

Sociological-Normative Analysis of The Provision of Joint Property in The Cyber Era

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Abstract

Economic activity in the information technology era does not only occur in the real world but also in cyberspace. There are so many things that can be done in cyberspace that can bring economic benefits, for example ownership of a YouTube channel, web hosting, google AdSense, crypto and so on. This fact raises the problem of joint property in the family. Can the acquisition of property through the economic activity of husband and wife in cyberspace during the marriage period be included as joint property that must be divided when the marriage breaks up? This problem needs to be studied sociologically and normatively. This sociological study is intended to find an explanation of how the process of creating economic institutions in cyberspace uses Michael Heim's theory of the characteristics of cyberspace and Peter L. Berger's dialectical theory of society formation. Normatively, the problem of joint property in the cyber era is analyzed using Islamic legal norms, positive law, and customary law. The data is taken from searching documents on the internet and other documents such as journals and books that discuss human activities in the cyber era. These data were then analyzed using the sociological and normative perspectives above. Sociologically, the character of the cyber world in the form of simulation, interaction, artificiality, immersion, telepresence, and networked communications makes people choose economic activities using the internet, because of the convenience it provides. This activity occurs through a dialectical process of externalization, objectivation and internalization that makes the cyber world economic order sustainable. Normatively, the assets produced by a husband and/or wife through their economic activities in the

cyber world during a marriage can be included in the category of joint property which must be divided in two when the marriage breaks up.

Keywords: *Joint Property, Cyber Era, Sociological-Normative Analysis*

A. Introduction

The family is a universal institution, existing in every society in the world. Primitive and modern society needed a family institution because it is impossible to reproduce itself, either physically or culturally. Family sociologists propose one theory to explain the essence of the family why it exists in every society of the world, namely the theory of property systems¹. This theory states that there are three things that make up the essence of the family, namely the right of sexual possession, rights of economic property, and intergenerational property rights.²

In the family, sexual intercourse becomes exclusive; it should not be done with other than a partner. This is what is called sexual property rights. The existence of sexual relationship exclusivity gives birth to the need to meet the economic needs of the family. Husband and wife work together to meet and prepare the needs of the family at home. In the past sexual property and economic property gave birth to intergenerational property rights with children in the family. Parents care for and finance children's needs; children are entitled to inheritance from their parents and parents are entitled to care from their children in their old age.³

Joint property is related to the right to economic property in the family as described above. In indigenous peoples, it is distinguished between the original property and the joint property in marriage. Original property is property obtained before marriage, either because of one's own efforts, grants or the inheritance of each parent while joint property is a property obtained during marriage. There are many terms to refer to this property in indigenous

¹ (Coltrane & Collins, 2000, hlm. 30)

² Ibid., 37.

³ Ibid, 56–57.

peoples. In Kalimantan it is called "*barang berpantangan*", in Minangkabau "*harta suarang*", in West Java "*guna kaya*" or "*campur kaya*", and in Central and East Java "*harta gono-gini*".⁴

In Islamic law (fiqh), the term joint property is not known, but the joint property in the marriage is classified as *the property of shirkah* which includes *syarikah abdān mufāwadah* because husband and wife work together to meet the daily needs of the family, save their property for old age, and to be inherited. This husband-and-wife partnership is in terms of seeking material benefits that only have expertise and not fund capital. Each husband and wife play a role without questioning the type of work.⁵⁶

Based on customary law and provisions in Islamic law, the provisions of joint property in Indonesian regulations are established in Law No. 1 of 1974 concerning Marriage (Undang-Undang Perkawinan/UUP). This joint property is mentioned in Article 35 which separates the joint property and the innate property of husband and wife. In the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), the joint property is explained in Articles 85 to 97 which in detail explains the difference between property along with other property and the provisions on the control of the property. Both the Marriage Law and the KHI recognize the existence of joint property and regulate its division as much as possible for each husband and wife if the marriage breaks up, either due to divorce or death.⁷⁸

The issue of joint property in Indonesia is no longer a new settlement because this problem is very familiar with the indigenous life of the people. Disputes over joint property also often occur and are submitted to the Religious Court for the Muslim religious community. Studies on joint property have also

⁴ (Dewi Judiasih, 2015, hlm. 10)

⁵ (Dewi Judiasih, 2015, hlm. 15)

⁶ (Wahyu Widiana, 2004, hlm. 140–141)

⁷ BIP Team, *Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage* (Bhuana Popu Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan (Bhuana Ilmu Populer, 2017)lar Science, 2017).

