

# IN RELIGIOUS COURT CLASS 1 A PADANG, APPLICATION OF THE JUSTICE PRINCIPLE IN THE DISTRIBUTION OF SHARED ASSETS DUE TO DIVORCE

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**Abstract:** *The formation of marital property is one of the legal implications of a valid marriage. To satisfy all of the necessities of family life, wealth or riches in marriage is necessary. When a couple divorces, the joint property is usually divided in half, with the woman and husband receiving the same portion. In this instance, Case Number 0665/Pdt.G/2016/PA.Pdg and Case Number 1290/Pdt.G/2021/PA.Pdg in the Religious Courts, where the court distributes the combined assets, In the matter of the division of joint assets in the Religious Courts, Case Number 0665/Pdt.G/2016/PA.Pdg and Case Number 1290/Pdt.G/2021/PA.Pdg, the judge distributes the joint assets unequally, resulting in one party receiving greater property. The following are the formulations of the problem in this study: 1) How to Divide Joint Assets Due to Divorce at the Religious Courts of West Sumatra Province, 2) How to Divide Joint Assets Due to Divorce at the Religious Courts of West Sumatra Province, and 3) How to Divide Joint Assets Due to Divorce at the 2). What is the basis for the judge's consideration in determining the case for the distribution of joint assets due to divorce, and what is the basis for the judge's consideration in deciding the case for the distribution of joint assets due to divorce, and 3). In the distribution of shared assets, the principle of justice is used. The main approach method used in this research is a normative juridical approach, which entails conducting research that focuses on legal aspects by studying primary and secondary legal materials that will later be used as guidelines in understanding and analyzing the problems discussed, while also supporting the main approach. An empirical legal methodology is employed. According to research conducted in the West Sumatra religious court on the distribution of joint property, joint property should be divided equally, but there are certain factors, as well as the judge's considerations, that prevent the joint property from being divided in two, despite the rules in the Marriage Law and the Compilation of Islamic Law.*

**Key Words:** *Common Property, Divorce, Religious Court, Judge*

## 1. INTRODUCTION:

Marriage is one of the most important dimensions of life in human life in any world. So important is marriage, it is not surprising that the religions of the world regulate the issue of marriage. The basics of understanding marriage are bent on three wholeness that need to be possessed by a person before carrying it out, namely: faith, Islam and sincerity.[1] By the time the marriage occurs, then between husband and wife has been bound in a family. Which in marriage each party both from husband and wife must have property that is brought and obtained before entering into a marriage contract, which is referred to as an innate property.[2] The property obtained during the marriage is a joint property belonging to the husband and wife, while the joint property of each husband and wife both as a gift and inheritance of objects under the management of each as long as the parties do not determine otherwise. The arrangement of marital property in the Civil Code has legal provisions that are different from the Marriage Law, where according to the provisions of Article 119 it is stated that from the time the marriage is held for the sake of the law enacting a unanimous union between the property of the husband and wife, thus, a marriage causes the melting down of the husband and wife's property as a property of unity, all the property of each husband and wife, both those they bring at the beginning of the marriage and What they earned during the marriage, mixed into one fortune with husband and wife. The unanimous union of the husband and wife's wealth throughout the marriage should not be abolished and changed with the consent of the husband and wife.[3]

Based on the fact that this problem often causes the divorce process to be complicated in addition to child custody. In the Marriage Law at least 3 types of property are known, namely:[4]

- a. Shared Treasures
- b. Innate Treasures

### c. Acquisition Treasure

Based on the provisions above can be obtained an explanation that the formation of joint property in marriage is from the date of the marriage until the date of the marriage bond ends, meaning that at the time of marriage between husband and wife there is a unity of property in the property whether the property is obtained either individually or with the husband and wife during the marriage bond.[5] In principle, a man and a woman who bind their birth and mind in a marriage as a husband and wife have the right to break the marriage by means of divorce under applicable divorce law. The basics that can result in divorce of a marriage are contained in Article 39 paragraph (2) of Law No. 1 of 1974 on Marriage which affirms that in order to divorce there must be enough reason, that the husband and wife cannot live in harmony as husband and wife. Reasons that can be used as a basis for divorce. In living a home life can not be separated from the acquisition of property which then becomes a common treasure. Marriage causes legal consequences for the husband and wife in marriage, among others regarding the legal relationship between husband and wife, the formation of marital property, the position and status of legal children, and inheritance relationships. The result of the marriage law can only be obtained if the marriage is carried out legally.

