

# CHAPTER I

## INTRODUCTION

### A. Background of Study

Indonesia showcases a diverse range of talents in the creative industry, with innovative content created by local creatives in various sectors every day. This remarkable wealth of ideas represents an infinitely valuable economic resource. Therefore, the government encourages the public, especially those in the creative economy, to increase awareness of the importance of Intellectual Property Rights (IPR).<sup>1</sup>

Intellectual property rights (IPR) are exclusive rights granted by the state to individuals or legal entities for copyrighted works, inventions, new discoveries, industrial intellectual property, and integrated circuit layout designs. IPR provides legal protection for creators and their works or inventions allowing them to benefit economically for their creations. This means that musical works can generate royalties as they are a form of intellectual property protected by law. Copyright for musical works is granted to songwriters, composers, and record producers. Copyright grants rights to the holder to use, reproduce, and distribute the musical work.<sup>2</sup>

Royalties are periodic payments made by one party to another party in

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<sup>1</sup> Gatot Supramono, "*Hak Cipta dan Aspek-Aspek Hukumnya*", P.T. Rineka Cipta, Jakarta, 2010, hal. 1-3.

<sup>2</sup>Admin Lp2M, <https://lp2m.uma.ac.id/2021/11/25/hak-atas-kekayaan-intelektual-haki-pengertian-dan-jenisnya/>, diakses tanggal 18 januari 2024, jam 00.04 WIB.

exchange for the use of intellectual property rights, such as copyrights, patents, or trademarks. In the context of music, film, and other creative industries, royalties are usually related to the use of artistic or intellectual works. Royalty recipients are the copyright holders or parties with exclusive rights to use or distribute the work. Royalties can be generated from physical sales, digital downloads, streaming, or the use of a creation in projects such as films, advertisements, or video games. According to the explanation of Article 1 number 20 of the Law on Copyright, the creator or copyright holder or owner of related rights has the right to grant a license through a written agreement for the commercial use of a creation for a specific period and does not exceed the validity period of the copyright and related rights. In accordance with the explanation of Article 80 paragraph (1) of the Law on Copyright, unless otherwise agreed, the implementation of a license agreement also includes the obligation of the licensee to pay royalties to the copyright holder or related rights owner during the license period. The determination of the royalty amount and the procedure for its payment are based on the license agreement between the copyright holder or related rights owner and the licensee.

As time progresses, so does the law. The law must evolve to remain relevant and accommodate the needs of society. One of the legal developments in recent years is the increasing stringency in the protection of intellectual property rights (IPR). This is proven by the enactment of Law Number 28 of 2014 concerning Copyright which provides broader protection

to IPR holders. Enhanced protection of IPR also has an impact on the status of royalties as joint assets. Royalties are compensation received by IPR holders for the use or exploitation of their intellectual property. Based on Article 35 paragraph (1) of Law Number 1 of 1974 concerning Marriage, property acquired during marriage becomes joint marital property. This means that royalties earned during the marriage are also classified as joint marital property.<sup>3</sup>

Joint assets, commonly referred to as joint property (*harta gono-gini*), consists of assets acquired by a husband or wife from the time of marriage or during the period of their marital relationship. The concept of joint assets or shared assets recognizes that both the husband, who works to provide for daily needs, and the wife, whether employed or a housewife, are considered as having "earnings". Since both contribute to the marriage in some form, the notion of joint property or *harta gono-gini* arises. Amid social and economic progress in Indonesia, legal disputes surrounding joint property remain complex. The issue of property division in divorce cases continues to be a significant concern in society. On one hand, marriage begins with the shared dream of a couple to build a life together and assume mutual responsibilities. However, when the marriage fails, issues surrounding the division of joint assets emerge as prolonged and intricate legal disputes.