⁸ *Compilation of Islamic Law* (Pustaka Widyatama, 2004).

been carried out by many researchers, both reviewing the decision of the Religious Court on incoming dispute cases, as well as customs in the community, as well as the study of theories about joint property, both in positive law and Islamic law.

The study of the verdict for example was conducted by the Directorate of Religious Justice Development Team which reviewed three religious court decisions related to joint property, namely the decision of Religious Court of Palangkaraya, Semarang, and Gorontalo. The study was conducted using fiqh analysis. The work of M. Beni Kurniawan discusses the decision on the division of joint property based on the contribution of husband and wife in marriage. The analysis of the verdict was also carried out by Nikmatun Nuzula who discusses a ruling by Religious Court of Kediri which stipulated the distribution of more joint property for wives. Meanwhile, Zaiyad Zubaidi's work examines the practice of joint property with the Samalanga-Bireuen Acehese people whose control is on one of the husband or wife parties.⁹¹⁰¹¹¹²

Theoretical study of joint property, for example, can be seen in the work of Sonny Dewi Judiasih which examines the equal rights and position of husbands and wives over property ownership in marriage. Evi Djuniarti's work examines the provisions of joint property according to the Marriage Law and civil law. Other studies such as Winda Wijayati's work discuss the constitutional right of the wife to know the joint property stored in the name of the husband in the bank. Linda Firdawaty studied the philosophy of joint property according to Islamic law to interpret the provisions of joint property stipulated in the KHI. The study conducted by Arifah M. Maspeke and Akhmad Khisni looked at the normative provisions of mutual property, both in Islamic law and KHI and how

⁹ Wahyu Widiana, *Tinjauan Fiqih Islam Terhadap Putusan Pengadilan Agama Dalam Perkara Harta Bersama*

¹⁰ (Kurniawan, 2018, hlm. 41)

¹¹ (Nuzula, 2017, hlm. 27)

ify Law 1, no. 1 (January 4, 2017): 27, <https://doi.org/10.30762/mh.v1i1.1009>.

¹² (Zubaidi, 2019, hlm. 55)

the practice of its distribution by religious courts judges is not always in accordance with the provisions of KHI.¹³¹⁴¹⁵¹⁶¹⁷

From the search for joint property studies that have been conducted, there has been no discussion of how the development of joint property in the cyber world. Therefore, it is important to fill the gap of study in the field of joint property in this cyber era to provide an idea of the potential of the cyber world in developing property with marriage and how to respond normatively to new developments in the era of the Industrial Revolution 4.0.

We are entering the era of the Industrial Revolution 4.0. This era was marked by rapid advances in the field of telecommunications and computer technology. Along with the times, the fields of people making a living also changed. In the cyber era which is characterized by the rapid use of internet connections as a medium of daily human interaction, business is very possible to be done via *online* or known as e-commerce.¹⁸ Various other media in cyberspace are also very promising for example by creating a blog, building a youtube channel, joining affiliates, taking paid surveys, selling products by dropshipping, becoming a freelance writer, becoming a social media influencer, pursuing cryptocurrency and so on.

The development of the digital world allows the possession of shared property in the form of soft files, applications, websites and others that are very valuable. Virtual objects like this often have a value that is not small and can easily be converted into money. Website domains, for example, can be sold at varying prices, ranging from about 100 thousand to hundreds of millions or even trillions of rupiah, depending on the popularity and value of the domain's investment. According to Viva.co.id, the most expensive domain ever sold is

¹³(Dewi Judiasih, 2015)

¹⁴. (Djuniarti, 2017, hlm. 445)

¹⁵ (Wijayanti, 2016, hlm. 709)

¹⁶(Firdawaty, 2016, hlm. 88)

¹⁷ (Maspeke & Khisni, 2017, hlm. 173)

¹⁸ (Prasetyo & Sutopo, 2018, hlm. 17–18)

LasVegas.Com which was sold in 2005 for US \$ 90 million or around Rp1.31 trillion.¹⁹

The economic potential that people can use in this cyber world requires explanation, both normatively and sociologically. Sociologically it is necessary to examine how the reality of the cyber economy arises. Meanwhile, normatively, how to redefine the provisions on joint property in Marriage Law No. 1 of 1974 and Compilation of Islamic Law, so that joint property that developed in this cyber era can be included in the category of joint property which must also be divided among divorced husband and wife. Therefore, this study intends to examine the two sociological and normative issues above.

