



**Position of Joint Assets in Marriages that Lead to Divorce (Decision Study
No.419/Pdt.G/2021/Pn.Tng)**

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Abstract

Marriage is a sacred and noble relationship intended for humans in terms of development to continue offspring and spend life with someone we love. Marriage in Indonesia is regulated in Law Number 1 of 1974 concerning Marriage and also the Civil Code. In marriage, assets that have been owned so far will indirectly become joint property since the marriage took place as long as there is no agreement regarding the separation of assets. This study uses a normative juridical method, namely legal research conducted by examining literature or secondary data as the basis for research. The data collection technique is by conducting a literature study of the Law and Decision No.419/Pdt.G/2021/Pn. Tng to find out how the position of joint assets collected during marriage becomes joint property like this when a divorce is in progress. the parties who control the joint property must voluntarily surrender the joint property based on the decision of the marriage agreement made or in accordance with the applicable decision, which can also be done by confiscating the marriage property by the bailiff.

Keywords: marriage, joint property, legal position.

I. PRELIMINARY

A. Background

Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in One Almighty God. . Marriage is one of the instructions of Allah SWT as a halal way to gather and have intimate relations (coitus). However, the fulfillment of biological needs is not the sole aim of the syari'atization of marital ties, although only



in this way is the distribution of biological needs justified by the Law and the Civil Code (KUHPer).

More than that, there are several aspects outside of fulfilling biological needs that also need attention, starting from economic readiness, physical maturity, psychological maturity, and so on with the intention that the goal of marriage can be achieved in building a household. For the sake of the realization of this noble goal, the state should make laws governing marriage which will apply to all its citizens. Therefore, after going through a long process and taking a long time for discussion, in the end Law Number 1 of 1974 concerning Marriage was created, this law was ratified by President Soeharto on January 2, 1974. For the implementation of this law the government issued Government Regulation Number 9 of 1975 as the implementing regulation of the Marriage Law.

In the provisions of the Marriage Law, the principles and principles have been adapted to the times and contain all matters relating to marriage. This principle or principles include the existence of the purpose of marriage, namely to form a family (household) that is eternally happy and prosperous based on Belief in the One and Only God. Another principle or principle is that in order to enter into a marriage, the prospective husband and wife must be ready and mature physically and mentally so that they can realize the goals of marriage as mentioned above. Therefore marriages between prospective husband and wife who have not reached the minimum age allowed by law or underage marriages must be prevented.

Marriage is “a relationship between the behavior of creatures created by God Almighty so that life in the natural world can multiply. Marriage does not only occur among humans, but also occurs in plants and animals. Because humans are intelligent creations, marriage is one of the regular cultures that follows the development of human culture in social life. Marriage does not only contain elements of human relations with humans but also involves civil relations. Marriage also contains an element of sacredness, namely the human relationship with God because the union of the two human beings is sacred and binding on God and his accountability.



A marriage that involves both parties, consisting of a husband and wife, also has responsibilities, rights and obligations that are equal, although not always the same. In the Marriage Law Number 1 of 1974 it is also regulated regarding the issue of the Rights and Obligations of husband and wife in a marriage, one of which is in Article 36 Paragraph (1) it says that "Regarding joint property, the husband or wife can act on the agreement of both parties. parties", then regarding this matter it is also stated in Article 31 paragraph (2) of Law Number 1 of 1974 that states that "each party has the right to take legal action". Legal actions here are not only limited to the scope of the law, but there are also other things that have been regulated and can be done.

One of the legal actions referred to in this article is to enter into a sale-purchase agreement whether it is carried out by the husband or the wife, but back to Article 36 paragraph (1) above, if every person does something related to joint property, it must be done on the basis of agreement of both parties. Like the sale-purchase agreement relationship, the agreement can be said to be valid if it meets the subjective and objective requirements of an agreement, namely based on Article 1303 of the Civil Code, the terms of a valid agreement are as follows:

- 1) Their agreement binds him,
- 2) The ability to make an engagement,
- 3) A certain subject matter and
- 4) A cause that is not forbidden.

In previous marriages, the existence of a marriage agreement was not recognized, the present marriage agreement is known as a prenuptial agreement. Marriage agreements/Prenuptial Agreements are regulated in the Civil Code Articles 139 to 185. A marriage agreement according to Soetojo Prawiro Hamidjojo is "an agreement (agreement) made by the prospective husband and wife before or at the time the marriage takes place to regulate the consequences of marriage on their assets". 3 Assets The wealth here referred to is the assets of each of them, both innate assets and their own assets. After the dissolution of the joint property, their joint



property is divided in half between the husband and wife, or between their heirs, without questioning which party the goods come from.