A divorce will bring various legal consequences, one of which is related to mutual property in marriage. Law No. 1 of 1974 on Marriage regulates common property. Based on the provisions of Law No. 7 of 1989 jo No. 3 of 2006 the last amendment to Law No. 50 of 2009 concerning Religious Justice, especially Articles 1, 2, and, 49, as well as general explanations of number 2 and other applicable regulatory regulations. Among others, Law No. 1 of 1974, Government Regulation No. 28 of 1977, Presidential Instruction No. 1 of 1991 concerning the compilation of Islamic Law, Regulation of the Minister of Religious Affairs No. 2 of 1987 concerning guardian judges, then the Religious Justice is in charge and authorized to provide legal and justice services in the field of family law and marital property for those who are Muslim under Islamic Law.[6] In this study, the author took the example of the case of sharing common property in the Religious Court Class 1 A Padang with case number 0665 / Pdt.G / 2016 / PA. Pdg and appeal at the Padang Religious High Court with Case Number 31 /Pdt.G/2017/PTA. Pdg, where in the division of property with the Judge dividing the common property is not equal, where the husband gets the property together 1/3 (one-third) and the wife gets 2/3 (two-thirds), so that one of the parties gets more property. And also case Number 1290/Pdt.G/2021/PA. Pdg regarding joint property based on the lawsuit requested by the plaintiff is to divide half of the joint property owned during the marriage but in the judge's ruling stated to divide 1/4 of the requested. Based on the above description, the author conducted research and discussion on the subjects raised, the results of which were outlined in a scientific paper in the form of a proposal with the title "Application of the Principle of Justice in the Division of Common Property Due to Divorce in the Religious Court Class 1 A Padang"

## 1.1.. CONCEPTUAL FRAMEWORK:

### a. Division of Property

Division of Property Is the division of property obtained during marriage beyond gifts or inheritance, property obtained for the efforts of married couples during the period of marriage bonding.

### b. Common Treasures

Common Treasures According to the Law on Marriage The property obtained during the marriage becomes a common property and the inherited property of each husband and wife and the property obtained by each as a gift or inheritance, is under the control of each as long as the parties do not determine otherwise.

### c. Religious Courts

Religious Courts Referring to Law No. 50 of 2009 concerning the Second Amendment to Law No. 7 of 1989 concerning Religious Justice mentions that Religious Justice is a trial for people of Islam and the Court is a Religious Court and a religious high court in the Religious Judiciary environment. 91 Law No. 3 of 2006 concerning amendments to Law No. 7 of 1989 concerning Religious Justice states that the Religious Court is in charge and authorized to examine, decide and resolve cases at the first level between people who are Muslim in the fields of: (a) marriage, (b) inheritance, (c) will, (d) grant, (e) waqf, (f) zakat, (g) infaq, (h) shadaqah and (i) sharia economy.

## 1.2. THEORITICAL FRAMEWORK:

### a. Understanding of The Judge's Consideration

The judge's consideration is one of the aspects that are very important to realize the value of a judge's decision that contains justice (ex aquo et bono) and contains legal certainty, besides that there are also benefits for the parties concerned so that the consideration of this judge must be addressed carefully, well, and carefully. If the judge's consideration is not careful, good, and careful, then the judge's decision derived from the judge's consideration will be overturned by the High Court / Supreme Court.[7]