B. Result and Discussion

1. Economic Reality in the Cyber World

We are currently entering a time marked by rapid advances in the field of information technology. If in the 20th century its central theme is modernization and industrialization, then in the 21st century it shifts to information technology. Living in the era of information technology is certainly different from the previous era. If previously we were accustomed to modern products, real in our daily lives, then in the era of information technology, the real reality is subject to severe challenges from virtual reality. Yasraf Amir Piliang rightly describes the reality of this age as *hyperreality*, a world that transcends reality.²⁰

This century simulates a world counterpoint to the real world, which is termed virtual reality. Everything we can do in the real world, with the same level of experience, we can do in virtual reality in a new way, which is an artificial way. The virtual world is felt to be no less real than the real world. The

¹⁹ VIVA, "5 Domain Termahal di Dunia, Ada yang Harganya Triliunan - VIVA," *Viva.Co.Id*, 14 Agustus 2018, <https://www.viva.co.id/digital/teknopedia/1064805-5-domain-termahal-di-dunia-ada-yang-harganya-triliunan>.

²⁰Yasraf Amir Piliang,"Sebuah Jagad Raya Maya: Imperialisme Fantasi dan Matinya Realitas, dalam pengantar Mark Slouka, *Ruang yang Hilang, Pandangan Humanis Tentang Budaya Cyberspace yang Merisaukan*, diterj. Zulfahmi Andri (Bandung: Mizan, 1999), 14.

difference is, if in the real world we can feel the land, water, air, and all living things with all their biological elements, in the virtual world everything is a simulation of the land, water, air and all living things in the real world. In this virtual world, according to Yasraf Amir Piliang, everything that used to be considered fantasy, illusion, hallucination, can now be experienced as a real "reality". Because everything we used to think of as illusions, fantasies, hallucinations, with the help of simulation technology, overlap with reality so it is difficult to distinguish anymore. This is called the cyber world (cyberspace²¹) whose reality is virtual reality.²²

Virtual reality in cyberspace forces us to change the notions of society, community, communication, social interaction and culture that affect social life at all levels: individual, inter-individual, and societal levels. At the inter-individual level, the cyber world creates situations where social relations occur: friendship, hostility, associations of a virtual nature. Social interaction no longer needs to be done in real territorial space, but in territorial hallucinations, all that is needed is an imaginary place inside the bits of the computer.²³

In cyberspace people can do any activity like in the real world. Even almost all areas of life in the real world we can find substitution in cyberspace. It just needs a *cyber* prefix, for example *cyber-society*, *cyber-community*, *cyber-economy*, *cyber-politics*, *cyber-culture*, *cyber-spirituality*, *cyber-sexuality* to indicate the existence of a massive migration from the real world to the virtual world.

To meet economic needs, this new reality supported by the advancement of information technology certainly promises great benefits for society. The conveniences provided by information technology through the virtual world

²¹Husnul Muttaqin, "Urgensi Pembaharuan Fikih Era *Cyberspace*, dalam *Jurnal Hukum Islam Kopertais Wilayah IV Surabaya*, Vol. 1 No. 1 Maret 2009. 29.

²² Term *cyberspace* was first used by novelist William Gibson. Gibson defines the term as a very complex graphical representation of data in a human mind system that is abstracted from the data bank of each computer. *Cyberspace* is an imaginary and virtual space, in which people interact using words and pictures, joke, argue, discuss, sell, find partners, make friends, make out, play games. Anyone can do anything in the world. Everyone can do anything in cyberspace, even doing things that have never been done in everyday reality. Yasraf, "Sebuah Jagad Raya Maya, 13-14 and 19.