In a marriage does not only take place to continue offspring or only demand happiness between the two parties. There are many things that happen in a marriage including the existence of Legal Action activities which are none other than Asset Sale and Purchase Agreements including Houses and Land carried out by Husband and Wife. This legal action sometimes causes many incidents and things that can be disputed. The legal actions of the sale and purchase agreement carried out by the husband and wife are categorized and included in joint assets.

Purchases or sales made by both parties or one of the parties still require permission from one of the parties, may not be carried out by an individual or without the consent of the husband or wife. When a husband or wife enters into a sale and purchase agreement outside the mutual agreement and uses one party's money, it can be disputed due to losses suffered by one of the parties, even though these costs are included in the joint property. Purchases made by a wife using her husband's money without her husband's permission can cause many problems and questions related to the position of the assets purchased.

On this matter, the author takes a case from one of the decisions of the Tangerang District Court, which when the plaintiff and the defendant entered into a marriage there was no pre-marital agreement found, and during their marriage finally stopped due to a lawsuit for divorce from the husband who apparently knew the wife apparently had bought a house without her husband's knowledge. They had filed for divorce in court, but for a moment where the court had not yet knocked on the gavel to declare that they were legally divorced, the defendant had secretly purchased assets using the plaintiff's money, and ended the sale and purchase agreement which also caused losses to the defendant.



B. Formulation of the problem

What is the position of joint property in a marriage that is undergoing divorce?

C. Research methods

The research method used is a normative legal research method that uses secondary data sources taken from literature studies with using research data types in the form of primary legal materials, secondary legal materials and tertiary legal materials. Study Conducted By using the applicable statutory approach related to normative deductive analysis techniques that adjust to the topics to be discussed by the author.

II. DISCUSSION

A. STATUS OF COMMUNITY PROPERTY IN MARRIAGE THAT PERFORMS DIVORCE

At first marriage was intended to achieve eternal happiness for the husband and wife, but in reality there are many causative factors that trigger problems in married life so that the couple decides the last and best way is by way of divorce.¹ After a divorce occurs, it does not mean that all family problems have been resolved, but it still leaves residual marital problems such as children (if you have children) and property acquired during the marriage. , this is very important to be resolved by both parties for the common good². According to the provisions of article 38 of the Marriage Law, a marriage can break up because of (a) death, (b) divorce, (c) by a court decision. The dissolution of a marriage due to death is often referred to by the community as "death divorce". While the dissolution of marriage due to divorce there

¹Syaikhul Hakim, 2015, "Reactualization of the Distribution of Joint Assets in the Syafii School and Compilation of Islamic Law in Indonesia", *Academics*, Vol. 9, No. 2, p. 45

²Sri Hariati and Musakir Salat, 2013, Injustice in the Distribution of Gono Gini Assets in Divorce Cases The Injustice of Distributing Marital Property, *IUS Journal of Law and Justice Studies*, Vol. 1, No. 3, p. 2



are two names, namely "divorce sue" and "divorce divorce". The breakup of a marriage because of a court decision is called "canceled divorce".³

If the marriage is broken up due to divorce, problems arise, including regarding the distribution of joint assets which are regulated according to their respective laws, namely religious law, customary law and other laws, meaning that joint assets are regulated according to their respective laws. This indicates that when a divorce occurs, the joint assets acquired by the husband and wife during the marriage can be regulated using different rules depending on variations in customary law or other laws outside customary law.⁴ Joint property is one type of the many assets owned by a person. In everyday life, property has an important meaning for a person because owning property can meet the needs of life naturally and obtain a good social status in society. However, the joint property will become property that can no longer be referred to as joint property when there is a death or divorce. The distribution of joint assets is also not carried out indiscriminately, but the distribution of joint assets has rules stipulated in the Marriage Law and in accordance with the provisions of the Civil Code.⁵

According to Law no. 1 of 1974 that assets acquired during marriage become joint property. Meanwhile, the inheritance of each husband and wife, whether as gifts or inheritance, is under the control of each as long as the parties do not specify otherwise (Article 35). Regarding joint property, husband or wife can act with the agreement of both parties. Meanwhile, each husband and wife have the full right to carry out legal actions regarding their property (Article 36). According to Wahjono Darmabrata and Surini Ahlan Sjarif, marital property according to the law

Number 1 of 1974 concerning Marriage is divided into:

³Sukardi, 2016, "Juridical Study of Marriage Agreements According to the Civil Code, Law Number 1 of 1974 and the Compilation of Islamic Law", *Jurnal Khatulistiwa - Journal of Islamic Studies*, Vol. 6, No. 1, p. 65.

