

Islamic Legal Review of the Sale and Purchase of Joint Property Post-Divorce Based on Compilation of Islamic Law

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Abstract:

This study analyzes the sale and purchase of joint property following divorce in Jatimulyo Village from the perspective of Islamic law and the Compilation of Islamic Law. The issue is significant because field practices frequently diverge from formal Islamic norms and statutory requirements. Employing a qualitative phenomenological approach, the research explores the lived experiences, perceptions, and meanings held by transaction participants through in-depth interviews, field observation, and document review. Findings indicate that the community regards joint property as assets accumulated during marriage that may be sold after divorce provided mutual agreement exists; transactions are typically conducted through deliberation, trust-based arrangements, and are morally endorsed by village officials and religious leaders. Substantively, these practices align with core muamalah principles justice, consent, and clarity of contract yet they often lack full compliance with Compilation of Islamic Law's administrative requisites that emphasize formal, written consent. The results suggest a pragmatic harmonization between sharia values and local customs and highlight the need to strengthen legal literacy on Islamic property law and to improve village-level administrative mechanisms to secure legal certainty. This study contributes empirically to Islamic family law and applied muamalah scholarship in rural contexts.

Keywords:

Sale And Purchase; Joint Property; Post-Divorce; Compilation of Islamic Law; KHI.



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INTRODUCTION

The issue of the division of joint property after divorce has become an important focus in the study of family law and Islamic economics, both at the global and national levels. In many Muslim countries, this issue often causes controversy, especially when one party sells property without consent or outside the provisions of Islamic law and state regulations (Equality Now, 2023). In Indonesia, the concept of joint property is regulated through the Marriage Law and the Compilation of Islamic Law (KHI), but practices in the field, especially in rural areas, often deviate from the formal provisions. This raises the potential for social tension, economic inequality and doubts over the legitimacy of sharia in post-divorce transactions.

The gap between legal norms and empirical practices shows the need for in-depth studies on the implementation of Islamic law in a social context. Some research confirms the division of joint property in accordance with Article 97 KHI, divided in half equally (Muhammad, 2022), but other research considers this model unfair when the spouses' contributions are different (Ristianawati, 2021). In addition, there are cases of unilateral sale without consent, which is contrary to Article 92 KHI (Sodiq, 2021). Studies on the sale and purchase of joint property after divorce, especially at the village level such as Jatimulyo, are still rare, and the majority of research focuses on the division of assets, not the sale and purchase transactions (Aprindawati et al., 2023).

This research is based on Islamic economic theory and the doctrine of muamalah, which emphasizes the principles of justice ('adl), willingness (ridha), transparency (ihsan), and the prohibition of harming other parties (gharar). Based on Articles 92 and 97 KHI, legal action on joint property must be agreed upon by both parties and divided fairly. Through this framework, this study analyzes the extent to which the practices in Jatimulyo Village reflect the values of muamalah and conformity with Islamic law. A qualitative phenomenological approach is used to explore the experiences and perceptions of the perpetrators of buying and selling joint property after divorce.

The scientific contribution of this research lies in the empirical analysis of the practice of buying and selling joint property at the village level, an aspect that is still rarely studied in Islamic family law literature. Previous studies such as Ristianawati (2021) and Aprindawati et al. (2023) highlight the distribution of assets after divorce, but have not explored the transaction mechanism and its compliance with the principles of muamalah. This article fills this void by exploring the interaction between KHI norms and the social practices of village communities, while enriching the discourse on the application of Islamic law in the context of microeconomics and local wisdom.

Research gaps identified include the limitations of empirical studies at the village level, the lack of a comprehensive analysis of the conflict between KHI norms and field practices, as well as the lack of studies examining the application of muamalah principles such as fairness and voluntariness in the local context. As such, this article not only strengthens the literature on applicative muamalah and Islamic family law, but also contributes to the integration between sharia norms and social realities. Through this conceptual synthesis, the research is geared towards bridging theory and practice to produce a more contextualized and relevant understanding for the development of contemporary Islamic law.

