



# The Implementation of Decision on Joint Assets Due to Divorce

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**Abstract**— The distinction in Islamic law is that all inherited property, including that derived from the original property and that owned jointly, can be accounted for in order to cover the successor's rights. Joint property or joint property is excluded from inheritance. But in accordance with customary law, the heir's interests can only be taken into consideration for a limited range of joint property, or "gono gini." This study used a normative-sociological legal research methodology. Implemented law studies focuses on how normative legal obligations (such as contracts, laws, or codification) are applied or enforced in all situations. social conventions that are specific. Implementation in practice is a crucial element in achieving predetermined goals, which is a social and factual truth.

**Keywords**— divorce, islamic, law

## 1. INTRODUCTION

Marriage is the intimate union and equal partnership of a man and a woman. It comes to us from the hand of God, who created male and female in his image, so that they might become one body and might be fertile and multiply. Though man and woman are equal as God's children, they are created with important differences that allow them to give themselves and to receive the other as a gift. The purpose of marriage is to create an inner and outer relationship between a man and a woman as husband and wife with the intention of creating an eternal family based on God Almighty. Marriage is also a very virtuous and sacred act. This distinguishes this bond from other bonds in the market. When entering into a marriage, there are a number of steps that must be taken, beginning with the proposal ceremony and continuing through a very sacred marriage ceremony procession before the wedding ceremony is done with the intention of making it public.

Article 1 of the Marriage Law and relatives that the couple has become legally husband and wife. The existence of marriage will give rise to rights and obligations in the household as husband and wife. The objectives of marriage must be met by the husband and wife sharing responsibility for carrying out their rights and duties as such. relatives that the couple has become legally husband and wife in accordance with Article 1 of the Marriage Law. Marriage establishes a couple's rights and responsibilities as husband and wife in the home. The objectives of marriage must be met by the husband and wife sharing responsibility for carrying out their rights and duties as such. In actuality, marriage is celebrated in order to start a family and foster harmony within it. There must be a way out for both partners to split if issues in married life threaten to upend the family to the point that it is difficult to retain its integrity. Each party does not have to force oneself to uphold a marriage relationship that has been marred by regular arguments or possibly even hatred under these circumstances. Divorce is a solution to domestic issues, much like marriage. Divorce may be used as a remedy, but it must be done in a good and proper manner to



prevent creating other issues. Domestic abuse, adultery, partner incompatibility, and even economic concerns are some of the leading causes of divorce.

Another reason for divorce is because neither couple truly understands the meaning of marriage, making it challenging to create a family rich in the lovely nuances of *sakinah*, *mawadah*, and *warahmah* due to the neglect of the numerous rights and obligations of each partner. Divorce has legal repercussions for how a married couple divides their joint property. The Marriage Law defines the following as marital assets:

- a. assets acquired during the marriage are referred to as joint assets;
- b. the inheritance of each husband and wife;
- c. assets obtained by each as a gift or inheritance.

Generally speaking, there is a distinction between co-ownership of assets, asset inheritance, and gifts or inheritance received during the marriage. Those who possess the property can freely do anything they want with it without seeking permission from other parties. Inheritance, prize, and inheritance assets are under the control of each husband or wife. While this is going on, since husband and wife share control over the property, either spouse needs the consent of the other to take any legal action, including selling or pawning the property. The property brought by the husband and wife separately and the property earned of respective parties as gifts or inheritance stays under their own possession, unless otherwise specified by respective parties. Each of the parties shall separately retain all rights and interests in all property of any kind which he or she owns to dispose of such separate property.

In Islamic society, where it is traditional to divide the husband's and wife's property in a domestic connection, joint property is not found. assets gained by each party during the marriage that are not joint ventures or assets that each party fully possessed before the marriage, such as obtaining inheritance, grants, gifts, and so on.

Judging from the origin of the assets in the marriage can be classified into three groups:

- a. Innate property is what each husband and wife had before they were married, regardless of whether they acquired it through hard work or an inheritance;
- b. Each husband and wife's assets acquired during their marriage but not as a result of their joint or individual work but rather as a result of gifts, inheritances, or wills for each of them;
- c. Assets gained after they got married as a result of both of their or one of their parties' efforts are referred to as livelihood assets;
- d. In the event of a divorce in a marriage, joint property may be divided. However, both the Marriage Law and Presidential Instruction Number 1 of 1991 about the Dissemination of the Compilation of Islamic Law address the allocation of joint assets (hereinafter referred to as the Compilation of Islamic Law). Divide it equally, with half going to the wife and husband.

