs. Y is settled based on the contribution of income towards the household.

From the above case it can be seen that the division of joint property after a divorce in the Central Aceh Regency that was conducted by discussion with taking into account where the child lives and who contributes more income towards the household will result in a party receiving more than the other although this is not in accordance with the Compilation of Islamic law, it does not violate either Islamic law nor Customary Law.

C. CONCLUSION

1. According to Article 88 of the Compilation of Islamic law, the settlement of disputes regarding division of joint property is the jurisdiction of the Religious Court. The settlement of division of joint property after divorce in the Central Aceh Regency may be

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done through discussion with family, discussion by involving the customary institution Sarak Opat and by filing a claim to the Takengon Syar'iyah Tribunal.

2. The division of joint property after a divorce in the Central Aceh Regency that is done by discussion, although not in accordance with the Marriage Law and the Compilation of Islamic law, it may be based on Article 37 of the Marriage Law and that this will not contradicting either Islamic law or Customary Law.

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