

### IMPLICATIONS OF HUSBAND AND WIFE'S LIABILITY FOR JOINT DEBTS TO THIRD PARTIES AFTER DIVORCE ACCORDING TO THE MARRIAGE LAW

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#### **Abstract**

The implementation of the locus delicti theory in cybercrime faces various complexities. This is due to the unique characteristics of cybercrime, where the use of computers as a crime tool often results in the perpetrator, victim, and impact of the crime being in different locations. This condition has caused debate among law enforcement officials regarding determining the right location where the crime occurred. This research aims to see the implementation of the locus delicti theory in cybercrime by law enforcement officials in Indonesia. The research method applies a normative juridical and descriptive nature of analysis. This research uses a theoretical approach, legal principles, a legal rule approach, and a case approach collected through literature studies, data collection techniques, and interviews. After all the data is collected, it is analysed qualitatively to produce several conclusions. The locus delicti theory has a necessary position in law enforcement efforts. However, in practice, this theory is not always applied in every case of cyber crimes; it only becomes a reference when the provisions in Article 84 Paragraph (2) of the Criminal Code cannot be applied optimally. Therefore, regulatory reform and a more flexible approach are needed to apply the locus delicti theory in the future.

**Keywords:** Debt Liability, Divorce, Third Party.

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## A. INTRODUCTION

Marriage has an important role in human life as it has legal consequences for both spouses, their children, their parents, their families, and society as a whole. Marriage is considered the most important element that determines the civilization and progress of Indonesia's human rights, so the Indonesian government launched Law No.16 of 2019 to amend article 1 of Law No.1 of 1974 on Marriage, which states that "Marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God"<sup>1</sup>. Marriage is defined as a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and lasting family (household) based on the Almighty God. The marriage law covers important points such as marriage registration, the principle of monogamy, permission for polygamy, conditions of marriage, prohibition of marriage, prevention of marriage, annulment of marriage, partnership agreements, and marital property.

The discussion of joint property is closely related to the settlement of the debts of the husband and wife incurred during the marriage. The head of the family takes on debt to improve the family economy, which will become the responsibility of the heirs or family members if separation occurs. It is not uncommon, in managing a household in a state of distress or in need of contributing funds for family needs, of those who execute debt agreements with others. The debt then becomes a joint debt. J. Satrio mentions the kinds of debt in marriage can be grouped into three, namely: 1). Personal debt of the husband; 2). Personal debt of the wife; and 3). Family (joint) debt. The problem of joint debt is closely related to the issue of joint property. Joint debt in marriage is considered as property, because property is basically a combination of debt and capital. Thus, in the event of a joint property dispute, not only should the profits be divided, but both parties to the divorce may also be liable for losses.

Theoretically, the resolution of joint debt disputes seems simple and straightforward. However, in reality, after divorce, issues often drag on and often go unresolved. In Indonesia, it is normal that the husband is not the only breadwinner in the family, and the wife is also responsible for running the family finances. Many times, it is the wife who is responsible for the family finances, so it is clear what will happen if the marriage breaks up. This phenomenon makes resolving debt disputes after divorce more difficult<sup>2</sup>

Many rights and obligations are disputed by both parties after divorce, including the division of joint property. Although the status of joint property is regulated by law, the two litigants, in this case the husband and wife, still often cause problems. One of the problems that will arise as a result of the existence of joint property in marriage is about who will be responsible for joint debts during marriage. It is very important to understand that divorce between married couples does not necessarily eliminate all debts incurred during the marriage. Today, many cases concerning the division of joint property are brought to the Religious Courts, but few parties assert the existence of joint marital debts. Since there is no recognized and statutorily regulated joint debt lawsuit in the Courts, joint debts

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<sup>1</sup> Susanti I Botu, Nur Mohamad Kasim, dan Zamroni Abdussamad, "Status dan Perlindungan Hukum Anak dalam Kandungan Seorang Wanita yang Belum Menikah (Studi Kasus: KUA DUNGINGI)," *Perkara : Jurnal Ilmu Hukum dan Politik* 1 (2023): 72–97.

