
Legal Analysis Of Mediation In The Settlement Of Joint Property Disputes In Marriage In Terms Of Islamic Law And Positive Law

Gideon

Department of Islamic Family Law Postgraduate Program IAIN Sheikh Nurjati Cirebon

Email: gideongultom48@gmail.com

Article info:

Received: 27 May
2024

Accepted: June
2024

Available online:
December 2024

ABSTRACT

Joint Property has become a polemic in Indonesia's Islamic legal discourse and legal system. Initially, the assets brought by the husband did not have any identification, nor did those brought by the wife. Such assets are inherited assets of both parties, which are identified as the personal property of the husband or wife. The assets a husband and wife produce during marriage are a logical consequence of marriage. The aim of this research is firstly to find out more about Islamic law regarding mediation in resolving marital property disputes. Secondly, I want to find out more about the positive legal review of mediation in resolving marital property disputes. This research was conducted using a Normative Juridical approach. The specifications of this research are descriptive analysis. The conclusion that can be obtained is that mediation in the distribution of joint property in Islamic law has no specific rules but only provides general guidelines for resolving joint property problems without causing disputes. Second, Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Court makes mediation part of the court process. In court to obtain peaceful efforts through the mediation process as contained in the Procedural Law Article 130 HIR or Article 154 RBg.

Keyword: Mediation; Joint Assets; Islamic Law and Positive Law;

I. INTRODUCTION

Ideally, the concept of property has complete provisions in Islam. Marital life has regulated all schemes for the distribution of rights and obligations within the scope of the family, including in the matter of bringing property, which ideally becomes the husband's obligation. The rights and obligations referred to are ideally regulated in law.¹ Both parties, husband and wife, have been regulated regarding rights and responsibilities in fiqh. Even the scheme of rights and obligations regulated in Islam is one of the tools in achieving mistaken walidzah in marital life.

Property in marriage becomes unproblematic when both parties live in a comfortable, peaceful, and prosperous marriage. The property's position becomes a medium in fulfilling family needs, both issues of clothing, food, and shelter. The position of wealth is one of the instruments of family life in meeting the needs of life in the family.² Treasure is necessary, although other elements exist in a married life. However, wealth is an essential instrument in meeting the needs of life. Several patterns of property in marriage will be the responsibility of marital life. There is the husband's innate property; there is also the wife's innate property, and there is also the property produced during the marriage.³ The husband produces both as an embodiment of the husband's obligation to earn a living. Remember also the assets the wife generates because the wife has the creativity and competence to bring wealth.

Mediation is one way of resolving a conflict in court (litigation) and outside the court (non-litigation). The implementation of mediation in resolving civil cases for people who are Muslims is carried out in the Religious Courts. Mediation grows and develops in line with the growing human desire to resolve disputes quickly and satisfactorily for both parties, as well as with justice. In the implementation of mediation in religious and state courts, the percentage of the success rate of mediation is relatively low compared to divorce cases that end in court decisions (verse).

Supreme Court Regulation (PERMA) Number 1 of 2016 on Mediation Procedures in Courts defines mediation as a way of resolving disputes through a negotiation process to reach an amicable agreement between the parties with the assistance of a Mediator. We can generally maintain good ties with the disputing parties after a disagreement through mediation. However, not all mediation processes run smoothly and as desired. There are times when the disputing parties find it difficult to find a solution that mostly continues to the trial, especially property cases that often arise after divorce.

¹ Zainudin Ali, *Philosophy of Law* (Jakarta: Sinar Grafika, 2006).

² Miftahul Jannah, "The Islamic Family Concept," *Gender Equality: International Journal of Child and Gender Studies* 4, no. 2 (September 12, 2018): P. 87.

³ Mushafi Mushafi and Faridy Faridy, "A Legal Review of the Division of Gono Gini Property between Divorced Husband and Wife," *Batulis Civil Law Review* 2, no. 1 (May 31, 2021): P.44.

The Supreme Court Regulation (PERMA) No. 1 of 2016 concerning Mediation Procedures in Court states that parties to civil litigation in court at the first hearing must first conduct mediation; mediation is carried out so that the parties to the dispute can resolve the dispute amicably.

Mediation is a private, non-public, and cooperative process for resolving problems. It is practical, relatively easy, and informal, similar to a court. Mediation always involves the existence of a mediator who acts as a neutral and impartial third party.⁴

Dispute resolution means explicitly that in a dispute between husband and wife, differences of opinion between the two parties because of property can also refer to disputes. So, for this reason, there is an imbalance of ownership, and a policy is needed to equalize the position for both parties.