⁴Evi Djuniarti, 2017, *Joint Property Law From the Perspective of the Marriage Law and the Civil Code*, *DE JURE Journal of Legal Research*, Vol. 17 No. 4, p. 8

⁵Eni C. Singal, 2017, *Distribution of Gono-Gini Assets and Determination of Child Custody as a Result of Divorce Based on Law Number 1 of 1974*, *Lex Crimen*, Vol. 6, No. 5, p.2



1. Joint assets are assets acquired throughout the marriage since the marriage took place until the marriage ended or the marriage was broken up due to divorce, death or a court decision.

Shared assets include:

- a. Assets acquired during the marriage;
- b. Property obtained as a gift, gift or inheritance if not so determined;
- c. Debts that arise during the marriage except those is the personal property of each husband and wife (Darmabrata and Surini, 2016:21)

2. Personal property is property inherited by each husband and wife which is permanent property under the control of the husband and wife which constitutes the property concerned as long as it is not specified otherwise in the marriage agreement. In other words, private property is property owned by husband and wife before they got married

Personal assets include:

- a. Assets that each husband and wife bring into the marriage, including debts that have not been paid off before the marriage takes place;
- b. Property obtained as a gift or gifts from other parties unless specified otherwise;
- c. Assets acquired by a husband or wife by inheritance unless otherwise specified;
- d. The results of the personal property of the husband and wife throughout the duration of the marriage, including debts arising from the management of the private property.

According to J. Satrio, based on Law Number 1 of 1974 concerning Marriage, in one family there is more than one group of assets namely: (Satrio, 1992: 89)



1. Common property

According to Article 35 paragraph (1) of Law Number 1 of 1974 concerning property marriages

jointly with husband and wife includes only the assets acquired by the husband and wife

wife throughout the marriage so it is concluded that it includes assets together are the results and income of the husband, the results and income of the wife.

2. Personal property

According to Article 35 paragraph 2 of Law Number 1 of 1974 concerning Marriage, assets already owned by the husband or wife at the time the marriage took place and the assets each acquired as a gift or inheritance do not enter into joint assets unless they agree otherwise. These personal assets can be distinguished again, including assets inherited by the husband for the wife concerned, assets obtained by the husband or wife as gifts, grants, or inheritance.

If a marriage is broken up due to divorce, joint assets are regulated according to their respective laws, such as religious law, customary law and other laws.

In the Civil Code, Joint Assets are regulated in Chapter VI Articles 119-138, which consists of three parts. Part One concerning Joint Assets according to the Law (Articles 119-123), Part Two concerning Management of Joint Assets (Articles 124-125) and Part Three concerning Dissolution of Joint Assets and the Right to Release Thereof (Articles 126-138)⁶According to the Civil Code, from the time the marriage takes place, according to law there is a total joint property between the husband and wife, as long as the provisions in the marriage agreement are not made.

⁶Hilman Hadikusuma, Indonesian Marriage Law, according to Customary Law, Religious Law, Print 1 (Bandung, Mandar Maju, 1990) p.123



The joint assets while the marriage is in progress may not be abolished or changed by an agreement between the husband and wife (Article 119). With regard to the matter of profit, joint property includes movable and immovable property of the husband and wife, both existing and future, as well as goods that they obtain free of charge, unless in the last case this is what bequeaths or who grants determines the opposite with firmly (Article 120).

In Article 122 of the Civil Code or Burgerlijk Wetboek "From the moment the marriage takes place for the sake of law, does unanimous union between the assets of husband and wife, just regarding that with the marriage agreement other provisions are not abolished. That rule as long as the marriage cannot be abolished or changed by any agreement between the husband and wife. All debts and losses throughout the marriage must be reckoned for the good fortune of the union. For those who are subject to Western Civil Law (BW) regarding assets acquired during marriage in Article 119 BW (Civil Code) states; "Starting from the moment the marriage takes place, for the sake of law the union applies between the monthly union between the assets of the husband and wife, just regarding that the marriage agreement does not make other provisions.

This union as long as marriage cannot be abolished or changed by any agreement between husband and wife. Thus, this article shows that insofar as the assets become joint assets or mixed assets, according to the law it becomes a joint relationship or if the husband and wife before entering into marriage enter into a letter of agreement before a notary regarding their assets, then the husband and wife can take deviations. If one of the husbands or wives dies first, then they have the right to property, but they can also not control (bescekking) their respective shares.