<sup>2</sup> Agustin Hanapi, "Konsep Penyelesaian Utang Bersama Suami Istri Ditinjau Menurut Hukum Islam dan Hukum Postif," *Ahkamul Usrah: Jurnal Hukum Keluarga dan Peradilan Islam* 1 (2021), <https://journal.ar-raniry.ac.id/index.php/ahkamulusrah/index>.

automatically become the responsibility of each spouse when a joint property case has been decided that does not include joint debts<sup>3</sup>.

However, in practice, the issue of debt is often a source of conflict in households. Debts taken on without a partner's knowledge or consent can trigger distrust and tension that leads to strife. When one party is involved in substantial debt, especially without the consent of the other, it can be a heavy burden on the household. In many cases, the debt issue is the main trigger for disputes that lead to divorce, even though debt is not a legal ground for divorce under the Marriage Law.

Debt-induced divorce reflects the complexity of liability for joint debts following divorce. Religious court judges are often faced with situations where one party files for divorce because their spouse has incurred debt without their consent. In this situation, the court must consider a variety of factors, including who is responsible for the debt and how the division of joint property will be carried out. The court's decision is usually based on the evidence presented and considerations of fairness to both parties.

Ultimately, legal protection of the rights and obligations of husband and wife in marriage is very important to maintain balance and harmony in the household. The management of joint property, including debts accumulated during marriage, must be done with transparency and cooperation between husband and wife. Otherwise, disagreements that arise can undermine the foundation of the household and lead to divorce. Therefore, it is important for couples to have good communication and mutual agreement in all matters concerning property and finances, so that issues such as debts do not become a trigger for domestic disunity. Divorce is caused by various factors, including financial problems and unresolved debts. In some cases, religious court judges have granted divorce applications due to a husband or wife being in debt without the permission of their spouse. Although debt is not an official reason for divorce under the Marriage Law, the result of debt incurred by either party can lead to serious arguments in the household and eventually end in divorce.

Divorce is often the last resort for couples facing incompatibility in their marriage. In addition to the significant emotional and psychological impact, divorce also brings legal repercussions, particularly in relation to the division of property and responsibility for debts. According to Indonesian marital law, both Law No. 1/1974 on Marriage and its implementing regulations, responsibility for debts incurred during marriage can have complex legal implications after divorce.

Decision Number 180/Pdt.G/2019/PA.Pra is one of the decisions that has resolved a joint debt dispute between a former husband and former wife submitted to the Paraya Religious Court. A more concrete case found is the existence of joint debt (*gemeenschaap* debt) made by the husband and wife during the marriage period then the debt is made in the name of the wife, due to a dispute and quarrel, there was a divorce between the husband and wife, but the husband deliberately avoided the obligation and responsibility to pay these debts, so that his wife was burdened to pay monthly installments to Bank Mandiri by deducting the wife's salary as a civil servant. Given that the debt is a debt of unity (*debt gemeenschaap*), it is legally a joint responsibility to pay it off, if the debt cannot be paid, it can be done by selling joint property or by reducing the husband's rights or share of joint property.

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<sup>3</sup> Haryono Daud dan Ajub Ishak, "Pembebanan Hutang Bersama Dalam Putusan Pengadilan Agama Tilamuta" 1, no. 1 (2020).

The Gorontalo Religious Court decided a joint debt dispute between an ex-husband and an ex-wife in decision number 618/Pdt.G/2023/PA.Gtlo. In a subsequent case, it was found that the husband and wife had joint debts, also known as *gemeenschaap* debts, which were used to buy a car and repair their house. However, the Plaintiff and Defendant had not paid these debts, so the Plaintiff requested that the loans be designated as joint debts that must be repaid by the Plaintiff and Defendant respectively. As the debt is a joint debt, all family members are responsible for repaying it. If they cannot repay it, they can sell the joint property or reduce the husband's right or share of the joint property.