### b. Justice Theory

This theory of justice is used to solve problems related to factors that cause cancellation. Therefore, this theory of justice is reviewed in order to answer the formulation of the problems of the three authors carefully in this writing. Justice is indeed one of the goals of law, the Theory of Justice developed by Hans Kelsen in his book general theory of law and state. The view that the law as a social order that can be declared fair if it can regulate human actions in a satisfactory way so as to find happiness in it.[8]

## 2. LITERATUR REVIEW:

Understanding Marriage according to Law No. 1 of 1974 concerning Marriage formulates that marriage is an inner birth bond between a man and a woman to form a happy and eternal household (family) based on the Supreme Godhead Compilation of Islamic Law (KHI) Article 2 states that marriage is a marriage, that is, a very strong contract or to obey God's command and carry it out is Worship.[9]

The termination of marriage due to divorce according to article 144 presidential instruction No. 1 of 1999 concerning the Compilation of Islamic Law in can occur due to talaq or based on a lawsuit divorce lawsuit. Divorce according to Prof. Subekti is the abolition of marriage by a judge's decision, or the demands of one of the parties in the marriage.[10]

In marriage, of course, every individual hopes that his marriage will last until the death of one. But it cannot be denied in some marriages must be taken divorce as a final solution. The Qur'an requires that in the event of talaq or divorce it must occur to be done in a ma'ruf way, as described in the Qur'an Surah al-Baqarah (2) verse 231. In the Compilation of Islamic Law, Article 149 is explained when the marriage broke up because of talaq.

Marriage has far-reaching legal consequences in the legal relationship between husband and wife. With marriage arises a bond containing rights and obligations, such as the obligation to live the same, loyal to each other, the obligation to provide shopping for household needs, inheritance rights and so on. In addition, marriage also has a big effect on the wealth of the husband and wife.

Islamic law does not see any common property. Islamic law is more concerned with the separation between the property of husband and wife. In the fiqh books, mutual property is interpreted as the wealth produced by the husband and wife as long as they are tied by the marriage rope, or in other words it is mentioned that the common property is a treasure produced by the way of syirkah between husband and wife so that there is a mixture of property with each other and cannot be distinguished anymore. The legal basis is the Qur'an Surah An-Nisa' Verse (32), that for all men there is a part of what they strive for and all women of what they do anyway.

Islamic law also holds that the property obtained by the husband during marriage becomes the right of the husband, while the wife is only entitled to the living that the husband gives to him. However, the Qur'an and hadith do not give a firm provision that the property obtained by the husband during marriage is entirely the right of the husband, and the wife is limited to the living provided by her husband.[11]

The perspective of Islamic law on togetherness or common property is in line with what Muhammad Shah said that livelihood with husband and wife should be included in the rubu "amalah", but it was not discussed specifically. This may be because in general the authors of the fiqh books are people who generally do not know the livelihood of husband and wife. What is known is shayirkah or sharing.[12]

## 3. METHOD:

This research is empirical juridical research, which is research based on field research to obtain primary data in the field of law. To supplement the data obtained from field research, literature research is also carried out. The research tools used for research in the field are interviews and documentation. While the research tool used to collect supporting theories is library research.[13]

## 4. DISCUSSION:

The rights and obligations arising from marriage are one of them is related to marital property. Marital property is property obtained by the husband and or wife in marriage intended to meet the needs of the family that has been fostered, in this case it is not determined which party produces more wealth because each party has a common obligation to find income to realize family welfare. According to Udin Narsudin, family law is included in the law of marital property influenced by the law that applies when the husband and wife are married. A perfect marriage is not based solely on feelings of love, but is supported by material possessions. This material property is not the main and first need, but as the main basis for the survival of the family.[14] The break-up of the marriage is due to the will of the husband and wife or the will of the two because of the incompanity. Referred to as "divorce", which stems from the non-implementation of rights and obligations as a husband or wife as it should be according to applicable marriage law.[15] Based on the fact that this problem often causes the divorce process to be complicated in addition to child custody. In the Marriage Law at least 3 types of property are known, namely:[16]

- Shared Treasures
- Innate Treasures
- Acquisition Treasures

One of the legal consequences of a legal marriage is the creation of marital property. Property or wealth in marriage is needed to meet all the needs needed in family life.[17] The most common thing that happens in Indonesian society, which is majority Muslim today, is that after the divorce, regarding the position or division of joint property between the divorced husband and wife, many people choose the Religious Court to resolve disputes over the division of common property. The Compilation of Islamic Law reads:

1) In the event of a dead divorce, then half of the joint property becomes the right of the couple who live longer.