In the dynamics of Indonesia's socio-economic life, a new case has

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<sup>3</sup> Presiden Republik Indonesia, 2014, Salinan Undang-undang Republik Indonesia No. 28 Tahun 2014 Tentang Hak Cipta, Kementerian Sekretariat Negara, Jakarta, Hal. 4.

emerged that has attracted public attention. This case relates to the division of royalties as joint marital assets, based on significant contributions in a particular sector. The decision to consider royalties as a form of joint assets was made to acknowledge the substantial contribution of the involved parties. This case pertains to the marriage of Inara Rusli and Virgoun. The dispute over royalties as joint property began when Inara Rusli, Virgoun's wife, filed for divorce. The divorce suit was submitted to the West Jakarta Religious Court on Monday (22/5/2023) and was registered under case number 1662/Pdt.G/2023/PA.JB. In her petition, Inara Rusli sought rights to the royalties from the songs composed by Virgoun during their marriage<sup>4</sup>. She claimed to have contributed to the creation of these songs, so the royalties received by Virgoun should be considered joint property. However, Virgoun denied this claim, asserting that he was the sole creator of the songs. He also emphasized that Inara Rusli had no involvement in the songwriting process and had assisted with administrative and business management matters. On November 13, 2023, the Panel of Judges at the West Jakarta Religious Court decided that the copyright to Virgoun's songs, including "Surat Cinta Untuk Starla", "Bukti", and "Selamat" were classified as joint marital property. This decision granted the lawsuit of Inara Rusli, Virgoun's wife, in which she

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<sup>4</sup>Wahita Damayanti S.H, <https://www.pa-pangkalankerinci.go.id/berita/arsip-artikel/1356-tanya-hukum-pembagian-harta-gono-gini-ketika-istri-yang-paling-berkontribusi-dalam-keluarga-oleh-wahita-damayanti-s-h> diakses tanggal 20 januari 2024, jam 01.10 WIB.

requested a share of the royalties from the three songs.<sup>5</sup> The court determined that the royalty income should be divided equally, with 50% allocated to Inara Rusli and 50% to Virgoun. The Judges based their ruling on Article 91 paragraphs (1), (2), and (3) of the Compilation of Islamic Law (KHI). The explanation of paragraph (1) is that joint assets as stated in Article 85 above can be in the form of tangible or intangible objects. The explanation of paragraph (2) is that tangible joint assets can include immovable objects, movable objects, and securities. The explanation of paragraph (3) is that joint assets that are not tangible can be in the form of rights or obligations. Then, royalties, as income derived from creations produced during the marriage, fall within this category. This ruling sets an important legal precedent in Indonesian. This ruling confirms that royalties are intangible assets that can be classified as joint assets in divorce cases.<sup>67</sup>

The case of Inara Rusli and Virgoun is interesting because, to date, Indonesia has no specific regulations that explicitly regulate royalties as joint marital assets. The absence of detailed legal provisions on this matter creates uncertainty in determining the status and distribution of royalties in divorce proceedings.<sup>8</sup> The lack of specific legal guidelines regarding royalties as joint

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<sup>5</sup> Ana Suheri, “Penyelesaian Harta Gono-Gini dilihat dari Undang-Undang N0.1 Tahun 1974 Tentang Perkawinan berdasarkan Kompilasi Hukum Islam” , *Jurna Morality*, No. 2 Vol. 2, Fakultas Hukum Universitas PGRI Palangkaraya, 2015, hlm. 3.

<sup>6</sup> Musa Ade, <https://www.fimela.com/entertainment/read/5452224/cetak-sejarah-baru-royalti-lagu-jadi-harta-bersama-di-perceraian-virgoun-dan-inara-rusli> diakses tanggal 21 januari 2024, jam 02.04 WIB.

<sup>7</sup> Tim DetikHot, <https://www.detik.com/jateng/berita/d-6734475/inara-rusli-resmi-gugat-cerai-virgoun-ke-pengadilan-agama> diakses tanggal 21 januari 2024, jam 02.06 WIB.

<sup>8</sup> Taryono, <https://lampung.tribunnews.com/2023/12/30/kakak-virgoun-sebut-inara-rusli-aneh-karena-tuntut-hak-royalti-lagu?page=all> diakses tanggal 21 januari 2024, jam 02.11 WIB.

property also affects the assessment of a spouse's contributions to royalty generation. Without a clear legal basis, determining whether a partner's contribution can be recognized and counted in the division of joint assets becomes subjective.<sup>9</sup> This situation highlights a gap in Indonesia's civil law system, where regulatory developments have not always kept pace with industry dynamics of change in the industry, particularly in the entertainment and creative sectors.<sup>10</sup> Therefore, the author intends to conduct research on royalties classified as joint marital assets, as well as the contribution of a spouse or inspiration in a creative work, which is considered in the division of joint assets following a divorce. This study focuses on the case of Inara Rusli and Virgoun with the title **"LEGAL ANALYSIS OF ROYALTIES AS JOINT MARITAL PROPERTY AND THEIR DISTRIBUTION AFTER DIVORCE"**.