According to the analysis of the decision of case no. 53/Pdt.G/2012/PA.Tlmt. regarding joint property, the plaintiff and the defendant, former spouses, were asked to divide their debts. To show that, historically, this disputed joint debt at the Tilamuta Religious Court can actually be recognized, as this debt was owned by the plaintiff and the respondent during their marriage until they finally divorced, and was used to develop the business. However, there were certain events that made this debt no longer repayable. According to the defendant's rebuttal, he did not know how the BRI Bank loan money was used. Instead, the plaintiff used all of the money without the knowledge of the defendant. Nonetheless, the panel of judges did not take note of this and held that the joint debt remained a joint responsibility.

Spouses should divide their joint property proportionally. In the above case, the husband and wife's property consists of tangible property and intangible property (e.g., house, household furniture, etc.). Both tangible and intangible joint assets should be divided equally between the two.

## **B. RESEARCH METHODS**

This research is normative in nature using a conceptual approach and conducting qualitative descriptive analysis. This research is basically conducted to collect data and information from library research, which will then be used as a basis for field practice. The approaches used are statute approach and case approach <sup>4</sup>.

## **C. RESULTS AND DISCUSSION**

### **Husband and Wife's Liability for Union Debt to a Third Party After Divorce According to the Marriage Law and the Compilation of Islamic Law**

Regulations regarding the management and responsibility for debts born from both parties, both before marriage and during marriage, are not regulated in the Marriage Law, nor are there articles specifically regulating responsibility for joint and personal debts. In every marriage, each party (husband and wife) has rights and obligations that are adjusted to their proportions. The party with greater obligations will have more rights as well. Husband and wife liability for joint debts is one of the complex issues in Indonesian marital law, especially after divorce. Marriage in Indonesia is regulated by Law No. 1/1974 on Marriage, which stipulates the rights and obligations of husband and wife in domestic life and society. However, when a husband and wife divorce, the question of who is responsible for joint debts becomes very relevant.

When a marriage is broken up by divorce before a judge, each party can divide the marital property. They must file a lawsuit with the court, and the judge will decide on the division of marital property. The court divides the property also divides responsibilities,

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<sup>4</sup> Siska Yulia Chandra Eyato dan Nur Mohamad Kasim, "Tinjauan Implikasi Hukum Terhadap Penagihan Hutang Melalui Media Sosial," *Jurnal Hukum, Politik dan Humaniora* 1, no. 3 (2024): 151–65.

such as debts. In a husband and wife relationship, the obligation to bear arises when they divide the property. It determines who should pay the debt or how much should be deducted to pay it.

According to Marriage Law Number 1 of 1974, the joint obligations of husband and wife First: Husband and wife bear a great responsibility to maintain a household that is *sakinah, mawaddah, and rahmah*, which is the pillar and structure of society. Second, spouses must love, respect, be faithful, and provide physical and mental assistance to each other. Third, the responsibility of husband and wife is to look after and educate their children, both intellectually and spiritually, as well as providing their religious education. Fourth, spouses must maintain their honor. Fifth, spouses can file a lawsuit with the court if each does not fulfill their obligations.<sup>5</sup> According to Article 79 of the Compilation of Islamic Law, this is the spirit of the age and is a natural thing to create a harmonious atmosphere in family life. In addition, as a result of the long emancipation struggle, there is now a moral awareness to realize the equal position of husband and wife.

Debts made by spouses are debts that are used only for joint needs, so they are considered a shared burden and responsibility. In marriage, there are often third parties who are responsible for the debts of the husband or wife. Article 93 paragraph (1) (2), (3), and (4) KHI discusses debts made for the benefit of the family are also charged to the joint property, and if the joint property is insufficient to pay the debt, then the debt will be charged to the husband's property. If the husband's property is insufficient to pay the debt, then the debt will be charged to the husband's property.