METHOD

This research uses a qualitative phenomenological research strategy, which was chosen to explore the meaning of the subjective experiences of the actors in the practice of buying and selling shared property after divorce in Jatimulyo Village. The phenomenological approach aims to understand the "essence" of experience experienced by subjects through in-depth descriptions of the phenomena of their lives (lived experience) (McLeod, 2024). Phenomenological research allows researchers to enter the perspectives of actors and explore the structure of meaning that emerges from their experiences, rather than simply explaining quantitative variables (Langdrige, 2021). To ensure validity, this research applies the principles of epoché and bracketing, i.e. restraining the

researcher's preconceptions in order to enable an authentic description of the phenomenon (Groenewald, 2004).

The data used consisted of primary and secondary data. Primary data was obtained through semi-structured in-depth interviews with key informants: perpetrators of post-divorce sale of joint property, religious leaders, community leaders, and village government (including KUA and village officials). Field observations and documentation related to sale and purchase deeds, village letters, or mediation minutes also complemented the primary data. Secondary data included KHI documents, academic literature (journals, books), fatwas or writings of scholars, and regulations related to the sale and purchase of joint property and Islamic family law.

The primary data inclusion criteria included informants who were directly involved or aware of the practice of buying and selling shared property after divorce in Jatimulyo Village with a minimum experience of six months after divorce; while informants who were not willing to be interviewed in depth or did not have relevant experience were excluded. For secondary data, literature was selected with the following criteria: (a) publications within the last five years (2020-2025), (b) open-access sources, (c) focus on muamalah, buying and selling, joint property or asset division in the context of Islam and family. Literature that addressed only non-Islamic aspects of civil law or other topics outside the exclusive scope of this research was excluded. The unit of analysis is the experience and perception of individual informants, namely the seller of joint property, the divorced spouse who sells, religious leaders and the community who are positioned as a "unity of meaning" in local phenomena. The research subjects were limited to residents of Jatimulyo Village who had conducted or witnessed the practice of buying and selling joint property after divorce. Data analysis was conducted thematically (thematic analysis) based on Braun & Clarke's approach which consists of six stages: data familiarization, initial coding, searching for themes, reviewing themes, defining and naming themes, and writing reports (Braun & Clarke, 2021). The analysis process was conducted by organizing codes and themes, while maintaining researcher reflexivity in interpretation (Coates et al., 2021). Thematic validity was strengthened through data triangulation (interview, documentation, observation), peer debriefing, and audit trail to ensure consistency and reliability of findings (Nowell et al., 2017).

RESULTS AND DISCUSSION

Results

Based on the results of data collection and analysis through in-depth interviews, field observations, and documentation in Jatimulyo Village, four main themes were obtained that represent the practice of buying and selling shared property after divorce in the perspective of Islamic law and the Compilation of Islamic Law (KHI). These themes include: (1) the community's interpretation of the concept of joint property; (2) the mechanism and stages of the sale and purchase of joint property; (3) the socio-religious role and the village government in legalizing the transaction; and (4) the suitability of the practice with the principles of muamalah and the provisions of KHI. These four themes emerged from the process of data reduction and thematic coding of the results of

interviews with eight key informants consisting of KUA officers, religious leaders, village heads, divorced couples, and buyers of joint property.

The first shows that the community's understanding of the concept of joint property (*gono-gini*) generally stems from practical experience rather than formal legal understanding. The majority of informants referred to joint property as "property accumulated during marriage," such as palm oil plantations, houses or land, without distinguishing between inherited property and the results of joint work. This understanding is in line with the concept in KHI Article 85 which emphasizes that property acquired during marriage becomes joint property. However, some communities still consider the greater financial contribution of one party (usually the husband) as the basis for claiming dominant ownership. This local interpretation shows a shift between the principle of equal ownership in Islamic law and the patriarchal reality that is still strong in society (Lestari & Mansur, 2023). In addition, the perception that "joint property can be sold as long as it is agreed" shows that social agreements are considered sufficient to replace formal legal procedures (Rohman & Safitri, 2022).

The second study reveals that the mechanism of buying and selling joint property after divorce takes place through a series of informal but structured stages. The process begins with a deliberation between the former spouses to determine the selling value and profit sharing, followed by an offer to the closest relatives or neighbors. Price agreements are made based on local market prices that are adjusted to the condition of assets such as palm oil plantations or houses. The payment process is carried out in stages (two to four months), with an oral agreement without a written agreement, but witnessed by village officials and buyers. This mechanism shows the existence of social norms that emphasize trust (trust-based transactions) between villagers. A similar pattern is also found in Harahap's (2021) research on the sale and purchase of agricultural land in rural areas, which prioritizes social trust over legal formalities. Interview results also show that the repayment is accompanied by a change of ownership name at the village office, which indicates administrative recognition even though the legal basis is still based on local customs (Fitriani et al., 2020).