2) The distribution of joint property for a husband or wife whose wife or husband is missing must be suspended until there is certainty of his true death or legal death on the basis of a religious court ruling. While Article 97 of the Compilation of Islamic Law states: "Widows or widows divorced each have the right to one-second of the common property as long as it is not specified in the marriage agreement".

## 5. ANALYSIS:

### A. Judge's Consideration in deciding the case of Sharing Of Common Property due to Divorce

At the time between the husband and wife who have been bound in a family must have the property that he has brought and obtained before the marriage. This is called an innate treasure. That is the property that each husband and wife brings into the marriage bond. Such shared property can be immovable objects, moving objects and securities. While the intangible can be in the form of rights and obligations. Based on the case I took in the Class I A Padang Religious Court, namely in the decision of Case No. 0665 / PDT. G/2016/PA. PDG that the parties to the Muslim litigant and divorce has been carried out in the Padang Religious Court. Before the filing of a lawsuit regarding joint property, the settlement of divorce cases was first made at the Padang Religious Court. The parties are Indra jaya as Husband (Plaintiff) and Zulrahimah ZA (Defendant). The parties then appealed with case number 31/Pdt.G/2017/PTA. Pdg because it feels that it is not in accordance with the regulations that have been stipulated in marriage law No. 1 of 1974 in Article 37 and in the Compilation of Islamic law in Article 97 which explains that in the event of divorce, the common property must be divided in half, but another thing with the ruling issued by the Padang Religious Court which divides 1/3 (one-third) of the joint property for the Plaintiff while the Defendant gets 2/3 of the joint property. Based on the results of the decision given by the Judge of the Padang Religious High Court, the plaintiffs felt unfair and wanted to maintain their right to the joint property, the previous comparator as a plaintiff filed a cassation to the Supreme Court with case Number 84K / Ag / 2018. But Amar's ruling upheld the High Court's ruling and rejected the petitioner's application for cassation.

Based on an interview with Mr. Drs. H. Khairuddin, S.H., M.H., the Panel of Judges of the Padang Religious High Court argued in the first case, that the consideration was correct because it had implemented the principle of justice in a large proportion of efforts and obligations that must be fulfilled, but which led to doubts and misunderstandings of understanding in placing the language, namely the lack of acrobatics between the facts encountered in the trial and its legal considerations, In the trial found the fact that many tried and more dominant in obtaining common property is the Defendant / Comparison, in consideration appeared the language of the Plaintiff / Comparison more trying to obtain common property, while in the decision stated Defendant / Comparison more got a share of the joint property. Based on the fact that the trial obtained evidence that the wife is more trying to obtain the common property that exists now, while the husband does not provide a living from his business towards the wife proportionally which is an obligation for a husband, even proven to be in the plaintiff / comparison likes to have fun and have fun with his siri wife when he already has income and then after the joint property obtained by the wife from the work and from the loan. on its own, then for the sake of a reasonable sense of justice deserves the Defendant / Comparison to get more common property from the Plaintiff / Comparison as stipulated in the a quo case decision. The facts in the trial prove that it is true that the Defendant / Comparison is more and more dominant trying since the beginning of the marriage because he has become a Civil Servant and already has a permanent job to make a living the needs of living together, while the Plaintiff / Comparison does not have a fixed income, when according to the husband should be responsible for all the needs of domestic life in marriage. That in the circumstances of household conditions such as the above is very fair should put the portion of the division more obtained by the wife than the husband's part as decided by the Panel of Judges of the Padang Religious Court with a ratio of 1/3 (one-third) versus 2/3 (two-thirds) by assigning 1/3 (one-third) part for the husband as Plaintiff / Comparison and 2/3 (two-thirds) part for the wife as Defendant/ Comparison as can be diedomani in Jurisprudence. Supreme Court of The Republic of Indonesia Number 226-K / Ag / 2010 dated July 12, 2010.