Achmad Dimyati, S.H., M.H. stated that although the Marriage Law is the main reference in the settlement of marital property disputes, other laws, such as religious, customary and civil laws, maintain that each party is fully responsible. There is no reason that can eliminate the right of a third party to settle debts related to the dissolution of the union property. In addition, according to Achmad Dimyati, S.H., M.H., the transfer or pledge of joint property by a spouse without the consent of the other spouse is considered legally invalid. The focus is to protect third parties who are of good ethics and if the legal actions of the spouse are done for the mutual benefit of the husband and wife.

In theory, joint debt is a joint responsibility, as long as the debt is made during the marriage period, then the husband and wife have responsibility for the problem of joint debt.<sup>6</sup> Joint debt has a correlation with joint property. Because when people file a case, the joint property is taken into account together with joint debt. In the context of marriage, debts made during the marriage period by one of the spouses are considered joint debts. According to Article 130 of the Civil Code, after divorce, the husband and wife remain responsible for the debts made during the marriage. The husband is fully responsible for paying off the debts made by the wife, except for debts made by the wife before the marriage. The wife is only liable for half of the debts made by the husband, but is fully liable for debts made by herself during the marriage.

After the divorce, the joint property (*gono-gini* property) will be divided, and responsibility for debts will be settled in the process of dividing the property. If one party is unable to pay off the debt, then the other party can demand a half share of the debt. In

<sup>5</sup> Syaiful Anwar, "Hak dan Kewajiban Suami Istri Menurut Undang-Undang Nomor 1 Tahun 1974," *JURNAL KAJIAN ISLAM AL KAMAL* 1 (2021).

<sup>6</sup> I Gede Arya Agus Pratama, Ni Luh Mahendrawati, dan Luh Putu Suryani, "Penyelesaian Sengketa Pembagian Harta Bersama yang Dijadikan Jaminan Hutang Melalui Akta Perdamaian," *Jurnal Analogi Hukum* 2, no. 2 (20 Juli 2020): 165–69, <https://doi.org/10.22225/ah.2.2.1915.165-169>.

the context of Islamic law, similar principles apply. Debts taken on for mutual benefit during the marriage are jointly and severally liable. However, personal debts taken without the consent of the spouse cannot be charged to the other party.

Regarding joint debts and joint property, joint debts are charged to joint property. This means that the debt is settled first and then the property can be divided. In the sense that the joint debt is charged to the joint property. This is in line with Article 93 of the Islamic Law Compilation and Supreme Court Circular Letter No. 3 of 2018 concerning joint property that cannot be divided if it is still a debt to a third party in the sense of a bank etc.

There is no article in Indonesian positive law that explicitly addresses joint debt. The provisions contained in Article 35 paragraph (1) of Law No. 1/1974 on Marriage can help understand the relationship between debt and property. In the article, joint property includes property owned by the spouses. To understand the “property” mentioned in the article, it is not enough to understand it as tangible property. But liabilities, or liabilities, fall under the category of “property” mentioned in the article.

The definition of property in the KBBI (Kamus Besar Bahasa Indonesia) defines property as tangible and intangible wealth that has value according to the law. Therefore, the debt mentioned in Article 35 paragraph (1) of the Marriage Law is also included in the category of property in this case.

In the Marriage Law, Article 36 Paragraph 2 of the Marriage Law states that the personal property or assets of each husband and wife have the full right to carry out legal actions regarding their property. Thus, the responsibilities of husband and wife are divided into internal (between the two of them) and external (towards third parties). Joint expenses are expenses needed to live together as a family, including daily needs, expenses for health and treatment and education of children. While external responsibility, namely that in principle each husband and wife bear their respective personal debts both before and during marriage with their personal property or inherited property.

The Marriage Law is the main basis for the settlement of joint debt disputes after a marriage ends, but the settlement of disputes must also consider other regulations, such as religious, customary, and civil law, as stated in article 37 of Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning Marriage, which states: “When the marriage has been dissolved, or if the marriage has been dissolved.”