## **B. Formulation of the problem**

Based on the above explanation, two research problems are formulated:

1. Are creative works and royalties generated during marriage considered joint marital property?
2. How are royalties from creative works produced during marriage distributed after divorce?

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<sup>9</sup> Insertlive, <https://www.insertlive.com/hot-gossip/20231125152534-7-324885/hakim-kabulkan-hak-nafkah-hingga-royalti-inara-rusli-virgoun-ajukan-banding#:~:text=Majelis%20hakim%20Pengadilan%20Agama%20Jakarta,ah%2C%20dan%20pembagian%20royalti>. Diakses tanggal 21 januari 2024, jam 05.21 WIB.

<sup>10</sup> Putusan Pengadilan Agama Jakarta Barat No. 1662/Pdt.G/2023/PA.JB., hlm. 62-64

### **C. Research Objectives**

1. To determine the legal status of royalties in the context of marriage law, especially about the division of assets after divorce. More specifically, this research intends to answer the following questions: Are creative works and royalties generated from marriage considered joint property? If yes, then the royalties will be evenly divided between both spouses after divorce. Or are royalties considered inherited property from one spouse? If so, the royalties will remain the personal property of the respective spouse and do not need to be divided.
2. to gain a comprehensive understanding of the legal basis and practice of profit distribution from creative works, as well as to evaluate whether the existing distribution model is fair and aligned with the principles of justice. This study is also expected to provide recommendations or alternative models for a more equitable profit distribution.

### **D. Benefits of research**

It is expected to provide benefits and contributions to the theoretical and practical levels. As for its uses:

1. Provides information on the legal status of royalties in the context of marriage law.
2. Information about the legal basis and practice of distributing creative and written works is expected to provide recommendations for better distribution models.

## E. Research Originality

Based on a review of prior studies, the researcher identified several studies investigating the division of joint assets but **addressing different legal issues.**

1. A study entitled “Division of Joint Assets Due to Divorce According to Civil Law and Islamic Law” written by Muhammad Nurman, from the State Islamic Institute (IAIN) Palopo, discusses the regulation of the division of joint assets due to divorce according to Civil Law and Islamic Law. The research finding revealed that first, referring to Civil Law, joint assets are assets obtained by a husband and wife during marriage, either in the form of movable or immovable assets. The division of joint assets due to divorce is carried out fairly and evenly, namely 50% for the husband and 50% for the wife. According to Muhammad Nurman who comes from Islamic Law, joint assets are assets obtained by a husband and wife during the marriage, either in the form of movable or immovable assets, except for assets obtained by the husband or wife separately, such as inheritance and gifts. Second, the division of joint assets resulting from divorce is carried out fairly and evenly, with 50% allocated to the husband and 50% to the wife, unless otherwise stipulated in a prenuptial agreement. Third, the comparison of regulations on the division of joint property due to divorce according to Civil Law and Islamic Law is as follows: In terms of the method of division, these two laws regulate the

division of joint property fairly and evenly, namely 50% for the husband and 50% for the wife. In terms of exceptions, Civil Law does not recognize any exceptions in the division of joint property, while Islamic Law acknowledges exceptions, specifically for assets acquired separately by the husband or wife.

2. A study entitled “Division of Joint Assets Post-Divorce (Case Study at the High Court of Syariah Melaka, Malaysia)”, written by Fatin Nabillah Bint Harris, from the Ar-Raniry Darussalam State Islamic University Banda Aceh institution discusses first, what are the consideration of the judges of Sharia High Court of the Melaka State when deciding the division of joint assets after divorce?, second, What is the legal basis for the judges in deciding the division of joint assets after divorce?. The conclusions are first the considerations in deciding the division of joint assets is to take into account the level of contribution of the husband and wife. Second, the legal basis used by the judges in resolving joint property cases is the 2002 Melaka State Islamic Family Law.
3. A study entitled “Intellectual Property Rights (HKI) as Joint Assets in the Perspective of Law Number 1 of 1974 and the Compilation of Islamic Law”, written by Arso, from the North Sumatra State Islamic University, Medan, discusses first, how to determine the juridical momentum of IPR when they were created before marriage but registered after the marriage took place? second, Is it still relevant and