According to rusli Muhammad's expert opinion regarding in consideration there should be considerations that are juridical, Non-Juridical Considerations and Having Justice have been in accordance with the considerations made by the Judges of the Padang Religious Court, the High Judges of the Padang Religious High Court and the Supreme Court

Judges. In his consideration there is justice between the plaintiff and the defendant in the division of common property based on who is trying to obtain the common property that exists now, while the husband does not provide a living from his efforts to the wife proportionally which is an obligation for a husband, even proven in the plaintiff / Comparison likes to have fun and have a spree with his siri wife when he already has income and then after the joint property obtained by the wife from the work and from his own loan, then for the sake of a reasonable sense of justice deserves the Defendant / Comparison to get more joint property from the Plaintiff / Comparison as stipulated in the a quo case decision.

### **B. Application of the Principle of Justice in the Division of Common Property**

Based on the conditions of the household above, it is very fair to place a portion of the division that is more obtained by the wife than the husband's part as decided by the Padang Religious Court Judge Panel with a ratio of 1/3 (one-thirds) versus 2/3 (two-thirds) by stipulating 1/3 (one-third) part for the husband as a Plaintiff /Comparison and 2/3 (two-thirds) part for the wife as Defendant/Compared as can be followed by the Supreme Court Jurisprudence as can be followed by the Supreme Court Jurisprudence. Number. 226-K/Ag/2010 dated July 12, 2010.

Based on the case above the Padang Religious Court does not use the values of Islamic law in accordance with article 97 of the Compilation of Islamic Law, because to apply these values must look at and maintain the purpose of the law itself and the interests of the benefit of the law to lead to harmony of life. But the Judge took the view based on Islamic law which considers the existence of separation between the property of husband and wife. What the husband produces is his property, and vice versa, what the wife produces, is his property. When viewed from the theory put forward by Hans Kelsen, it is of the view that the law as a social order that can be declared fair if it can regulate human actions in a satisfactory way so as to find happiness in it.[18] Hans Kelsen's view is that positivism, the values of individual justice can be known by the rules of law that accommodate common values, but still the fulfillment of a sense of justice and happiness for each individual. Hans Kelsen further put forward justice as a subjective consideration of values. Although a just order that assumes that an order is not the happiness of every individual. Although a just order that assumes that an order is not the happiness of every individual. But the greatest happiness for as many individuals as possible in the group sense, namely the fulfillment of certain needs, which by the ruler or law makers, is considered as needs that deserve to be met, such as clothing, food, and board needs. But which human needs should take precedence. This can be answered using rational knowledge, which is a consideration of value, determined by emotional factors and therefore subjective. Based on the theory put forward by Hans Kelsen above, it can be described as beneficial in the judge's consideration and there is also happiness for justice obtained by the Defendant / Comparison. Based on the fact that actually occurs, that the wife or defendant / comparison is the one who does a lot of family living, while the husband does not provide a living from his business to the wife proportionally which is an obligation for a husband, even proven in the trial of the husband or plaintiff / comparison likes to have fun and have fun with his wife siri when he already has income and then after the joint property obtained by the wife from the results of work and from his own loan.