Indonesia is a country with the principle of the rule of law, which means that all actions and decisions of state administrators must be based on the law. In addition, the country has a civil law tradition that tends to prioritize written law in the form of legislation. According to the Compilation of Islamic Law, article 86, marriage basically does not involve mixing the assets of the husband and wife. If there is no shirkah, the joint property of husband and wife remains theirs.<sup>7</sup>

The absence of a shirkah between husband and wife does not remove the husband's obligation to bear the maintenance and household expenses of the family. All property owned by each husband or wife is owned by each of them, and they have the full right to do whatever they wish with it, including debts and credits to third parties.

Regarding responsibility for debt in a marriage, KHI provides rules in article 93, namely:

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<sup>7</sup> Bella Nur Azizah, Moh Muhibbin, dan Ahmad Bastomi, “Petanggungjawaban Suami Istri Terhadap Hutang Bersama Akibat Perceraian Menurut Kompilasi Hukum Islam dan Kitab Undang-Undang Hukum Perdata,” *DINAMIKA* 29 (2023).

Article 93 KHI

- 1) Responsibility for the debts of the husband or wife is charged to their respective assets;
- 2) Liability for debts incurred for the benefit of the family, charged to the joint property;
- 3) If the joint property is insufficient, charged to the husband's property;
- 4) If the husband's property is not available or sufficient, it shall be borne by the wife's property.

Therefore, the debts of the husband or wife are charged to their respective assets (Article 93 paragraph 1 KHI). However, debts made for the benefit of the family are charged to the joint property (Article 93 paragraph (2) KHI). If the joint property is insufficient, the debt is charged to the husband's property (Article 93 paragraph 3 KHI), and if the husband's property is no longer sufficient, the debt is charged to the wife's property (Article 93 paragraph 4 KHI). Article 93 contains errors. The husband is also responsible for the wife's personal needs, and the husband must pay the wife's debts. Thus, article 80 paragraph (4) of the Compilation of Islamic Law states that the needs of the family must be in accordance with the husband's income:

1. Nafkah, kiswah and residence for the wife;
2. Household expenses, care and medical expenses for the wife and children;
3. Education expenses for the children.

Thus, the personal needs referred to in Article 93 of the Compilation of Islamic Law are needs that are different from the husband's responsibility to fulfill obligations in the household. In Case No. 0180/Pdt.G/2019/PA.Pra, the judge of the Praya Religious Court considered the legal basis, including Article 37 of Law Number 1 of 1974 concerning Marriage, which states that joint property is regulated according to their respective laws if the marriage breaks up due to divorce. In this case, for Muslims, joint property is regulated according to their respective laws. In addition, it is expected that there will be no difference in rights between husband and wife due to sociological considerations such as deliberation and justice, namely the division of debts and joint property, based on the principle of justice.

In the decision of case No. 53/Pdt.G/2012/PA.Tlmt at the Tilamuta Religious Court, the judge considered four factors: the legal burden of the joint debt, its historical status, and the party's ability to pay it. Thus, based on the case of joint debt that occurred in the Religious Court that the responsibility is borne by the husband's joint property and the wife sees two sides of opinion regarding the role of extrn as stipulated in the marriage law but, in the context of the Gorontalo Religious Court's decision when talking in the context of joint debt, the husband should be more responsible for settling joint debts instead of being charged to the wife. So when we talk to third parties, it must be clear, meaning that the third party only sees the reason for the recognition of debt, the wife's justice in the context that she cannot fulfill helping her husband pay off debts then when she is due to divorce she does not have the capacity and capability to pay off. But, suddenly the object that was previously a joint debt and was paid off by the husband and then the wife's right to that object is lost, it is not allowed.

The phenomenon that occurs in the community, when there is a divorce, the husband pays off the wife's debt and cannot do anything to help the husband if then the wife's right to joint property is just lost, because in fact they are still together, the wife can never give a sum of money as assistance to her husband to pay off debts made from the beginning when they were still together, let alone when they have finished divorcing, but the count is when the joint debt made from the date of marriage to the date of divorce is a joint debt. Finished joint debt is joint property, or simply joint debt is joint property. Then we use the

theory that debt is an asset, because once paid in full, debt becomes an asset (debt is an asset theory).