The property acquired during the marriage becomes joint property of a married couple. The husband and /or wife have a legal capacity to dispose of such property upon approval of both parties. In accordance with the Indonesian



1974 Marriage Law, such property shall be referred to as marital property. In the event a marriage is terminated due to divorce, the marital property must be arranged in accordance with respective law. The respective law means religious law, ethnic (adat) law, and other applicable laws. The division of joint assets is governed by a number of articles in the Marriage Law, Civil Code, and Compilation of Islamic Law. However, there has yet to be any evidence or language from the Qur'an and the Hadith that clearly governs it. Because the division of joint property can be handled outside of court, by the parties themselves, these guidelines are not always required to be followed.

Conflict between the partners involved in a marriage over the distribution of joint property is common. The division of joint property is implemented for a variety of reasons, including the significant contribution in a marriage where there is a connection with the rights and obligations between husband and wife that are not carried out in a balanced manner, leading to conflict and the dissolution of the marriage relationship. The opinions or assessments of the community regarding the division of joint property based on the level of contribution in marriage can be used to determine the amount of contribution in marriage.

## **2. PROBLEM FORMULATION**

How is the execution of the Decision on Joint Assets Due to Divorce?

## **3. RESEARCH METHODS**

Writing or compiling scientific papers requires consideration of the research methodology in order to properly and effectively explore and analyze the subject under inquiry. In order to address the current legal questions and make final findings that can be scientifically accounted for, research methodologies used to write scientific papers can be employed to explore, process, and formulate legal materials that have been gathered. Therefore, a strategy is employed to ensure that this thesis is close to excellent and is written in a methodical manner. The research methodology utilized in this study is normative juridical, which indicates that it is primarily concerned with investigating the applications, regulations, or standards of the relevant positive law. Various formal legal rules, such as laws, regulations, and literature that contains theoretical notions are examined as part of this type of normative juridical study, and these formal legal rules are then connected to the issues that will be covered in this paper.

## **4. DISCUSSION**

The division of joint property in a divorce is mandatory carried out, but the new husband and wife questioned the distribution of joint assets (gono gini, in Indonesia) after a court decision. This is because the husband and wife do not think about the wealth of things like this at all. And the problem that arises after the divorce is the problem of joint property (gono gini).

According to the findings of an interview with one of the judges handling the case in Decision Number 209/Pdt.G/2020/PA.Sr, the case has been declared closed. Because both parties mutually agree on the decision's outcome. Because there was no appeal or cassation, the case settlement in this decision was declared closed and



finished without any appeal or cassation from either party to the dispute. The findings of an interview with Drs. Ikhsan SH., MH, a Judge of the Sragen Religious Court, are presented here. It was returned to the plaintiff and defendant on June 20, 2022, following a decision from the competent judge, who are required to carry out the legal consequences imposed by the court. In more detail, there are two executions in the Religious Courts for the implementation of decisions on the division of joint assets after divorce, as follow:

***a. Real execution***

The execution steps are as follows:

***1) Application of the winning Party***

The winning party must file an application for execution with the head of the Religious Courts in order for the decision to be carried out by force, as stated in 48 Article 207 paragraph (1) RBg and Article 196 HIR. If the winning parties want the court decision to be enforced by force, they must submit a letter of application to the head of the Religious Court that decided the case, requesting that the decision be enforced by force because the losing party refuses to carry out the decision's contents. The execution cannot take place without the request letter.

***2) Execution cost estimation***

If the chairman of the court has received a request for execution from an interested party, he/ she orders table one to estimate the execution costs required to carry out the execution he/ she is carrying out. (Editor, "Sragen Religious Court" Quoted from <http://pasragen.go.id/new/formasipengdinding> accessed 16 July 2022).

***3) Execute warnings***

It is an action and effort undertaken by the chairman of the Religious Court in the form of a warning to the losing party in order for him to voluntarily implement the decision's contents. In the summons, the losing party is summoned, and the day, date, and hour of the trial are specified. If the losing party fails to appear at the hearing (aanmaning) and his absence is justified, the losing party must be summoned again for a second aanmaning. If the losing party fails to appear after being summoned officially and cannot be found, the decision is made whether to summon them again. There is no need for a memorial trial, and warnings have no grace period. Legally, the head of the Religious Court can issue an execution order to the clerk/bailiff right away.

***4) Issuing an Execution Order***

If the time specified in the warning (Aanmaning) has passed and it is discovered that the losing party did not carry out the decision and refuses to attend the summons for the warning without a valid reason, the head of the Religious Court issues an execution order with the provisions specified in the warning:

- The execution order is in the form of a determination.
- The order is addressed to the clerk and bailiff whose name clearly stated.
- Must clearly state the case number that wanted to be executed and the object to be executed.
- Execution orders are made at the location of the goods and not maybe behind the desk.
- Fill in the execution order so that it is carried out in accordance with the order decision.