²³ Ibid., 20-21.

can be utilized to make trades that generate huge profits for those who can take advantage of it. The potential for wealth or income comes not only from activities in the real world but also from the virtual world. Even this activity in cyberspace is much more promising in the right of profit, because of the convenience it provides. If in the past people needed space to sell goods, in the cyber era, people do not need stores located in certain places, people only need to open virtual stores in cyberspace. Like in the real world, they can manage the goods they sell, making transactions without being limited by space and time and the distance between the sellers and the buyers. People do not even need to have capital to be able to sell; they can sell people's belongings by becoming dropshippers. One only needs a *smartphone* and an internet connection to be part of the *cyber-economy* community and make money from it.

The goods sold are also more diverse than the goods in the real world. People can sell information that is needed by many people through the YouTube channel, TikTok, Facebook, Twitter, Instagram, selling the need to be able to exist in life in cyberspace, such as selling web hosting, google adsense, suspending a certain product, even becoming a miner to hunt bitcoin.

Economic activity in cyberspace is carried out not only by men but also by women. If in the era of the industrial revolution, men still dominate the public space in the process of making a family living. In the cyber era, with its characteristics, various jobs that make a lot of money are actually done by women without having to leave the house. Even office work, in this era no longer need a physical office, everything can be done from home.

In many cases of families, husband and wife often cooperate in generating economic benefits in this digital era. The wife who manages the online store while doing homework, such as shuttling children to school, preparing family needs, cleaning and tidying the house, while the husband works in the office or in other fields in the real world. Sometimes husbands help deliver orders to customers after work. In some cases of YouTube channels, the wife works as the one who is being teased, while the husband plays the role

of the cameraman who prepares the video for upload. Or often each has their own work, both in the real world and the virtual world that both generate income for the family.

The emergence of economic potential in cyberspace cannot be separated from the nature of cyberspace which is then utilized in conducting economic transactions like in the real world. These traits according to Michael Heim are: first *simulation*. The virtual world has the ability to simulate the real world so that it appears as reality itself albeit in a different form. For example, the appearance of an online store in virtual reality is a simulation of the relitas of the real world so that in its management it is not much different from the real world, even much more convenient and cheaper when compared to the real world. Second *interaction*. Cyberspace is also characterized by its ability to provide facilities for interaction between people easily so that all interactions, including economic interactions are easily and cheaply carried out when compared to interactions in the real world. **Third artificiality**. Economic reality that exists in cyberspace is actually a reality of design made by humans and not a real reality in an economic sense. Since the reality of cyberspace is man-made, anyone can create reality freely. The four is *immersion*. Being like a virtual world means feeling real involvement in it. In transacting for example, a seller in cyberspace will be involved in real terms with the transactions carried out, such as offering goods or bargaining to the delivery of goods. The fifth is **telepresence**. Economic transactions carried out in cyberspace can be done remotely. The nature of this one virtual world that makes economic activity become wider and more profit, because transactions can be done with everyone in any part of the world without being constrained by space and time. The sixth is **networked communications**. All the above virtual world characters are mediated by the internet network that makes all humans in the world become connected to each other so as to allow economic activity not only limited in the real world and in certain places, but can be more global as long as they can connect to the internet.

These characteristics explain why cyber activity is currently so loved and may become a trend in the future. With all the convenience offered in carrying out economic activities, it does not mean that economic activity in cyberspace has no weaknesses. Fraud and theft with all forms and modes are also easier to do in cyberspace. However, the virtual world community, like the real world, always strives and always finds ways to overcome weaknesses in order to maximize the benefits that can be obtained from this cyber era.

2. The Formation of Cyber World Economic Reality

How was this social order created? Why do people have confidence in cyberspace so that a virtual world community is formed with all the value systems and norms that have been mutually agreed upon there? To explain this, it is necessary to look at the process of forming social relics through the dialectic of externalization, internalization, objectivization proposed by Peter L. Berger. This famous theory, presumably, can not only explain how social order in the real world is formed, but also how the social order in cyberspace was created as experienced by society today.