The judge will consider the circumstances of each party, including their respective contributions and roles in the division of joint property and responsibility for debts. For example, if the joint property is generated by the wife, then the judge may give a larger share to the wife. The judge will also have to consider the marital laws, such as the KHI and the Marriage Law, which govern the division of joint property and responsibility for debts. The judge should apply the applicable legal norms and consider the parties' contribution to the obligations in the household.

### **Implications of Union Debt to Third Parties After Divorce According to the Marriage Law.**

Marriage is a legal act, every marital act has legal consequences, including rights and obligations for both husband and wife and other parties with whom they have a relationship. In addition, the legal consequences resulting from marriage are diverse, including:<sup>8</sup>

1. The onset of the relationship between husband and wife,
2. The creation of property in marriage,
3. The relationship between parents and children.

To live a prosperous life, humans expect to be able to fulfill basic needs such as shelter, clothing and food. Living together with prosperity and happiness determines the prosperity and happiness of society and the state, conversely, a broken and chaotic living together will cause the fabric of society to be broken and chaotic. Wealthy households can be an important part of their happiness and can also be a source of conflict.

The existence of marital debt is not an attempt to fulfill their needs, so it becomes a problem when the debt is not settled. As domestic life is directly related to income and expenditure, marriage is closely related to property and debt. This often causes problems in the household. If both husband and wife have marital debt, it will be a shared burden and responsibility as the debt is used for mutual benefit and agreement.<sup>9</sup>

After the dissolution of the matrimonial union, the husband and wife are each liable for all debts created jointly, according to Civil Law. According to Article 130 of the Civil Code, the husband has the right to claim back half of the debt to the wife or her heirs, but this does not prejudice the husband's right to claim back the entire debt of the union. The husband is fully liable for all debts of the wife, except for debts made before the marriage. After the division of property, the other party can no longer be sued for debts incurred before the marriage. During the marriage, the wife is fully liable for her husband's joint debts, but only half of her husband's debts.

The law governing marital debt determines who is liable for the debt. When the property union is divorced, the debts of the union will be charged to the property union according to the Civil Code. However, the UUP distinguishes personal and joint assets, and personal and joint debts are also distinguished. While joint debts are the joint responsibility

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<sup>8</sup> Julius Martin Saragih dan Herni Widanarti, "Pertanggungjawaban Hutang-Hutang Persatuan Setelah Putusnya Perkawinan," *DIPONEGORO LAW JOURNAL* 6 (2017), <http://www.ejournal-s1.undip.ac.id/index.php/dlr/>.

<sup>9</sup> Priesty Yustika Putri, Prija Djatmika, dan Dhiana Puspitawati, "Implikasi Yuridis Perjanjian Perkawinan Yang Dibuat Selama Dalam Ikatan Perkawinan Terhadap Utang Bersama Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Ilmiah Hukum LEGALITY* 26, no. 1 (15 Agustus 2018): 95, <https://doi.org/10.22219/jihl.v26i1.6621>.



of husband and wife, personal debts are charged to the personal assets of the husband and wife who incurred them. Joint debts must be settled before the court along with the division of property after the marriage ends. The parties should be responsible for their personal and joint debts.

Divorce is increasingly angry in modern society, many people are too hasty to divorce without considering the impact that will be caused after divorce, because divorce does not always solve one's life problems, but the rights and obligations of husband and wife also end except for the interests of children. According to Moh. Anwar Usman as a Judge of the Gorontalo State Religious Court said that divorce has implications for joint property. The issue of joint property is not only the division of profits but also the responsibility for debt because basically joint property in the context of marital law in Indonesia is often compared to joint debt because it is a responsibility shared between husband and wife. This concept is regulated in Marriage Law Number 1 of 1974 concerning Marriage, which states that during marriage the property obtained becomes joint property, including debts arising during the marriage period.

a. Implications for joint and several liability

Joint property acquired during marriage is known as gono-gini property, divided in half between husband and wife upon divorce. This property includes all assets acquired regardless of who generated or registered the property. Meanwhile, joint debts are debts incurred during the marriage that are also considered joint liabilities. In this case, in the event of divorce or death, the debt must be paid by both parties or the heirs, depending on the situation.