The position of marital assets according to the Marriage Law (UUP) is basically carried out separately in the sense that there is no unanimous union as stipulated in the Civil Code. According to Article 35 UUP, marital assets consist of two types, namely:



- 1) joint property, namely property acquired by the husband and wife during the marriage
- 2) inherited assets, namely assets acquired and owned by husband and wife before marriage (including inheritance from each party)

Furthermore, the responsibility of the husband/wife for joint property is regulated in this way, that is, because the contents of the joint property are all the results of the business and income of the husband and wife throughout the marriage, the management and control of it is the joint responsibility of the husband and wife. Thus, the husband and wife jointly have the authority to bind joint assets to third parties, so that the debt for joint assets is appropriate and this should be the case if the husband and wife each bear half of the expenses or debts for joint assets. the. Joint property is property acquired during a marriage where in marriage the husband and wife live trying to meet the interests of the needs of family life.

- a. All assets that can be proven were obtained during the marriage, even if the assets or goods registered are in the name of one of the husband and wife, then the property of the husband and wife is considered joint property.
- b. If the property is maintained or managed and has been transferred to the name of the husband's sister, if such assets can be proven as the results obtained during the marriage period, then these assets must be considered joint property of the husband and wife;
- c. Also in the same decision a rule has been formulated that the existence of joint property between husband and wife does not require proof that the wife must actively participate in helping the realization of said joint property which is the principle as long as the property is proven to have been obtained during the marriage;
- d. Property purchased by both husband and wife in a place far from their place of residence is joint property of the husband and wife if the purchase was made during the marriage;



- e. Goods include joint property of husband and wife, namely:
- 1) All property income earned during Marriage includes income derived from goods of origin belongings and goods produced by the joint property alone;
 - 2) Likewise all the personal income of the husband and wife either from profits derived from each trade or the proceeds obtained by each individual as an employee Referring to the scope of joint assets put forward by Yahya Harahap, it is known that an asset can be determined to be joint property 18 Article 49 letter (a) number 10 of Law Number 3 of 2006 concerning Amendments to the Law Law Number 7 of 1989 which has been amended most recently by Law Number 50 of 2009 concerning the Religious Courts. Aif it can be proven that the assets are joint assets, whether the assets are registered in the name of one of the husbands/wives who are then divorced, or if the assets are registered and managed by another person, but it can be proven that the proceeds obtained from the marriage between the husband and wife , or property purchased by both husband and wife in a place far from their place of residence if the purchase was made during the marriage.

The mix of wealth is also about the whole Activa (assets or assets either in the form of money or other objects that can be valued in money) and Passiva (shares or assets that do not provide benefits). This mix can include inherited assets and/or assets acquired into marriage which eventually become joint property. In fact, this mix of wealth is not a problem as long as it is an agreement between husband and wife.⁷

This joint property dispute will arise if there is a dispute between husband and wife or a divorce occurs. Especially if there is no agreement on the separation of

⁷Sri Hariati and Musakir Salat, Op. Cit, page 2



assets in marriage. Sometimes each party claims joint property to be inherited or acquired assets. Or, the wife is harmed and experiences injustice in the distribution of joint assets based on a court decision. This is the forerunner to the occurrence of joint property disputes.⁸It is better if the distribution of joint assets is done fairly, so that it does not cause injustice between what is the right of the husband and what is the right of the wife.

So that this also involves the position between husband & wife where both parties when married automatically have rights, obligations to responsibilities that are different between the two of them. The marriage law regulates rights and obligations husband and wife in chapter V article 30 to article 34.1 of the Marriage Law: sublime to uphold the household which is the basis of the foundation of society". Lalu next, Article 31 Constitution Pe Marriage regulates the position of husband and wife which states:

- a. The rights and position of the wife are in balance with the rights and position husband in household life and social life together in society.
- b. Each party has the right to take legal action.
- c. The husband is the head of the household and the wife is the housewife.

In the Marriage Law it is stated explicitly that the position of husband and wife is equal, in carrying out legal actions. Whereas in civil law, if the husband's permission is not obtained due to the husband's absence or other reasons, the court can give permission to the wife to appear before the judge in carrying out legal actions.

In addition to legal actions against judges, all matters relating to the sale or purchase of assets during marriage are also counted as legal actions by the parties, both husband and wife. Apart from that, selling or buying assets must be based on the consent of one of the parties, because in the Marriage Law it is stated that in carrying

⁸Ibid



out all legal actions including buying and selling in marriage, each right must obtain the consent of the spouse, which will matter. The law states that the legal position of joint property in marriage has a high status, because it is purchased using the husband's money because in general all household needs are purchased and fulfilled by the men who are the heads of the family.