The parties certainly do not want the disputes that occur to them to affect their marriage and harm them regarding inheritance. Therefore, the parties expect a fair settlement and clear legal rules in resolving disputes involving these assets.

II. RESEARCH METHODS

The type of research that researchers use is *library research*, namely by collecting data related to mediation in joint property disputes that researchers get from books, theses, dissertations, journals, and articles that have to do with mediation and joint property.⁵ A descriptive analysis approach describes the legal analysis of mediation in the settlement of joint property disputes with matters relating to it. As well as by systematically describing the facts regarding mediation according to Islamic law and positive law. With data sources, namely primary legal materials, secondary legal materials, and tertiary legal materials: In this study, what is used as primary legal material is the regulation regarding mediation PERMA No. 1 of 2016, Laws, Jurisprudence, AL-Qur'an and Hadith, Secondary legal materials in this study include books, theses, dissertations, journals and scientific works, which are related to research, and Secondary legal materials in this study come from dictionaries and encyclopedias.

⁴ Gunawan Widjaja and Ahmad Yani, *Arbitration Law*. (Jakarta: PT Raja Grafindo Persada, 2003).

⁵ Bambang Waluyo, *Legal Research in Practice* (Jakarta: Sinar Grafika, 2002).

III. RESULTS AND DISCUSSION

A. Positive Law Review of Mediation in Settling Joint Property Disputes in Marriage

In essence, joint property in Islamic law can be traced through the concept of *'urf* contained in the study of *ushul fiqh*. It can also be through Islamic law's fundamental values or aspirations and the universal principles contained in Islamic *Shari'a*. It is known that Islamic *Shari'a* only regulates social life issues globally, not in detail, and includes moral messages, general principles, and essential and universal teachings. These principles are eternal and should not change, such as the principle of upholding justice, benefit, balance, truth, compassion, and Peace. If the rules in the social field were detailed, concrete, and binding at all times and places, they would clash with the dynamics of society. The technical laws of *Ramallah* are temporary and contextual because their formation is based on considerations of Arab customs or culture when the verse is revealed.⁶ These general principles are used as a reference to answer the legal issues of joint property that arise in society. Customs or traditions in Islamic legal literature, called *'urf*, contribute a lot to the development of the law itself.

'Urf, Which is good (*sahih*) and must be maintained as the law is formed in the legislative and judicial institutions. In other words, the custom is *shari'a* that is confirmed as law or better known as the term "custom can become law" (*محكمة العادة*), which Nurcholish Madjid means that local culture and can be used as a source of Islamic law.⁷ Abdul Wahhab Khallaf⁸ They even elaborated that the developers of the *madhhab* in the past also did not deny the elements of tradition in the legal system they built.

Joint property accommodated from *'urf* has long grown and developed in Indonesian society. Most customary societies in Indonesia recognize and apply the provisions on joint property, although the mention and application vary. *'Urf*, as long as it does not violate the *Sharia* text, can be accommodated as part of Islamic law because if it has become a tradition, it has become a necessity, and the fulfillment of needs is a benefit, while the benefit is the purpose of *shari'ah* (*maqashid shari'ah*).⁹ Consequently, when *'urf* changes, the law also changes because it means there has been a change in the *ill* of the law. This is what is meant by the scholars, including Ibn al-Qayyim al-Jauziyah (d. 751 AH), that it is not denied. 751 AH) that there is no denying the change of law with the change of

⁶ Zein, Satria Effendi, and Satria Effendi. "Munawir Sjadzali Dan Reaktualisasi Hukum Islam Di Indonesia." Dalam Muhammad Wahyuni Nafis, Dkk (Ed). *Kontekstualisasi Ajaran Islam 70 (1995)*, n.d.

⁷ Nurcholis Madjid, *Islam Doctrine, and Civilization: A Critical Study of the Issues of Faith, Humanity and Modernity*, First Printing (Jakarta : Paramadina, 2000).

⁸ Abdul Wahab Khallaf, *Science of Ushul Fiqh* (Egypt : Maktabah ad-Da`wah al-Islamiyyah, n.d.).