Joint property in the context of marriage in Indonesia is often compared to joint debt because both are responsibilities shared between husband and wife. This concept is regulated in Marriage Law No. 1 of 1974 concerning Marriage, which states that property obtained during marriage becomes joint property, including debts incurred during that period.

In marriage, a husband and wife can have joint debts arising from economic activities during the marriage. According to Article 130 of the Civil Code, after divorce, both husband and wife are liable for debts incurred during the marriage.<sup>10</sup> However, this responsibility is divided based on who created the debt. The husband is fully liable for debts made by the wife, except for debts made before marriage, while the wife is only half liable for debts made by the husband.

After a divorce, the burden of debt can become the responsibility of either party, especially if one party is involved in a debt bondage. This can have a significant impact on an individual's financial life after divorce, especially for those with large debts.

The implications of marital co-debt are heavily influenced by existing legal provisions, whereby both husband and wife have joint responsibility for debts incurred during the marriage. However, challenges in the implementation of the law and execution of judgments can result in difficulties in resolving debt issues after divorce. Therefore, it is important for spouses to understand their responsibilities in terms of joint debts and how these will be managed in the event of divorce.

b. Implications for the Division of Joint Property

According to Article 35 paragraph (1) of Law No. 1 Year 1974, property acquired

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<sup>10</sup> Siti Yeri Rezyu Wahida, "Pertimbangan Hakim Dalam Putusan Akibat Perceraian Terkait Harta Bawaan Istri Yang Dijadikan Jaminan Pelunasan Hutang Dalam Perkawinan," *AKTUAL JUSTICE JURNAL ILMIAH MAGISTER HUKUM PASCASARJANA UNIVERSITAS NGURAH RAI* 6 (2021).

during marriage becomes joint property. In the event of divorce, this joint property is divided in half for each party, after fulfilling debt repayment obligations. Joint property includes all assets acquired during the marriage, including those acquired through credit or debt.

Debts incurred during marriage are considered a joint responsibility, which means that both husband and wife are responsible for paying the debt jointly and severally. This is regulated in KHI, which states that debts incurred during the marriage period are joint responsibility, and must be paid from joint assets if any. If the joint property is insufficient to pay the debt, then the burden of the debt will be transferred to each party in accordance with their contribution to the debt. For example, if the debt was taken out for a joint purpose, then both should be liable.

When a divorce occurs, the joint property (*gono-gini*) is divided after settling the debt payment obligations. The property divided is the net property after all debts are paid, so that each party gets a share that is not affected by existing debts. In practice, when a divorce occurs, the court will decide on the division of joint property after all debt obligations have been fulfilled. This means that the property distributed is the net property, after deducting the existing debts. If one of the parties does not fulfill their debt payment obligations, then this may affect their portion in the division of joint property.

Overall, joint debts have significant implications for the division of marital property. The obligation to pay joint debts will affect the amount of property that can be divided between husband and wife after divorce. Therefore, it is important for couples to understand and manage joint debts during marriage to avoid conflicts later on.

c. Implications for third parties

In the field of marital law, often husband and wife cannot fulfill the needs of family life caused by various ha, thus forcing to relate or make agreements with other parties husband and wife, among others in the form of credit agreements. The credit agreement will give rise to rights and obligations on the part of the husband and wife as debtors and third parties as creditors.<sup>11</sup>

The will of the parties to carry out the rights and obligations of an agreement is based on the good moral principles of each party, where the parties want to carry out the things that have been mutually agreed upon in the agreement that has been made. In this case, the parties must carry out the agreed agreement in good faith, in accordance with the provisions of article 1338 paragraph 2 kuhperdata which states that agreements must be carried out in good faith.