Externalization means adjustment to the environment. This process is an anthropological necessity of creatures named humans. Because of their open biological nature, humans have many choices in determining their relationship to the environment. If it is associated with the digital era, then externalization is the adjustment of society to the environment that has become part of its life today, namely the community environment mediated by advances in the field of information technology.

Historically, the era of information technology which is often referred to as the Industrial Revolution 4.0 in fact has been carried out since the discovery of important objects that changed the environment of society. Revolution 1.0, for example, was marked by the invention of steam engines and railways in 1750-1930 which created economic acceleration so as to increase the per capita income of countries in the world. Revolution 2.0 was marked by the invention

of electricity, communication devices, chemistry, oil in 1870-1900 so that the production machines were powered by electricity which was useful for increasing mass production. While the 3.0 Revolution was marked by the invention of computers, the internet and mobile phones so that the manufacturing industry experienced automation. The era of the fourth industrial revolution today is characterized by the rapid development of sensor technology, interconnection and data analysis that makes it possible to integrate all these technologies into various industrial fields.

The industrial revolution that occurred is a form of mutual relationship between humans and the environment. In dealing with the information technology era, humans are finding practical ways to meet their needs. The most basic need is economics. The existing digital world objectively offers mechanisms and facilities that enable humans to meet the needs in this area of the economy in a fast, easy and inexpensive way. The ways of meeting economic needs in this digital era continue to be repeated so that it becomes a habit and experiences institutionalization. In the end, this habit is mutually agreed upon and institutionalized.

When human activity has undergone institutionalization, it is already an objective reality available out there regardless of the manufacturer. The ways of meeting economic needs in the digital world then become objective realities that must be obeyed by all members of this virtual world community and bring social sanctions for those who violate its rules. At first, the fulfillment of economic needs in the cyber world was only used by a few people, but over time more and more people were involved and felt the benefits so that norms and values were formed in the activity that gained mutual legitimacy as a provision that must be done.

All members of the cyber community must follow the rules and procedures that have been agreed and exist objectively to be able to undergo and carry out economic activities in it. This process is called by Berger as internalization. Internalization means the equalization of objective structures

that exist in the cyber world with the subjective structure in the individual community. In other words, to be able to adjust to the environment of the cyber era or the digital era, one must internalize the norms and values that apply in the activities of the digital world economy into his subjective consciousness, so that he can externalize as part of the digital world society.

So, through externalization dialectics, objectivization and internalization, the digital world continues to be sustainable and developed by its users so that it continues to exist today and is likely to grow in the future. It could be that in the future, these types of jobs will migrate from the real world to the virtual world. The reality of the property obtained by husband and wife through economic activity in this virtual world inevitably also affects aspects related to the law of property that is not limited to joint property, but also for example the property that is subject to zakat provisions and others.

3. Normative Perspectives on Joint property in the Cyber Age

a. *Perspective of Islamic Law on Joint property in the Cyber Age*

In Islamic law, the term joint property is unknown. The wife's property belongs to the wife, the husband's property belongs to the husband, the husband is obliged to provide for his wife. The husband's property that is the right of the wife is only dowry and living and other husband grants. When husband and wife divorce, each is only entitled to the property he has. This fact becomes unfair to wives who do not work and only receive a living from the husband throughout the marriage. When divorced she has very few possessions to continue living. It could even be that she has no property at all because during marriage she never makes her own money and only depends on the gift of the husband.

Because of this injustice, contemporary thought arises that relates property together with the concept of end in *fiqh muamalah*. Based on the concept of *shirkah*²⁴, the benefits obtained by both husband and wife, as well as

²⁴ *Shirkah* is defined by al-Jaziri as the sharing of two or more possessions by two or more people and causing them to be indistinguishable. Abdurrahman Al-Jaziri, *Al-Fiqh alā Madzāhib Al-Arba'ah Mujallad 3*, (Cairo: Daar Ibn Jauzi), 50. While according to Sayid Sabiq, *shirkah* is an agreement

the cooperation of the two, can be categorized into *shirkah abdān* and *mufāwāḍah*.