⁹ Yusuf Qordawi, *Al-Ijtihad al-Mu,Asir* (Dar at-Tauzi' wa an-Nasy al-Islamiyah, 1994).

time and place “تغير” means بالاحكام بتغير الازمان والامكنه this expression is that the laws of fiqh that were previously formed based on good customs, the law will change when the customs of the community in which the law is applied has changed.¹⁰

The determination and enforcement of the legal institution of joint property can also be highlighted using the *maslahah mursalah /istislah* approach (determination based on benefit). According to al-Ghazali, *maslahat* is, in principle, attracting benefits and rejecting *mafsadat* (harm) to maintain the objectives of the Shari’ah.¹¹ The *maslahat* aspect that can be taken from the determination of this joint property is that it can strengthen the marriage bond and support household harmony between husband and wife as recommended in the Qur’an *mu’âsyarah bi al-ma’rûf*.

Based on the above, the construction of joint property in Islamic law is justified because it does not conflict with the objectives of Islamic law (*maqashid al Shari’ah*), namely realizing the benefits associated with soul and property. The wife, who is divorced from her husband, is worried about having difficulty meeting her needs after the divorce, especially if she does not work. So, there needs to be a balance so the wife still gets her rights through a fair and proportional distribution of joint property.

In Islamic law, mediation in the division of joint property has no specific rules but provides general guidelines for resolving joint property issues without causing disputes. The best possibility in the division of joint property is done by *al Shulhu* (Peace), or by using the prevailing customs in society (*‘Urf*), or the last resort is through *qadha* (Judge’s decision). The agreement or consensus between husband and wife is the first step in resolving the division of joint property. This agreement in the Qur’an is called the term “*Ash Shulhu*,” an agreement to make Peace between the two parties (husband and wife) after they disagree. As described in the following Prophetic Hadith:

عن عمر ابن عوف المزني رضي الله عنه عن النبي صلى الله عليه وسلم قال: "الصلح جائز بين المسلمين, إلا صلحا حرم حلال, أو أحل حراما. والمسلمون على شروطهم, إلا شرطا حرم حلالا أو أحل حراما (رواه أهل السنن إلا النسفا)

Meaning: *Amr ibn Auf al-Muzani reported that the Messenger of Allah (blessings and Peace of Allah be upon him) said: "Peace is permissible between Muslims, except for a peace that forbids what is lawful or makes lawful what is unlawful. And the Muslims are subject to their conditions, except for conditions that forbid the lawful or make lawful the unlawful."* (Tirmidhi no.1370, Ahmad 2:366, and Abu Dawud no.3594)

¹⁰ Ibn al-Qayim al-Jauziyyah, *A’lam al-Muwaqi’in’An Rab al-Alamin, Juz I* (Beirut : Darul Kitab alIlmiyyah, 1993).

¹¹ Al Ghazali Al Ghazali, *Al-Mustashfa Fi al-Ilmi l-Ushul* (Beirut: Dar al-Kutub al-Ilmiyah, 1983).

Imam Al Shan'ani further explains the above hadith with the following description:

قَدْ قَسَمَ الْعُلَمَاءُ الصُّلْحَ أَقْسَامًا، صُلْحَ الْمُسْلِمِ مَعَ الْكَافِرِ، وَالصُّلْحَ بَيْنَ الرَّوَجَيْنِ وَالصُّلْحَ بَيْنَ الْفِتَى الْبَاغِيَةِ وَالْعَادِلَةِ وَالصُّلْحَ بَيْنَ الْمُتَقَاضِيَيْنِ وَالصُّلْحَ فِي الْجِرَاحِ كَالْعَفْوِ عَلَى مَالٍ وَالصُّلْحَ لِقَطْعِ الْخُصُومَةِ إِذَا وَقَعَتْ فِي الْأَمْلاَكِ وَالْحُقُوقِ وَهَذَا الْقِسْمُ هُوَ الْمُرَادُ هُنَا وَهُوَ الَّذِي يَذْكُرُهُ الْمُفْقِهَاءُ فِي بَابِ الصُّلْحِ

Meaning: *“The scholars have divided al-shulhu (reconciliation) into several types: reconciliation between Muslims and disbelievers, reconciliation between husband and wife, reconciliation between a group of brats and a just group, reconciliation between two people who appeal to the qâdhi (judge), reconciliation in the matter of injury such as forgiveness for the sanction of property that should be given, and reconciliation to give some property to the opponent of the dispute if it occurs in the case of joint property (amlaak) and rights. This is the division referred to here, which is the division mentioned by the fuqaha’ in the chapter on al-shulhu (reconciliation).”*

Based on the above description, a divorced husband and wife who will divide the joint property formed during their marriage may resolve it amicably. One form of Peace is Peace between husband and wife, or Peace when there is a dispute related to joint property. Husband and wife can deliberate in determining the division of the property, both related to the ratio (percentage) and its management. This is highly recommended so both parties are equally satisfied with their respective shares. Usually, in the agreement on a joint property, some parties must give up their rights; the wife must give up her rights to the husband, and vice versa; the husband must give up his rights to the wife for the sake of harmony between the two parties after the divorce.