The implementation of a credit agreement by pledging objects included in the scope of joint property, will result in the birth of responsibility for the repayment of debts from the credit agreement. What is meant by the debt is as follows: Debt should be given a broad meaning, both in the sense of an obligation to pay a certain amount of money arising from a debt and credit agreement (where the debtor has received a certain amount of money from his creditor), as well as an obligation to pay a certain amount of money arising from an agreement or contract that causes the debtor to pay a certain amount of money.

In marriage, both husband and wife are responsible for paying off debts incurred during the marriage. These debts may include debts for joint purposes, such as children's education or the purchase of a house.

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<sup>11</sup> Sonny Dewi Judiasih, *Harta Benda Perkawinan: Kajian terhadap Kesetaraan Hak dan Kedudukan Suami dan Istri atas Kepemilikan Harta dalam Perkawinan*, Cetakan Kedua, April 2019 (JL. Mengger Girang No. 98, Bandung 40254: PT. Reflika Aditama, 2019).

Third parties involved in debt and credit agreements are often in a vulnerable position. If one party (husband or wife) pledges joint property without the consent of the other, the third party may be disadvantaged. Therefore, existing legal regulations, although not always clear, attempt to provide protection for good faith third parties.<sup>12</sup> In the case of divorce, the joint property that has been divided will be the responsibility of each party. However, if there are outstanding debts, a third party can still make a claim against the remaining joint property to cover the debt.

Under the law, debts incurred during the marriage must be accounted for jointly, but a distinction must also be made between joint and personal debts. Personal debts cannot be taken from joint property without the consent of the spouse. Third parties transacting with a married couple should be aware that if one party does not fulfill his or her obligations, the third party may have to fight to recover the debt. This emphasizes the importance of transparency and consent in transactions involving joint property. In the event of a dispute over a joint debt, the resolution often involves the courts. An aggrieved third party can file a lawsuit to get their rights, but this process can be complicated and time-consuming.

Overall, the implications of joint debts on third parties depend largely on how the debt agreement is structured and how the law regulates the responsibilities of spouses in the marital context. Third parties need to exercise caution and ensure that all necessary consents are obtained to protect their interests.

#### **D. CONCLUSION**

Basically, joint debt is a joint responsibility as long as the debt is made during the marriage period. Debt has a correlation with joint property, because when people file a joint property case, it must coincide with joint debt. Articles 35 to 37 of the Marriage Law discuss the issue of joint property. Article 35 paragraph (1) states that the property obtained during marriage becomes joint property, while Article 35 paragraph (2) states that the innate property of each husband and wife, as well as the property obtained by each as an inheritance or gift, is under their respective control as long as the parties do not determine otherwise. Furthermore, Article 36 paragraph (1) states that the husband or wife can act on the press in terms of joint property. Article 37, joint property owned by a married couple during marriage can be regulated in different ways depending on changes in customary law or other laws outside customary law. In the Marriage Law, responsibility must be divided into two, namely internal responsibility (between husband and wife) and external (towards third parties). Regarding the responsibility for debt in a marriage regulated in the Compilation of Islamic Law, the debts of husband or wife are charged to their respective assets (Article 93 paragraph 1 KHI). However, debts made for the benefit of the family are charged to the joint property (Article 93 paragraph (2) KHI). If the joint property is insufficient, the debt is charged to the husband's property (Article 93 paragraph 3 KHI), and if the husband's property is no longer sufficient, the debt is charged to the wife's property (Article 93 paragraph 4 KHI).

Implications of Husband and Wife Liability for Joint Debt to Third Parties After Divorce According to the Marriage Law, namely: a). Joint Debt Charges, b). Division of Joint Property, c). Against Third Parties.

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<sup>12</sup> Ananda Putri Pratama Aathira Salsabila Iksir, "Perlindungan Hukum Pada Pihak Ketiga Sebagai Pemilik Objek Jaminan Hak Tanggungan," *DiH: Jurnal Ilmu Hukum* 19 Nomor 2 (2023).

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