The third highlighted the social and administrative roles of village officials and religious figures in ensuring the moral and social legality of the sale and purchase of joint property. The Jatimulyo Village Head said that the village functions as a witness and mediator in the transaction process to ensure that no party feels disadvantaged. Religious figures and KUA officials play a role in providing religious legitimacy by affirming that buying and selling is valid as long as it is done on the basis of willingness, clarity of objects, and without coercion. The community considers the presence of witnesses from religious figures and the village government to be sufficient to guarantee the validity of the sale and purchase. This pattern of socio-religious involvement is in line with the findings of Taufiq & Wahyudi (2022), which show that informal institutions play an important role in maintaining the ethics of economic transactions in rural communities. However, in terms of formal law, not all transactions have written documents that comply with KHI administrative standards or civil law (Azizah et al., 2024).

The fourth examines the level of conformity between local practices with Islamic muamalah principles and KHI provisions. Based on the results of the analysis, most of the practices of buying and selling joint property in Jatimulyo Village have fulfilled the basic principles of muamalah such as *ridha* (willingness), *'adl* (justice), and *tawadhun* (balance of rights and obligations). However, the formal legality aspect is still weak due to the lack of written documentation and the absence of a court order prior to the sale. In the perspective of Islamic law, transactions carried out on the basis of voluntary agreements without usury and *gharar* remain valid, but in positive law may pose a risk of disputes in the event of differences in claims at a later date (Rahman, 2023). KHI Article 92 stipulates that any legal action on joint property must have the consent of both parties, which in this context is mostly fulfilled. However, in some cases, one party makes a sale without written permission from the former spouse, which raises moral and juridical issues (Siregar & Jannah, 2021).

In addition to the four main themes above, contextual factors that influence the practice of selling and buying joint property in Jatimulyo Village were also found. Economic factors are the dominant driver; most informants stated that the sale was conducted to fulfill post-divorce needs or pay off household debts. Social factors such as family pressure and customary norms are also influential in determining who has the right to sell or buy property. Religious factors act as a moral control mechanism that encourages people to adhere to the value of justice and avoid conflict. These results are in line with the findings of Nuraini & Zulfikar (2024), which show that custom-based transactions in rural areas often combine social, economic and religious dimensions simultaneously.

Finally, the results of the documentation show that the practice of buying and selling joint property after divorce in Jatimulyo Village takes place in a socially orderly manner, but is not yet fully in accordance with the formal legal regulations regulated by KHI. Nevertheless, social and religious legitimacy remain the main basis for the community's acceptance of the transaction. This phenomenon confirms the dualism of the legal system between normative Islamic law and local customary law that coexists in Indonesian Muslim society (Hamidah et al., 2023).

Discussion

The results confirm that the practice of buying and selling joint property after divorce in Jatimulyo Village takes place through informal agreements, with a strong role of village officials and religious leaders as witnesses and moral legitimacy. The empirical themes that emerged from the local meaning of common property, transaction mechanisms, socio-religious interventions, and conformity to the principles of muamalah and KHI are directly related to the research objectives and problem formulations: namely describing the practice (Problem Formulation 1) and analyzing the Islamic legal review of it (Problem Formulation 2). The finding that most transactions are conducted on the basis of willingness (*ridha*), clarity of objects, and without coercion shows that the community emphasizes moral and social aspects rather than formal administrative compliance.

Interpretation of the findings through the lens of muamalah theory shows that although local practices tend to be informal, the transactions often fulfill the elements of a sale and purchase contract: a seller, a buyer, a clear object, and an agreed price. The principles of justice (*'adl*) and willingness (*ridha*) appear to be internal norms that are used as the tip of the legitimization

requirements by the community. However, the aspects of formal documentation and legal protection are still minimal, which has the potential to cause legality uncertainty in the future. This interpretation is consistent with the principle of muamalah that transactions are allowed as long as they do not contain elements of usury, gharar, or fraud. Within the KHI framework, Article 92 requires the consent of both parties to any legal action on joint property; in many cases in this study, verbal consent and social witnesses were considered sufficient even if not in writing, resulting in a shift between formal sharia norms and local practice.