B. Positive Law Review of Mediation in Settling Joint Property Disputes in Marriage

The term joint property in Western Civil Law (KUH Perdata) is expressed as “gemeenschap.” This *gemeenschap* will end if the marriage ends by divorce or death. If the *gemeenschap* is declared to have ended, it will be divided in half with equal shares regardless of the origin of the goods/assets individually from which party. Only items closely related to one party can be given to the other, considering their value in the division.¹²

Suppose the husband and wife disagree on separating assets before the marriage is implemented. In that case, all the assets of the husband and wife are

¹² R. Subekti, Principles of Civil Law (Jakarta: Intermasa, 1996).

merged, and the whole is considered joint property. Then, in Articles 128-129 of the Civil Code, it is stated that if the marriage rope is broken between husband and wife, the joint property is divided in half between husband and wife regardless of which party the assets were previously obtained. The marriage agreement is justified by statutory regulations as long as it does not violate the morals and general tranquility prevailing in community life.

The provisions on marital property formulated in the Civil Code above have been declared inapplicable since the issuance of Law Number 1 of 1974 concerning Marriage. Article 35 of the Marriage Law states:

1. Property acquired during the marriage becomes joint property;
2. The inherited property of each husband and wife and the property obtained by each as a gift or inheritance are controlled as long as the parties do not determine otherwise.¹³

Based on the formulation of Article 35 of the Marriage Law above, it can be understood that since the occurrence of marriage and during the marriage, legally, the mixing of assets between husband and wife begins to apply to the assets obtained during the marriage, both in the form of movable, immovable, tangible and intangible goods, both existing and those that will exist in the future, as long as the husband and wife do not expressly regulate it in a written marriage agreement and agreed upon by both parties. However, this does not apply to inherited or acquired property, such as property obtained from grants or inheritance.

Article 1 letter (f) KHI states, "Property in marriage or *Syirkah* is property obtained either individually or jointly by husband and wife during the marriage bond, from now on referred to as joint property, without regard to being registered in the name of anyone."

Article 85

"The existence of joint property in marriage does not rule out the possibility of property owned by each husband or wife.

Article 86

- (1) "There is no mixing between the husband's property and the wife's property because of marriage."
- (2) "The wife's property remains the right of the wife and is fully controlled by her, as well as the husband's property remains the right of the husband and is fully controlled by him.

Article 87

¹³ Permata Press Team, *Law Number 1 of 1974 Concerning Marriage* (Jakarta: Permata Press, 2015).

- (1) "The assets of each husband and wife and the assets obtained by each as a gift or inheritance are under their respective control, as long as the parties do not specify otherwise in the marriage agreement.
- (2) "Husband and wife have the full right to perform legal actions on their respective assets in the form of grants, gifts, sadaqah, or others."

Based on the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 803/SIP/1972 dated 5 May 1970, joint property is not limited to property obtained during marriage. The legal considerations in the jurisprudence emphasize that a property can be categorized as joint property if the property is purchased using joint property, even if the property was purchased after the divorce. It is also important to note that during the trial, the party that feels he has the right can prove the argument he is claiming.

The form of joint property formulated in Article 93 KHI, namely:

1. Joint property can be in the form of tangible or intangible objects;
2. Tangible rights can include immovable objects, movable objects, and securities;
3. Intangible assets can be both rights and obligations and;
4. One party can use joint assets as collateral with the other party's consent.

KHI has included forms of securities as part of the property that can be categorized as joint property, such as insurance policies, billet giro, shares, and the like. This shows the presence of modern nuances in the KHI by considering the development of intangible forms of property. Thus, KHI anticipated the development of the contemporary economy. In addition, KHI also anticipates the possibility that if the husband or wife is a spender, gambler, drunkard, or others who harm and endanger the security of property obtained during marriage and fear transferred to a third party by one of the parties, then the husband or wife can request assistance from the Religious Court to confiscate the joint property without a divorce application.