²⁵ The cooperation carried out does not have to have similarities in terms of capital, all the work done can be a capital of communion. In meeting household needs, this kind of cooperation is what happens between husband and wife. Both work with their respective abilities in jobs that may be the same and may also be different, so that the results can be the same, can also be different.²⁶

In the state of work capital owned by the husband and wife is the same, for example, both works as civil servants with the same group, then the end that is done includes the end of *mufāwāḍah*. If the husband-and-wife work in different jobs depending on their ability to produce different profits, then the category of *shirkah abdān* which does not require equality of capital.

Both in *shirkah mufāwāḍah* and *shirkah abdān*, both parties can act on the benefits that are divided and bear together all the losses incurred in the process of cooperation. From the work of husband and wife, both can do many things that become agreements in meeting family needs, be it in the form of primary needs such as clothing, food, boards, or secondary needs, including tertiary needs.

between two or more people that they share in profit and capital. Sayyid Sābiq, *Fiqhu al Sunnah*, volume 3, (Beirut: Al-Asriyah, n.d.), 210

²⁵ *Shirkah* is divided into two types, namely *shirkah amlak* and *shirkah al'uqud*. *Shirkah amlak*, according to Wahbah Zuhaili, is the communion of ownership between two or more people to an object without any transaction. *Shirkah al'uqud* is the agreement of two or more people to establish a partnership of property and profits. Scholars of Maliki and Shafi'i schools divide *shirkah 'uqud* into four kinds, namely *shirkah mufāwāḍah*, *shirkah abdān*, *shirkah 'inān* and *shirkah wujūb*. *Shirkah 'inān* is the partnership of two or more people to use the joint property in business and its profits are shared. While the end of deliberation is the alliance of two or more people in the work, with the condition, both in capital and the management of each party's property becomes a liability for the other party in buying and selling. *Shirkah wujūb* is a partnership between two or more people without capital. Both parties buy goods by way of debt and then sell the goods in a concrete manner by utilizing the good name (position) they have. While *Shirkah abdān* is a partnership between two or more people who each have a job (speaker, teacher, etc.) and the benefits of the work are divided together according to the agreement. Wahbah Az-Zuhaili, *Fiqh Islam wa Adillatuhu*, volume 5, (Jakarta: Gema Insani, 2011), 442-448.

²⁶ Contemporary scholars determine the law of joint property by means of analogizing joint property as *shirkah mufāwāḍah* and *shirkah abdān*. Besse Sugiawati, 'Konsepsi Harta Bersama Dari Prespektif Hukum Islam, Kitab Undang-Undang Hukum Perdata dan Hukum Adat', in *Jurnal Prespektif*, Vol. 19, No. 3, September 2014, 205.

b. Positive Legal Perspectives on Joint property in the Cyber Age

Although in *fiqh munakahat* is not mentioned at all about mutual property, but in the regulation of marriage in Indonesia, as in Marriage Law No. 1 of 1974 concerning Marriage (Undang-Undang Perkawinan/UUP) and in the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), joint property becomes one of the provisions.

UUP, one of the material sources derived from Indonesian customary law, lists the provisions of this joint property in Article 35 paragraph (1) which states that the property obtained during marriage will become a joint property. This law also distinguishes between the mastery of property along with innate property. The innate property stated in article 35 paragraph (2) is under the control of each husband and wife as long as the parties do not determine otherwise. While the power over the joint property exists on both sides of the husband and wife.²⁷

In the Compilation of Islamic Law, joint property is regulated in Chapters 85 to 97. The forms of joint property in marriage are stated in the following Chapter 91:

- 1) Joint property as mentioned in Article 85 above can be either tangible or intangible objects.
- 2) Tangible joint property can include immovable objects, moving objects and securities.
- 3) Joint property that does not exist can be in the form of rights or obligations.
- 4) Joint property can be used as collateral by one party with the consent of the other party.

As a material law used in the Religious Court, KHI regulates in more detail about this joint property, whereas in the books of fikih, there

²⁷ Article 35 dan 36 BIP, *Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan*.

is no discussion of joint property as part of the discussion of the law of marriage. The consideration of KHI regulating joint property is of course influenced by the customs of Indonesian people who have long imposed the provisions of mutual property in marriage. Based on *urf* and benefit, this joint property is then set to be one of the rules in KHI.

