

# IMPLEMENTATION OF THE PRINCIPLE OF JUSTICE IN SETTLEMENT OF DISPUTES FOR THE DISTRIBUTION OF JOINT ASSETS DUE TO DIVORCE IN DECISION NUMBER 983/PDT.G/2019/PA.PDG

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**Abstract:** Divorce is the breaking of marital ties between husband and wife, it creates new problems, namely the field of marital property. Based on the Marriage Law, there are three kinds of assets, namely from inherited property, from joint property, and from gifts or inheritance. Shared assets without an agreement are divided by half.

**Key Words:** Justice, Dispute, Shared Assets, Religious Courts.

## 1. INTRODUCTION:

Marriage has legal consequences between husband and wife in which the rights and obligations of husband and wife and also the property of husband and wife. If a divorce occurs, the marital relationship between the two is broken, it will cause new problems such as child custody, living, joint property and so on. In marriage, wealth is very important to meet household needs for the continuation of a marriage that is formed. Joint property is the main problem that is always caused by the consequences of divorce, husband and wife assets obtained during the marriage bond will become one unit. Therefore, the division of joint property is carried out, in order to achieve justice between husband and wife in the distribution of joint property.

## 2. THEORITICAL FRAMEWORK:

### a. Theory of Justice

The principle of justice according to HLA Hart is that individuals have an equal position with one another.[1]

### b. Legal Certainty Theory

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is carried out, that those entitled by law can obtain their rights and that decisions can be implemented.[2]

## 3. LITERATURE REVIEW:

Marriage is doing a contract or agreement to bind themselves between a man and a woman to justify sexual relations between the two parties, on a voluntary basis and the pleasure of both parties to realize a happy family life filled with love and peace in a way that is blessed. by Allah.[3]

Disconnection is the bond between a man and a woman that has been broken. This can happen due to the death of one of them, divorce and court decisions.

Congenital assets are assets that are controlled by their respective owners, namely husband or wife and fully husband and wife have the right to take legal actions against their property.[4]

## 4. METHOD:

The method used in this study is an empirical juridical approach, which is an approach based on legal research methods regarding the enforcement or implementation of normative legal provisions (laws and KHI) in action on every particular legal event that occurs in society.[5]

## 5. DISCUSSION:

Breaking the marriage bond, namely divorce, has legal consequences in the distribution of joint property. However, as the legal values that live in society develop and the provisions of the rules used are no longer able to

provide a sense of justice for the parties, it is the duty of the judge to resolve the case given to the judge. The judge's authority becomes a demand for judges to accept, examine, and decide a case. The judge may not reject the case submitted even if there is no law or it is unclear. The purpose of law is not only justice but also legal certainty and expediency. Even so, there are those who argue that, among the three objectives of the law, justice is the most important goal. Ideally the law must accommodate all three. Justice is one of the most widely discussed legal goals throughout the history of legal philosophy.[6]

## 6. ANALYSIS:

### A. Implementation of the Distribution of Shared Assets Due to Divorce at the Padang Religious Court Based on Justice

In the Religious Courts using material truths where judges are not only fixated on formal truths, judges seek the real truth in the evidentiary process that can convince judges in deciding cases and can provide certainty to judges about events, so as to provide justice for the parties. In this case the judge decides on the second property object using the ultra petita principle where the judge does not grant it according to the plaintiff's demands which in the petition the plaintiff asks for the joint property to be divided into but in the decision the plaintiff gets 1/3 share and the defendant gets more, this is because there is an inheritance from the ex-wife which is an inherited property. Based on Article 35 paragraph (2) of the Marriage Law, it is stated that inherited assets are inherited assets that are under the control of each.

### B. Judges' Considerations in Resolving Joint Assets Disputes in Decision Number 983/Pdt.G/2019/PA.Pdg Seen from the Principle of Justice

The case of joint property disputes in Decision Number 983/Pdt.G/2019/PA.Pdg which refers to the jurisprudence of Supreme Court Decision Number 266 K/AG/2010 that joint assets obtained by the wife and husband, this is because the husband does not fulfill obligation in which the husband provides a living and *kiswah*. This is one of the judges' considerations in deciding the case for the share of joint property based on evidence and facts at trial that the husband does not provide a living from his work and all joint assets obtained by his wife from the results of his work. Therefore, for the sake of justice, the ex-husband gets a smaller share than the ex-wife. The second property object can be seen from the calculation of the capital, the joint property is 50:50. So the judge's consideration lies in the capital where the wife's capital is more because there is an inheritance which is the wife's innate property. Shared assets are not always half-assed, sometimes we see the burden of the goods. At this time there have been many legal developments. An employee's husband and wife will of course have different incomes, there is a bigger one, so the judge may decide 2:1 because the salary is different. But if the husband is an employee and the wife is not working, it is still divided in half, because the wife works, the husband's rights are lost.

## 7. CONCLUSION :

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

- 1) The mediation was unsuccessful, then the Panel of Judges conducted a local examination (*discente*), which in essence stated that one joint property house was unfit for habitation and one unit was used as a place of sale by the tenant, with the size in accordance with the one in the lawsuit.
- 2) The Panel of Judges determined in the case of Decision Number 983/Pdt.G/2019/PA.Pdg that the second property object is divided by 1/3 and 2/3 of course this is very different from the rules regarding joint assets, namely Article 97 of the Compilation of Islamic Law which regulates portions of 1/2 each.

## REFERENCES:

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