Comparison with previous studies shows points of congruence and difference. As the Utilization of Joint Property study notes that the management of joint property is often carried out through collective agreements in local communities, this finding supports the observation that social agreements become instruments of legitimacy. However, different from the study of Distributive Justice After Divorce (Jamil et al., 2025), which states that the division of joint property is not always 50:50 but rather considers the contribution of the parties, our study found that the Jatimulyo Village community holds more to the concept of equal division as a default start even though in practice there are claims of greater contribution. In addition, a normative study on the division of joint property at the Surakarta Religious Court (Melia, 2019) showed that judges often decide on the division based on Article 97 KHI (50:50) but sometimes accommodate a larger division to one of the parties based on special factors (Melia, 2019). In this local case, the instrument of buying and selling joint property became a practical route so that joint property could be transferred in a way that the community felt was fair without involving a formal court process.

The scientific contribution of this article lies in combining phenomenological field data with normative analysis of sharia and KHI in the village context. The uniqueness of this research is that it focuses on aspects of the sale and purchase of joint property, not just the division of assets after divorce, which has been relatively little researched so far. Thus, this article enriches the literature on Islamic law and sharia economics by presenting a dynamic model of local practice and the potential for conflict between formal norms and community reality. The findings also open a discourse on the need to adapt KHI interpretation to be more responsive to local socio-religious practices, especially at the village level, as well as strengthening sharia legal channels that are easily accessible to the community.

Research limitations include the limited geographical coverage of one village, which reduces the generalizability of the findings to other areas with different socio-cultural characteristics. The limited number of informants (eight informants) also limits the depth of variation in experiences. In addition, the study relied on retrospective data and subject perceptions, which could potentially bias memory or subjective interpretations. This study did not involve quantitative data or extensive official administrative records for comparison.

The implications of this research include several recommendations. First, for policy makers and religious institutions, it is necessary to strengthen local regulations to require formal documentation for the sale and purchase of joint property so that legal certainty is guaranteed. Secondly, there is a need for muamalah literacy and Islamic family rights training at the village level

so that people understand the legal rights and procedures according to sharia and state law. Third, further research could expand the geographical coverage, incorporate quantitative approaches, or compare between village communities with different cultural backgrounds. Fourth, the preparation of operational guidelines (village standards) for post-divorce joint property sale and purchase transactions based on KHI and muamalah principles can be used as an implementative reference for community leaders and village officials.

CONCLUSION

This study concludes that the practice of buying and selling joint property after divorce in Jatimulyo Village takes place in a social pattern that is firmly rooted in local norms, trust between residents, and moral legitimacy from religious leaders and the village government. The results show that the community understands joint property as the result of efforts during marriage that can be sold after divorce as long as there is an agreement between the two parties. The transaction process is carried out through deliberations, offers to relatives or neighbors, price agreements, and gradual payments witnessed by the village without formal legal procedures. Substantially, this practice has fulfilled the basic principles of Islamic muamalah such as justice, willingness, and clarity of the contract, although in terms of administrative legality it is not fully in accordance with the procedures regulated in the Compilation of Islamic Law. Thus, this research answers two main objectives: describing the practice of buying and selling joint property at the village level and assessing its conformity with Islamic law, both of which show the existence of harmony between sharia values and local wisdom although it still requires strengthening the written law aspect.

Theoretically and conceptually, this research contributes to the development of Islamic law discourse and Islamic economics by presenting an empirical perspective on the practice of muamalah in a rural social context. The findings broaden the understanding of the application of Islamic legal principles in a plural society, and show that the Compilation of Islamic Law needs to be interpreted contextually in order to respond to evolving social dynamics. The practical contribution of this research also lies in the identification of social mechanisms capable of maintaining fairness and harmony in transactions outside the formal legal system, while opening up opportunities for synergy between positive law, religious norms and local customs. The implications of this research emphasize the importance of the role of religious institutions and the village government in ensuring that every joint property transaction is carried out in accordance with the principles of justice and legal certainty. Further research could expand the object of study to other areas to compare variations in the application of Islamic law in different social contexts, as well as examine the potential for the formation of an integrative model between Islamic law and adat that can be used as a national guideline in the management of joint property after divorce.

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