Based on the perspective of KHI and UUP above, the property generated by husband and wife in the digital era, through their economic activity in cyberspace, must also be counted as part of the joint property. Because as stated in Article 91 paragraphs (1) and (3), joint property can be tangible objects and can be intangible objects. While intangible objects can be in the form of rights and obligations.

The property obtained through the use of information technology by husband and wife in this case can be included in the category of intangible property because this property comes from the use of computer bits connected to the internet around the world in the form of applications or websites and not something that can be groped let alone touched. The meaning of intangible bands must also be expanded. Property objects in the cyber world can be soft files, applications, websites and others that are very valuable. Virtual objects like this often have a value that is not small and can easily be converted into money. Websites domains, for example, can be sold at varying prices, ranging from about 100 thousand, to hundreds of millions or even trillions of rupiah, depending on the popularity and value of the domain's investment. According to Viva.co.id, the most expensive domain ever sold is LasVegas.Com which was sold in 2005 for US \$ 90 million or around Rp1.31 trillion.²⁸

To provide legal certainty, KHI needs to provide explanations or redefinitions of the form of joint property in the form of tangible and intangible objects that can accommodate virtual objects. Or KHI can also add a virtual

²⁸ VIVA, "5 Domain Termahal di Dunia, Ada yang Harganya Triliunan - VIVA," *Viva.Co.Id*, 14 Agustus 2018, <https://www.viva.co.id/digital/teknopedia/1064805-5-domain-termahal-di-dunia-ada-yang-harganya-triliunan>.

object as one of the forms of shared property that can be shared when the break of the marriage bond occurs. For example, in Article 91 paragraph (3) on the definition of intangible property, it can be added in it a virtual object so that the editor of the verse is as follows, “(3) Joint property that does not exist can be a virtual object, rights or obligations.”

Religious Court judges also need to include ownership of wealth in this digital world as a joint property that needs to be considered for sharing when there is a break in the marriage bond.

In terms of separating property along with other property, both UUP and KHI both contain provisions that joint property must be separated from other properties, which can be innate property, inheritance, gift and others. In the digital era, if the husband or wife already has income from their activities in cyberspace before the marriage is held, then the benefits of this activity will only belong to each husband and wife. When the marriage has been carried out by mutual agreement through a marriage agreement, the benefits of this activity in cyberspace can belong to each husband and wife. If it is not promised to be separated then, the profits obtained starting from the legal marriage contract then become a joint property that must be divided in half if the marriage breaks up. This provision is also expressly stated in Article 119 to article 123 of the Civil Code.

In the division of joint property that the provisions of the law mention one-second for the wife and husband, not always carried out by the judge, judges in some cases divide the joint property based on the amount of contribution made by each married couple in fulfilling the family's living. The judge can give 2/3 of the share of the property to the wife who in addition to working in the house also works in fulfilling the family's living, while the husband does not work. This case was once decided by a judge of the Bukit Tinggi Religious Court who gave 1/3 to the husband (Plaintiff) and 2/3 for the wife (Defendant). Because the wife who should be given a living even makes a living, the husband who should make a living actually lives from the wife's

earnings. The division that violates the KHI rules is carried out by the judge in fulfilling the demands of justice.²⁹

c. Customary Legal Perspectives on Joint Property in the Cyber Era

In indigenous peoples, joint property has become part of the customary marriage law of each region in Indonesia that has different provisions. The difference can be seen from the terms used to grab common property, such as "*harta suarang*" in Minangkabau, "*barang perpentangan*" in Kalimantan, "*cakkeara*" in Bugis, "*drume gabro*" in Bali, "*barang gim*", "*gono gim*" in Java, "*guna kaya*", "*barang sekaya*", "*campur kaya*", "*kaya reujeung*" in Pasundan. The difference in customary law in terms of joint property can be seen from the differences in kinship patterns embraced by each indigenous people. In Indonesian indigenous peoples, kinship patterns can be summarized into three patterns, namely: ³⁰*patrilineal, matrilineal, and bilateral or parental.*"