So for the sake of a sense of justice, it is appropriate for the wife or defendant / comparison to get more joint property than the Plaintiff / Comparison. With the division of the joint property that was decided by the judge of the religious court with the acquisition of 1/3 (one-third) versus 2/3 (two-thirds) by stipulating 1/3 (one-third) part for the husband as a plaintiff /comparison and 2/3 (two-thirds) of the share for the wife as a defendant /compared as to which can be followed by the jurisprudence of the Supreme Court Number 226-K/Ag/2010 dated July 12, 2010. Based on the above arguments, the judge has given consideration in accordance with the theory described by Hans Kelsen. Case Number 1290/Pdt.G/2021/PA. Pdg regarding joint property based on the lawsuit requested by the plaintiff is to divide half of the joint property owned during the marriage but in the judge's ruling stated to divide 1/4 of the requested. Based on these considerations above the division of joint property must be examined first the origin of the common property and then divided according to Article 97 compilation of Islamic Law which states that if the marriage breaks up, either because of divorce or because of death, then the husband or wife gets half of the joint property obtained during the marriage. Berdasarkan pertimbangan tersebut di atas pembagian harta bersama yang adil menurut hakim Berdasarkan pertimbangan Hakim Pengadilan Tinggi Agama Padang jelas bahwa hakim dapat memberikan pandangan khusus terhadap kasus dalam memberikan putusan yang adil. Dalam kasus diatas jelas bahwa hakim memberi pandangan dalam menyelesaikan perkara berdasarkan hukum islam yang diatur oleh Kompilasi Hukum Islam dan Undang-Undang Perkawinan.

### **6. CONCLUSION:**

From the discussion as explained earlier, several conclusions can be drawn, including:

- T In the decision Number 0665 / Pdt.G / 2016 / PA, Number 31 / Pdt.G / 2017 / PTA. Pdg, Supreme Court of the Republic of Indonesia Number 226-K / Ag / 2010, the Judge decided to divide the joint property by one-third for the husband and two-thirds for the wife, as well as the decision Number 1290 / Pdt.G / 2021 / PA. Pdg

regarding joint property based on the lawsuit requested by the plaintiff is to divide half of the joint property owned during the marriage but in the judge's ruling stated to divide 1/4 of the requested. with the judge's consideration, that the judge's consideration should include juridical considerations, non-juridical considerations and having justice in accordance with the considerations made by the Judges of the Padang Religious Court, the High Judges of the Padang Religious High Court and the Supreme Court Judges.

- In the decision Number 0665 / Pdt.G / 2016 / PA, Number 31 / Pdt.G / 2017 / PTA. PdG, Supreme Court of the Republic of Indonesia Number 226-K / Ag / 2010, the Judge decided to divide the joint property as much as one-third for the husband and two-thirds for the wife, seeing from the aspect of justice obtained from the ruling, the wife deserves more property, considering that the wife is the one who makes a lot of income in the household, as well as Decree No. 1290 / Pdt.G / 2021 / PA. PdG regarding joint property based on the lawsuit requested by the plaintiff is to divide half of the joint property he owned during the marriage but in the judge's ruling stated to divide 1/4 of the requested because in the property there is money from the defendant's mother which is not all of the joint property they get during the marriage. Based on Hans Kelsen's theory itself that the law as a social order that can be declared fair if it can regulate human actions in a satisfactory way so as to find happiness in it. Based on the above considerations, the judge has given consideration in accordance with the theory described by Hans Kelsen.

## 7. SUGGESTIONS:

The suggestions given by researchers are as follows:

- Consideration of judges in the settlement of cases Number 0665 / Pdt.G / 2016 / PA. PdG and case Number 1290/Pdt.G/2021/PA. The PDG must be in accordance with the procedures and regulations governing the rules, in order to create justice for the plaintiff and the defendant.
- The application of the principle of justice in each verdict is very important, considering that not all the rules contained in the law have justice in it, but it must be seen from various aspects and facts that occur so far in the field. Although in the marriage there is a marriage agreement which is made before or during the marriage bond according to article 29 paragraph 1 of the marriage law jo. Constitutional Court Decision No. 69 / PUU-XIII / 2015 of 2015 then the judge should also consider the marriage agreement. 3. The application of the principle of justice in each verdict is very important, considering that not all the rules contained in the law have justice in it, but it must be seen from various aspects and facts that occur so far in the field. Although in the marriage there is a marriage agreement which is made before or during the marriage bond according to article 29 paragraph 1 of the marriage law jo. Constitutional Court Decision No. 69 / PUU-XIII / 2015 of 2015 then the judge should also consider the marriage agreement.

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