This is also regulated in Article 105 of the Civil Code, which stipulates that, "The husband is the head of the husband-wife association (Deman is het hoofd der echtvereniging)", while the wife must be obedient and obedient to her husband (Article 106 of the Civil Code). Furthermore, in Article 108 of the Civil Code it is determined, "That a woman who is bound by marital ties in carrying out legal actions must obtain prior permission from her husband". Therefore, Article 108 contains inability to enforce the law (onbekwaamheid) for a wife.

According to Pitlo, the two principles (the principle of *maritale macht* and the principle of *onbekwaamheid*) are 2 (two) different principles and lead to different legal consequences. The principle of *maritale macht* results in the husband being authorized to manage most of the assets, while the principle of *onbekwaamheid* results in every legal action, the wife must obtain prior approval from the husband, because the two principles are different, they cannot be applied side by side. An accident has occurred, then applying the rules in the Civil Code (KUHper)

Based on the principle of *maritale macht*, then in Article 124 paragraph (1) and paragraph (2) of the Civil Code it is determined that, "The husband himself must take care of (*beheren*) his own marital assets,

without the intervention of the wife, the husband is allowed to sell, transfer and burden." According to Article 124 paragraph (1) and paragraph (2) of the Civil Code, the husband is given a lot of authority

large in managing (*beheren*) marital assets. The term *beheren* here is used in a broad sense, that is, to manage. Which includes management actions (*beherr*) in the narrow sense and disconnecting actions (*beschikken*).



Beheren in a narrow sense according to Article 124 paragraph (1) of the Civil Code includes all actions to keep the assets intact and fruitful, or to take actions in accordance with their purpose or function, so that these assets produce results, for example cultivating land, renting out houses. , carry out repairs or repairs. Beschikken (breaking action) contains actions to make juridical changes to marital assets, which in Article 124 paragraph (2) of the Civil Code are stated as acts of selling, transferring and encumbering. According to Article 124 paragraph (1) of the Civil Code, the husband himself must manage the assets of the union

To carry out an arrangement regarding the personal assets of the wife included in a gift or inheritance that was obtained throughout the marriage relationship that has been carried out which fell to the wife is not included in a joint property (union property).⁹Here there is also a caretaker or (beheer) husband who in the event of a union of assets from the head of the household has great power. Even though the property is inherited from the wife and part of it is included in a wealth union, the full role of the husband in managing it is strictly prohibited to give an accountability for it. It can be explained that the position of the wife is actually weak, so the husband has the foundation and has a very large role (power).

This explanation is due to the wife's lack of understanding to make an agreement, this is regulated in Article 1330 of the Civil Code. ¹²Based on Article 140 Paragraph (3) of the Civil Code, when viewed from the magnitude of the power of men over joint assets and associations, it is very large. There is a limitation on the authority, especially from the man as the head of the family (marriage).

III. CLOSING

A. Conclusion

Based on the description above, the following conclusions are obtained:

⁹Faiz, PartMohamad. "John Rawls' Theory of Justice." *Constitutional Journal* 6, no. 1 (2009): 135-149, 135.



In a marriage, a sense of responsibility between the two parties must be felt, because the Marriage Law states that husband and wife are the cornerstone and basis of a household, therefore it is necessary to know that a husband or wife requires a high awareness of their position, rights and and their respective obligations. Gono-Gini assets are assets that were collected during the marriage without any time limit except when a divorce appears. The respective laws apart from customary law and religious law, the husband and wife are also bound by the marriage agreement as mentioned above. when a marriage agreement is formed, the matters regulated in it, including inherited assets may be separated from the joint assets or joint assets, so that the position of inherited assets cannot unite and be divided 50-50 like the Rule of Gono Gini Assets or Marital Assets. So, The legal position of property in the marriage law No. 1 of 1974 article 134 states that joint property is property produced by a husband or wife during marriage. Thus treasure objects that have individual rights cannot be owned, cannot be combined. The position of property in the Civil Code as can be seen in the provisions of Article 499 – 223 of the Civil Code states that all property obtained from the possession of the parties before marriage can be used together for the common good in the household

B. Suggestion

According to the author, the advice that can be given regarding the position of joint assets at the time of divorce, the assets collected at the time of the marriage should be divided equally according to their respective rights and It is better not to question who is most entitled to the property because it is clear in the Marriage Law that joint property is joint property acquired during marriage. So that all legal actions that arise during marriage using joint property must be borne together and must obtain approval from both parties To provide protection for husbands and wives, it is necessary to make a prenuptial agreement regarding the property they own.



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