Indigenous peoples adhere to the patrilineal pattern, which is a kinship system that follows the line of men or fathers. The prevailing marriage system is an honest marriage. A man who wants to marry a woman must pay honest money to a woman's family. This honest money is meant in exchange for the family of the woman who has raised the woman. This woman who had been married with honest money then became part of her husband's family and obeyed her husband's family rules. All property owned by the woman will be part of the husband's property, including the property produced during the marriage. Indigenous peoples who adhere to this pattern include the people of Lampung, Batak, Bali and others.³¹

If a divorce occurs, then the widow only has the right to use the property just to meet the needs of her life. All property will fall to the mastery of the boys. If the boy is not old enough, the widow or mother is only entitled to

²⁹(Kurniawan, 2018, hlm. 41)

³⁰Soerojo Wignodipoero, *Pengantar dan Asas-Asas Hukum Adat*, (Jakarta: PT. Toko Gunung Agung, 1995), 153-154.

³¹Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia Edisi Revisi*, (Bandung: CV. Mandar Maju, 2014), 189-191.

manage the property as long as the boy is immature and surrenders the property to the boy's power after he grows up. If there is a divorce of life caused by adultery committed by the wife, then she will be expelled from her sumi family without carrying property, including her innate property. If he wants his innate property back, then the wife's family must hand over the honest money that has been paid.³²

In indigenous peoples with matrilineal kinship patterns such as in Minangkabau, the marriage system is a cement marriage, that is, marriage without honest money. In the matrilineal kinship system, the lineage follows the maternal line. Heirloom property belonging to relatives is controlled by Mamak the head of inheritance, husband and wife have the right to manage and benefit the property, but not entitled to own it. While the joint property obtained during marriage or property, divided in two when divorce occurs.³³

In the parental society, a society that follows the lineage of fathers and mothers such as Javanese society, the position of husband and wife is equal, both are entitled to joint property that is cultivated in marriage. As for innate property, his mastery becomes the right of each husband and wife.³⁴

In customary law, property can be an object and can be a right. If the property was obtained through activities in cyberspace, then the category of ownership of businesses in cyberspace can be categorized on the chemo of objects because the property derived from virtual world activities can be cashed and utilized like income from businesses in the real world. Ownership of stores in cyberspace, google AdSense, hosting, crypto assets and so on, both worth the property as in the real world. It is just that the way to make a profit is different from the real world. Based on the real money generated from activities in the virtual world, the income from cyberspace can be categorized as objects that must also be divided into indigenous peoples depending on the pattern of kinship embraced. In the patrilineal society, all the acquisition from cyber

³² Ibid.

³³ Ibid.

³⁴ Ibid.

activities will belong to the husband, while in matrilineal and parental societies, the ownership can be divided in half in the event of a marriage break-up.

C. Conclusion

The development of economic activity that raises the problem of joint property in the cyber era cannot be separated from the character of the cyber world which provides convenience in the process of economic transactions. The characteristics of the cyber world as explained by Michael Heim include simulation, interaction, artificiality, immersion, telepresence, and networked communications. The emergence of economic order in the cyber world departs from externalization activities by humans continuously with the cyber world environment that eventually formed habits, norms, and values that were then instituted. This reality that has undergone institutionalization or objectivization is then reabsorbed into the internal consciousness of the individual community of the cyber community and becomes their basis for externalization at a later stage. With this dialectic, economic activity in the cyber world continues to be sustainable until now.

Normatively, property obtained through economic activity in the cyber era can be counted as a joint property. In Islamic law, although classical Islamic law scholars do not mention marital property, contemporary scholars categorize the property obtained by husband and wife in their economic activities in cyberspace, into the categories of *abdān* and *shirkah mufāwāḍah* which must be divided in two between husband and wife in the event of a break-up of marriage. The same is also true in positive law and customary law, both UUP, KHI and KUHP, including property obtained by husband and wife during marriage through economic activity in cyberspace, into joint property that must be divided in two between husband and wife. Although there are some exceptions, for example in the customary law of people who adhere to the patrilineal kinship pattern, the wife cannot have joint property, only the right to manage and utilize the results of management of the husband's property.

Another exception, for example, is in the division that judges make when there is a dispute over mutual property. Judges do not always divide the joint property by 1/2 for the husband and wife; often the judge divides based on the contribution to the property.

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