does it fulfill the principle of justice that satisfies all parties (al-qisth) to divide joint assets, in the form of IPR, equally between husband and wife? third, what is the legal certainty regarding the distribution of joint assets based on the Compilation of Islamic Law which is enforced through Presidential Instruction Number 1 of 1991?. The conclusions are as follows. First, property rights are recognized by the State through Legislation, and are categorized as intangible objects that hold economic value and moral rights beneficial to society. Second, there are no specific laws and regulations regarding Intellectual Property Rights that provide certainty and clarification on how they can be classified as joint assets. Furthermore, when referring solely to the marriage law (UUP) and the Compilation of Islamic Law (KHI), these references are not entirely relevant as a legal basis.

4. A study entitled “Division of Gono-Gini Assets (Joint Assets) in the Perspective of Islamic Law and Positive Law (Analysis of Decision Number 115/PdtG./2012/PTA.Bdg)”, compiled by Arsiliya Rifda, from the Syarif Hidayatullah State Islamic University Jakarta discusses first, What is the view of Islamic Law and Positive Law regarding the distribution of *Gono-Gini* assets? second, What are the Judge's considerations in the *Gono-Gini* Property Dispute Decision Number 115/PdtG./2012/PTA.Bdg? The conclusions are first, the Judges of the Bandung High Religious Court decided based on a sense

of justice referring to the Compilation of Islamic Law article 229. Second, the Bandung High Religious Court also considered the involvement of the parents of both spouses in the dispute over the division of joint assets. So the judge decided 1/3 of the assets would be allocated to the wife and 2/3 to the husband.

5. A study entitled “Progressive Legal Analysis of the Division of Joint Property (In Decision No: 1347/Pdt.G/2016/PA.SMG)”, written by Siti Muti' Khodijah, from the Walisongo State Islamic University (UIN) Semarang institution discusses first, what are the results of decision Number 1347/Pdt.G/2016/PA.Smg regarding the division of joint property in the Semarang City Religious Court? second, how did the judge consider the case no. 1347/Pdt.G/2016/PA.Smg using progressive legal analysis?. The conclusions are first, That the judge maintained a balanced approach in deciding case no. 1347/Pdt.G/2016/PA.Smg. The judge applied an analysis based on progressive legal methods, adhering to the principles of progressive law, namely, justice, expediency, and legal certainty. Second, the disputed asset was a joint marital property in form of a boarding house. Accordingly, the panel of judges ruled that  $\frac{3}{4}$  of the property be allocated to the Defendant and  $\frac{1}{4}$  to the Plaintiff on the basis that the land on which the boarding house was built was inherited property or separate property belonging to the Defendant.

## **F. Literature Review**

## 1. Joint Property

Joint assets, in general, refers to assets acquired by husband and wife during their marriage, whether in the form of movable or immovable property. Joint property belongs to both spouses collectively and not considered personal property of either party. Basically, joint property includes property and assets acquired during the marriage such as income earned by one or both spouses, property purchased during the marriage, as well as property acquired as an inheritance or gifts during the marriage. Therefore, joint assets can include land, property, vehicles, bank accounts, and all other forms of assets acquired by the husband or wife during the marriage.<sup>11</sup> Joint assets can be divided into two types, namely:

- a. Joint assets acquired during the marriage, namely assets acquired by both spouses during the marriage, whether in the form of movable or immovable property. This joint property falls under the category of absolute joint property. It includes assets obtained through the hard work and efforts of husband and wife, for example salaries, wages, honorariums, and business profits; assets obtained from the joint business between spouses, such as agricultural, plantation, livestock, and fishery products; assets derived from the sale or exchange of joint assets; assets received as gifts, grants, inheritances, and wills, as long as no other provisions are stipulated

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<sup>11</sup>Sonny Dewi Judiasih, "Kajian Terhadap Kesetaraan Hak dan Kedudukan Suami dan Istri atas Kepemilikan Harta Dalam Perkawinan", PT Refika Aditama, Bandung, 2015, hal. 23

in a prenuptial agreement.<sup>12</sup>

- b. Joint assets obtained through the efforts or cooperation of both spouses refers to assets obtained by the husband and wife through joint efforts or collaboration. This type of joint assets falls under the category of relative joint assets. It includes assets obtained from business activities carried out by either or both parties; assets obtained from the work or services performed by either or both parties; assets derived from copyrighted works or intellectual property rights generated by either or both parties.<sup>13</sup>