Based on the explanation above, it can be understood that in the provisions of positive law, all property obtained by husband and wife during marriage becomes joint property, whether the property is obtained separately or jointly obtained from joint work. As for the property obtained before marriage or from inheritance, gifts or grants cannot be categorized as joint property but are classified as personal property that belongs to each. Based on the explanation above, the construction of joint property in positive law is quite clear. Namely, the category of joint property is property obtained by both parties during the marriage bond from the fruits of joint labor between husband and wife.

The regulation of joint property in positive law before the birth of Law Number 1 of 1974 concerning Marriage is contained in Book One, Chapter Six of

the Civil Code concerning the Unity of property according to law and its management, starting from Article 119 to Article 128. According to Article 119, it is emphasized that “From the time of marriage, by law, the unification of the entire property of husband and wife shall apply, as long as no marriage agreement is made or entered into which provides for other provisions.”¹⁴ During the marriage, the joint property may not be eliminated or changed by another agreement between husband and wife.

Article 122 of the Civil Code stipulates that all income, livelihood, profits, and losses obtained during the marriage will become profits and losses (assets and liabilities) that will be enjoyed and borne together.

After the enactment of Law Number 1 Year 1974, the provisions on joint property as outlined in the Civil Code were declared revoked and no longer applicable. In several of its articles, the Marriage Law only outlines the rules related to the characteristics, management, and distribution of joint property. Joint property arrangement is legally recognized in management, use, and distribution. The provisions regarding joint property are regulated in Chapter VII, Articles 35 to 37 of the Marriage Law.

Article 36 of the Marriage Law states that “regarding joint property, husbands and wives can act with the consent of both parties and regarding the assets of each husband and wife have full rights to carry out legal actions regarding their property.”

The arrangement of joint property in KHI concerning Property in Marriage is regulated in Chapter XIII. Article 85 KHI states, “The existence of joint property in the marriage does not rule out the possibility of the existence of property belonging to each husband or wife.” Then, in Article 86, paragraph (1), it is elaborated: “Basically, there is no mixing between the husband’s property and the wife’s property because of marriage.” Paragraph (2) explains: The wife’s property remains the wife’s right and is fully controlled by her, and the husband’s property remains the right of the husband and is fully controlled by the husband.¹⁵

Furthermore, the formulation of Article 87 paragraph (1) explains that: “The inherited assets of each husband and wife and the assets obtained by each as a gift or inheritance are under their respective control, as long as the parties do not determine otherwise in the marriage agreement. (2) The husband and wife have

¹⁴ Subekti Subekti and Tjitrosudii Tjitrosudii, *Kitab Undang-Undang Hukum Perdata* (Jakarta: Pradnya Paramita, 1990).

¹⁵ Presidential Instruction No. 1 of 1991, *Compilation of Islamic Law in Indonesia* (Jakarta: Directorate of Development of Religious Courts-Director General of Islamic Religious Institutional Development of the Ministry of Religious Affairs, 1992).

the full right to perform legal actions on their respective assets through grants, gifts, sadaqah, and others.

In addition to written law, there are several Supreme Court jurisprudence that can be used as a legal basis for the settlement of joint property cases through the legislative process. These include Supreme Court Decision Number 417 K/AG/2000, which stipulates the husband's share of $\frac{1}{2}$ and the wife's share of $\frac{1}{2}$, regardless of who contributes to the family's livelihood.¹⁶ In addition, Supreme Court Decision Number 266K/AG/2010 is related to the division of joint property against husbands who do not provide for their children and wives.

The implementation of mediation procedures in court, aiming for deliberation and consensus, has been regulated in Indonesian regulations. It considered the ineffectiveness of the provisions mentioned in Article 130 HIR. Therefore, the Supreme Court considered it necessary to make rules regarding the mediation process, specifically through the regulations of the Supreme Court of the Republic of Indonesia (PERMA) relating to mediation. Mediation in court was officially implemented only after the Indonesian Supreme Court issued MARI circular letter (SEMA) Number 2 of 2002 concerning the empowerment of peace institutions in article 130HIR / 154 RBg. Then, it was improved with PERMA Number 2 of 2003 concerning mediation procedures in court. The regulation in this article places mediation as part of the case settlement process in court, a dispute resolution process previously not regulated in the HIR / RBg.