The regulation of joint assets is governed by several statutory regulations, namely: Law Number 1 of 1974 concerning Marriage, specifically in Article 35 paragraph (1), Article 36 paragraph (1), Article 83 paragraph (1), and (2); the Compilation of Islamic Law (KHI), namely Article 85 and Article 97; Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage which provides a detailed explanation of the Marriage Law.

The types of marital property owned by a husband and wife from a legal standpoint are governed under Law No. 1 of 1974, specifically Articles 35 and 36, which state as follows:

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<sup>12</sup> Besse Sugiswati, “*Konsep Harta Bersama dari Perspektif Hukum Islam, Kitab Undang-Undang Hukum Perdata dan Hukum Adat*”, Jurnal Kajian Islam, vol. XIX No.3, September 2014, hlm. 204.

<sup>13</sup>J. Andi Hartanto, “*Hukum Harta Kekayaan Perkawinan*”, Laksbang Grafika, Sleman Yogyakarta, 2010, hal. 45.

Article 35 outlines that:

- a. Assets acquired during the marriage constitute joint property.
- b. Assets brought into the marriage by each spouse, as well as those obtained individually through gifts or inheritance, remain under the sole control of the respective recipient unless otherwise agreed upon by both parties.

Article 36 specifies that:

- a. Decisions regarding joint property require mutual agreement between the husband and wife.
- b. Each spouse retains full authority to manage and take legal actions concerning their personal property brought into the marriage.<sup>14</sup>

In the Compilation of Islamic Law (KHI), joint property in marriage is addressed in Chapter XII, which covers marital property from Articles 85 to 97.

Article 85 of the KHI specifies that the existence of joint property in a marriage does not eliminate the possibility of each spouse owning personal property. Article 91 of the KHI outlines the types of joint property as follows:

- a. Joint property, as mentioned in Article 85, can consist of tangible or intangible assets. Tangible joint property includes immovable assets,

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<sup>14</sup> Wardah Nuroniya, dan Wasman. “*Hukum Perkawinan Islam di Indonesia*” , Teras, Yogyakarta, 2011, hal.219-222.

movable assets, and securities.

- b. Intangible joint property comprises rights or obligations.
- c. Joint property may be used as collateral by one spouse, provided that consent is obtained from the other spouse.<sup>15</sup>

The mechanism for dividing joint assets is carried out according to the following principles:

- a. Fair and equal, that is, the distribution of joint assets must be carried out fairly and equally, without discriminating against gender, religion, or socio-economic background.
- b. Based on an agreement, namely the division of joint assets can be done based on an agreement between husband and wife.
- c. Based on a court decision, that is, if the husband and wife cannot reach an agreement, then the division of joint assets is carried out based on the court's decision.<sup>16</sup>

## 2. Creative Works

The definition of a creative work according to Law of the Republic of Indonesia No. 28 of 2014 concerning Copyright, refers to any work in the fields of science, art, and literature that is created based on inspiration, ability, thought, imagination, skill, or expertise and is expressed in a tangible form. <sup>17</sup>A creation refers to any creative work in the fields of

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<sup>15</sup> Liky Faizal, "*Harta Bersama dalam Perkawinan*", Journal of Islamic Studies, vol. 8, No.2, Agustus, 2015.

<sup>16</sup>J. Andi Hartanto, *Op.Cit.*, hal. 64-87

<sup>17</sup> Syahril, "*Aspek Hukum Pendaftaran Hak Cipta dan Paten*", Journal ISI Surakarta, Vol.13 No.1, Desember, 2014, hal. 93.

science, art and literature that arises from inspiration, skill, ability, thought, imagination, dexterity or expertise and is expressed in concrete form.<sup>18</sup> It can be concluded that a creation is a work that has been manifested in real terms and not in abstract form. Additionally, this definition clarifies that the scope of a creation involves three fields, namely science, art, and literature. Outside these three areas, a creative work cannot be considered a creation.

In short, general understanding states that a creator is an individual who creates a work. This definition is easily understood by giving concrete examples of creation. However, in practice, determining who qualifies as a creator is not always simple. Some types of creations and creative processes require clarification in accordance with certain norms. For example, identifying the creator in the context of the film production, book covers, literary performances, or the layout of a publication, as well as the composer of advertisement jingles, promotional materials, and posters is not always easy.<sup>19</sup>

In general, a creator can be defined as an individual or group of people who, either independently or collaboratively, produce a work that has unique and personal characteristics.<sup>20</sup>

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<sup>18</sup> Pasal 1 Ayat (3) Undang-undang Nomor 28 Tahun 2014 tentang Hak Cipta.

<sup>19</sup> Henry Soelistyo, "*Hak Cipta Tanpa hak Moral*", PT. RajaGrafindo Persada, Jakarta, 2011, hlm. 64-65

<sup>20</sup> Pasal 1 Ayat (2) Undang-undang Nomor 28 Tahun 2014 tentang Hak Cipta

In the explanation of Article 31 of Law Number 28 of 2014 concerning Copyright, the person considered as the creator is the person whose name is:

- a. mentioned in the creation.
- b. declared as the creator of a creation.
- c. mentioned in the creation registration letter and/or,
- d. listed in the general register of creations as the creator.

In the context of a work consisting of several parts created by 2 (two) or more people, the creator is considered to be the individual who leads and oversees the completion of the entire work.<sup>21</sup> However, if the individual who leads and supervises the creation is not present, then the individual who is recognized as the creator is the individual who compiles the creation without diminishing the copyright of each contributor over their respective parts.<sup>22</sup> In cases where a work is planned by one person but executed and realized by others under the supervision of the planner, the initial person is considered to be the creator.<sup>23</sup>

If a dispute arises regarding copyright ownership, the first reference is the individual listed in the public register of works or mentioned in the copyrighted work. The second reference is the individual publicly declared as the creator. However, if the court obtains contradictory evidence, the

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<sup>21</sup> Pasal 33 Ayat (1) Undang-undang Nomor 28 Tahun 2014 tentang Hak Cipta

<sup>22</sup> Pasal 33 Ayat (2) Undang-undang Nomor 28 Tahun 2014 tentang Hak Cipta

<sup>23</sup> Pasal 34 Undang-undang Nomor 28 Tahun 2014 tentang Hak Cipta

legal presumption is deemed invalid and the court's ruling takes precedence.<sup>24</sup>

### 3. Divorce

Divorce is the termination of a previously legal marriage bond between two people. This process involves ending the rights and obligations associated with marriage, such as financial responsibilities, child custody, and the division of joint property. Etymologically, the word "divorce" comes from the root word "divorce" which means separation. In a legal context, divorce refers to the dissolution of a legally recognized marriage through a court decision. According the Oxford Dictionary; "Divorce is The legal ending of marriage, while the word divorce is the termination of the relationship as husband and wife, with the explanation of separation between husband and wife while both are still alive."<sup>25</sup>

Based on Law No. 1 of 1974 concerning Marriage, Article 38, divorce is one of the causes of the dissolution of a marital bond and can only be carried out in a court hearing after the court concerned has made an effort to reconcile both parties but failed to do so. Meanwhile, the explanation provided in the Compilation of Islamic Law (KHI) does not offer a general understanding of divorce but instead states that divorce may occur either through *talak* or by filing a divorce lawsuit. According to Article 117 of

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<sup>24</sup> Henry Soelistyo, *Op.Cit.*, hal. 65.

<sup>25</sup> Nia Januari, "Analisis Kasus Perceraian di Indonesia", *Journal Akademik Mahasiswa Humanis*, Vol.3 No.3, September 2023, hal. 120-123.

the KHI, *talak* is defined as a husband's declaration before a religious court, which serves as one of the causes of marital dissolution in accordance with the procedures outlined in Article 129, Article 130, and Article 131.<sup>26</sup>

According to Hurlock, divorce is a solution to marriage if the husband and wife can no longer find a resolution to their problems, which fail to bring happiness to their marriage. Divorce can be done either through legal means or outside the legal framework.

Sudarsono views divorce as a traumatic event for all parties involved, including spouses who can no longer live together as well as children, in-laws and friends. Divorce within a family is a big change, as children may experience emotional and behavioural reactions due to the loss of a parent.