In 2008, the Supreme Court issued PERMA Number 1 of 2008 concerning mediation procedures in court as an improvement to the previous regulation. The Supreme Court considered that the previous PERMA still had many shortcomings and was not maximized in its implementation, so it needed to be revised. The following is a summary of some relevant articles on mediation in PERMA No. 1 2008: In court based on the provisions in article 130 HIR. Based on the explanation in the previous discussion regarding mediation procedures in court in PERMA No. 1 of 2008 and PERMA No. 1 of 2016,

A suitable mediation is when it is carried out based on stages. It goes through at least eight stages, including the following:

1. It was opening greetings, introducing yourself, and thanking the parties for attending the mediation. Then, offer the parties' agreement to a time limit in the mediation meeting, explain the stages of mediation that must be passed, explain the code of ethics in mediation and the mediation rules that must be obeyed, and ask the parties whether there were any questions or suggestions

¹⁶ Abdul Manaf and Irman Fadly, *Jurisprudence of Religious Courts in the Field of Joint Property* (Bandung: Mandar Maju, 2010).

regarding some of the things that the mediator had conveyed.

2. Explanation of events and circumstances. In the second stage, the parties explain their differences and wishes. Then, the mediator clarifies by using his empathy to clarify what is expected so that the other party can understand these expectations.
3. Recording issues. After the parties have shared their problems or issues, the mediator uses neutral language to record the important points of concern and the parties' wishes.
4. Discovery. At this stage, the mediator assists the parties in speaking directly to each other and discussing their issues. The mediator then summarizes the points raised by the parties.
5. Special meeting. The parties have a special meeting with the mediator in a room called a caucus, also called a private session. The purpose is to see how far the parties have progressed and to discuss matters that cannot be addressed during the session.
6. Negotiation. This is a bargaining session for the parties; the mediator helps offer possible solutions, keep the parties focused, and delineate what will be agreed upon.
7. Agreement. If an agreement is reached, a peace agreement is made and reported to the examining judge. As in Article 27 paragraph (2), the peace agreement may not contain provisions, including those that are contrary to law, public order, decency, detrimental to third parties, or cannot be implemented. In the mediation process represented by a legal representative, the signing of a peace agreement must have a written statement from the parties containing their approval of the agreement reached.
8. Closing statements: After the parties have achieved what they have agreed upon, they express their gratitude for the cooperation and agreement.

The mediator's report on the agreement of the parties who requested that the peace agreement be confirmed in a deed of Peace is used by the examining judge to issue a deed of Peace. As with other alternative dispute resolution institutions, mediation has advantages and benefits related to its characteristics.

IV. CONCLUSIONS

The conclusion of this research is. *First*, joint property in Islamic law can be traced through the concept of *'urf* contained in the study of ushul fiqh. It can also be through Islamic law's basic values or aspirations and the universal principles contained in Islamic shari'a. The construction of joint property in Islamic law is justified because it does not conflict with the objectives of Islamic law (*maqashid al Shari'ah*), namely realizing the benefits associated with soul and property. Because the wife's husband worries about having difficulty meeting her needs after the divorce, especially if she does not work. So, there needs to be a balance so the wife still gets her rights through a fair and proportional distribution of joint property. In Islamic law, mediation in the division of joint property has no specific rules but provides general guidelines for resolving joint property issues without causing disputes. The best possibility in the division of joint property is done by *al Shulhu* (Peace), or by using the prevailing customs in society (*'Urf*), or the last resort is through qadha (Judge's decision). The agreement or consensus between husband and wife is the first step in resolving the division of joint property. This agreement in the Qur'an is called the term "*Ash Shulhu*," an agreement to make Peace between the two parties (husband and wife) after they disagree. *Second*, positive law in the rules of joint property is that in the provisions of positive law, all property obtained by husband and wife during marriage becomes joint property, whether the property is obtained separately or jointly from the results of joint work. The construction of joint property in positive law is quite clear.

Namely, the category of joint property is the property obtained by both parties during the marriage bond from the fruits of joint labor between husband and wife. Positive law review of mediation in the settlement of joint property in positive law in the rules of joint property that in the provisions of positive law, all property obtained by husband and wife during marriage becomes joint property, whether the property is obtained separately or jointly obtained from the results of joint work. The construction of joint property in positive law is quite clear. Namely, the category of joint property is the property obtained by both parties during the marriage bond from the fruits of joint labor between husband and wife. Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Courts realizes mediation as part of the court process. In court to obtain peaceful efforts through the mediation process as contained in the Law of Procedure Article 130 HIR or Article 154 RBg. This is confirmed in Article 4 of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts, namely, all civil cases submitted to the court of first instance must *f i r s t* be resolved through mediation with the assistance of a mediator.

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