According to Emery, divorce is the separation of a married couple and the termination of a marital bond based on a mutual agreement between the husband and wife, caused by the inability to fulfil each others' needs.

The conclusion drawn from the three expert opinions that divorce is a complex event that not only involves the married couple, but also has a broad impact on their social environment. Divorce is often considered the last resort when efforts to maintain the marriage have failed and household happiness can no longer be sustained. Various factors can trigger divorce,

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<sup>26</sup> H. Rusdi Malik, "*Memahami Undang-Undang Perkawinan*", Penerbit Universitas Trisakti, Jakarta 2010, hal. 89.

including dissatisfaction, incompatibility, and an inability to meet emotional needs in a relationship.

The Marriage Law only permits divorce on the basis of explicitly stated reasons. In accordance with Government Regulation Number 9 of 1975, divorce may occur due to the following reasons:

- a. One party commits adultery, is an alcoholic, a drug addict, a gambler, and others similar behaviours that are difficult to cure.
- b. One party leaves the other party for two consecutive years without the other party's consent and without a valid reason.
- c. One party is sentenced to imprisonment for 5 (five) years or a more severe punishment after the marriage has taken place.
- d. One party commits acts of cruelty or serious abuse that threatens the life of the other party.
- e. One party suffers from a physical disability or disease that prevents them from fulfilling their duties as a husband or wife.
- f. Continuous disputes and conflicts occur between the husband and wife with no hope of reconciliation.<sup>27</sup>

Following the provisions of Article 208 of the Civil Code, divorce cannot be granted solely based on mutual agreement between both parties.

The absolute requirements for divorce are as follows:

- a. Adultery.

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<sup>27</sup> Bab V Peraturan Pemerintah Nomor 9 Tahun 1975 telah diatur tentang Tata Cara Perceraian, Alasan perceraian.

- b. Abandoning the marital home with malicious intent.
- c. Subject to five years of imprisonment or another severe punishment after the marriage has taken place.
- d. Serious abuse or violence committed by one spouse against the other or another person, to the extent that it endangers life or causes serious injuries.

## **G. Research methods**

### **1. Types of research**

This research uses a normative legal approach as the main method for analyzing the problems raised. The normative legal research is a research method that focuses on the study of law as a set of norms or rules written in various laws and regulations, legal doctrines, and court decisions. Through this approach, the study aims to explore, understand, and explain legal rules relevant to the problems being examined.<sup>28</sup>

### **2. Research Approach**

The approach methods used in this research are:

- 1) Statute approach. Statute approach is a method that focuses on in-depth analysis of regulation. In this approach, the researcher will conduct a detailed analysis of each article, verse, and word in the legislation under study to comprehensively understand the intent and purpose of a regulation, identify gaps or ambiguities and

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<sup>28</sup> Ahmad Tanzeh, *Pengantar Metode Penelitian*, Teras, Yogyakarta, 2009, hlm180.

assess its consistency with other regulations. This will be done by applying statute analysis steps, including identifying regulations, text analysis, interpretation, context analysis, and evaluation.

- 2) Case approach. Case approach is a legal research method that focuses on in-depth analysis of concrete legal cases. In other words, the researcher will study court decisions, the facts of the cases, and the legal reasoning underlying the decisions. This process involves several steps, including selecting cases relevant to the topic, analysing the facts, identifying legal issues, analysing legal reasoning, and evaluating the decisions.<sup>29</sup>

### **3. Classification of Legal Material**

The Classification of data sources for this research is divided into three categories:

- a. Primary Legal Materials, which includes:
  - 1) Law Number 1 of 1974 concerning Marriage
  - 2) Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 on Marriage
  - 3) Compilation of Islamic Law (KHI)
  - 4) Law Number 28 of 2014 concerning Copyright
  - 5) Court Decision Register Number 1662/Pdt.G/2023/PA.JB by the West Jakarta Religious Court regarding Divorce and division of Joint Assets

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<sup>29</sup> Johny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*: Ctk. Kedua, Bayumedia Publishing, Malang, 2006, hlm. 44.

- 6) Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 About Marriage
- b. Secondary Legal Materials. These are supporting sources related to the discussion. In this study, secondary legal materials consist of books, journal articles, articles, and news, both in hardcopy and softcopy, references related to the research topic, government-issued regulations relevant to the research problems, digital mass media, manuscripts, the Qur'an, Hadith. and Compilation of Islamic Law that pertain to the research discussion.
- c. Tertiary Legal Materials. These are legal materials that provide explanations for primary and secondary legal materials, in the form of the Oxford Dictionary, the English-Indonesian Dictionary, legal dictionaries and legal encyclopaedias.

#### **4. Data collection technique**

##### **a. Observation**

Sutrisno Hadi stated that observation is a scientific method defined as systematic observation and recording of phenomena being studied.<sup>30</sup> Meanwhile, according to S Margono, observation is systematic observation and recording of symptoms that occur in the object being studied.<sup>31</sup> Suharsimi Arikunto explained that observation also referred to as observation-based research involves focusing attention on a research

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<sup>30</sup> Sutrisno Hadi, *“Metodologi Research (Jilid II)”*, Andi Offset, Jakarta, 2004, hlm 151.

<sup>31</sup> Nurul Zuriyah, *“Metode Penelitian Sosial dan Pendidikan Teori-Aplikasi”*, Bumi Aksara, Jakarta, 2006, hlm 173.

object using all sensory faculties.<sup>32</sup> Observation serves the purpose of obtaining a clearer picture of a particular issue and providing insights as a means to solve it.

**b. Literature Study**

The literature study in this research is conducted by collecting, reading, studying and analysing several reference books, journal articles, papers, research results, legal dictionaries related to the legal problems being studied.

**c. Document Study**

Document studies in this research are conducted by collecting, reading, studying and analysing laws and regulations related to the problems being discussed in this research.

**5. Data analysis**

This research uses a qualitative approach. A qualitative approach is a research approach carried out by describing and analysing phenomena in depth. By using this approach, the researcher will describe and analyse legal regulations and cases related to the distribution of royalties as joint assets after divorce. The researcher aims to gain a comprehensive understanding of the meaning and implications of these legal regulations and cases.

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<sup>32</sup> Suharsimi Arikunto, “*Prosedur Penelitian Suatu Pendekatan Praktek:*” Ed. Revisi VI, Rineka Cipta, Jakarta, 2006, hlm 204.

In addition, the researcher will also analyse cases of royalty distribution as joint assets after divorce that have been handled in court. The analysis of these cases will be carried out to understand how the contribution of each spouse influences the distribution of royalties as practiced in court.

## **H. Thesis Framework**

The structure of this thesis consists of 4 (four) chapters, each discussing different aspects of the research. This arrangement is designed to meet the needs of analyzing and addressing the research problems. The systematic outline of this thesis is as follows:

### **CHAPTER I INTRODUCTION**

Chapter I is an introduction consisting of Research Background, Problem Formulation, Research Objectives, Theoretical Review, Research Methods, and Thesis Outline.

### **CHAPTER II LITERATURE REVIEW**

Chapter II is a theoretical and conceptual basis that serves as a basis for analyzing legal issues related to creative works, joint property, and divorce. The discussion in this chapter includes a general description, theoretical basis, and legal principles relevant to the topic.

### **CHAPTER III RESEARCH RESULTS AND DISCUSSION**

Chapter III provides an in-depth discussion of two research questions. The first question examines whether royalties should be classified as assets obtained during marriage (marital assets) or assets owned before marriage (inheritance assets). This section analyzes the legal status of royalties as a form of wealth from both the perspectives of civil law and intellectual property law. The discussion includes legal regulations related to joint assets in marriage, as well as the interpretation of norms governing royalties as a result of intellectual work. The main focus is to determine whether royalties, as a continuous source of income falls within the category of joint marital assets or remain personal property because they come from works created before marriage. The second question explores the philosophical and legal aspects of profit-sharing from creative works within the context of marriage: if creative works are the result of individual creativity, why should the profits from such works be shared equally? This section examines the principle that creative work stems from individual intelligence and effort while considering how the law views the contribution of partners in marriage to the financial success derived from such work. The discussion also explores the legal basis and arguments supporting or opposing the division of profits from creative work as part of joint marital assets.

#### **CHAPTER IV CONCLUSION AND SUGGESTION**

This chapter serves as the conclusion, presenting the findings and recommendations derived from the previous analysis.