***b. Execution with Amount of Money***

***1) Issuing a stipulation of execution confiscation***

When the Religious Court receives the request for execution from the winning party, it immediately summons the losing party to the aanmaning trial (reprimand) in order for the losing party to voluntarily carry out the decision. If, despite a warning, the losing party refuses to carry out the Religious Court's decision, the head of the Religious Court issues a decree of confiscation of execution. The execution letter takes the form of a stipulation addressed to the clerk/bailiff, with the name clearly stated.

***2) Issue execution orders***

Following the determination of the execution confiscation, the next aanmaning process is to issue an execution order, which is carried out by the head of the Religious Court. The execution order includes an order for the auction sale of goods whose execution confiscation has been placed, as well as a clear statement of the object to be executed and the decision upon which the execution is based.

***3) Auction announcement***

The next step is to make public announcements in newspapers and the mass media about the items to be auctioned off in accordance with Article 200 a 6 HIR and Article 217 a 1 RBg. Auction notices for movable property are placed on the announcement board of the Religious Courts, or announcements in newspapers or other mass media, according to local customs. If there has been a previous collateral confiscation, this announcement may be carried out immediately after the execution confiscation is ordered, or shortly after passing the warning.

***4) Auction request***

If the announcement was made in accordance with the provisions stated above, the Head of the Religious Court requests the assistance of the State Auction Office in selling the confiscated items at auction. The auction order addressed to the country's auction office is accompanied by the following documents: "a copy of the decision letter from the Religious Court, a copy of the auction stipulation, a copy of the notification letter to interested parties, details of the amount of the invoice, proof of ownership (land certificate) of the auction item, the terms of the auction, evidence of the announcement of the auction.

***5) Auction request registration***

The obligation to register requests for auction at the auction office in accordance with Article 5 of the Stb Auction Regulations. 1908 Number 189. The auction office registers the request for said auction in a special book for that purpose and the nature of the registration is open to the public. This is intended to provide an opportunity for anyone to see the registration, so that those who are interested in participating in the auction can determine their attitude.

***6) Determination of auction day***

The competent State auction office is the party authorized to determine the date of the auction. The Religious Court's head may propose that the auction be held on a day determined by the Religious Court, but it is entirely up



to the State Auction Office to determine it, and the State Auction Office is not bound by the request of the Religious Court, he/ she can determine the time for the auction to be carried out himself/ herself attached to the auction request so that generally known. The plaintiff or defendant may propose conditions, but they have no effect on the auction's implementation because the chairman of the Religious Court who conducts the auction determines it.

### **7) Bidding procedure**

Parties interested in participating in the auction organized by the state auction office must submit a bid in writing in Indonesian, clearly stating the bidder's name and address, the price he is willing to accept, and signed by the bidding party. If no bids reach the floor price, the bidding can be continued verbally. However, this permissibility must be approved by the seller, in this case the Religious Court. Bid registration must be submitted to the auction office by parties participating in the auction by placing the bidding paper in a sealed envelope. Furthermore, the state auction immediately records the bid in the bid book that has been set up for it.

### **8) Auction buyers and determine the winner**

The auction buyer is the highest bidder, and the minimum bid is the floor price. Conditions are required to support the victory, namely careful research on the validity of registration, in addition to not being influenced by other parties.

### **9) Determination of auction conditions**

According to Articles 1b and 21 of the Auction Regulation stb. 1908 No. 189, the person who determines and determines the terms of the auction is the Head of the Religious Court, who acts as the selling party for and on behalf of the executed. The bidding and payment procedures are the most important conditions in the auction's implementation. These conditions must be examined for the ability to pay so that things do not go against the auctioneer and the execution request.

### **10) Payment of the auction price**

The Religious Courts have the authority to set auction payment terms. Article 26 of the Stb. Auction Regulations, 1908 Number 189, must guide this provision. Payment of the auction price must be made in cash if the price is relatively low, because the buyer can easily pay it off. If it is determined that payment must be made in cash, but the auction winners do not pay in cash, their rights as auction winners or buyers are null and void. If the auction winner pays in part and postpones payment in part, this can be justified within a few days (not too long), but it must be done by providing guarantees to the seller (Religious Court).

If you pay on time, you will be fined 2% of the amount paid; if you fail to pay within one month, the fine will be increased to 5% of the amount not paid. According to this, this is in accordance with Civil Code Article 1246. As a result, the execution procedure can be carried out at the request of the aggrieved party to the head of the Religious Court. Efforts to Execute by the Religious Courts Against the Judge's Decision Regarding Joint Assets After Divorce, sometimes there are obstacles. The obstacles are as follows:



### **1) Coordination between courts in the implementation of adjudication**

It is not uncommon for the confiscated object to be located outside the territory of the Court examining/trialing it, resulting in the confiscation that should have been delegated to the Court where the object is located not being delegated.

### **2) Difficulties in Implementing Decisions**

A decision in its implementation encounters obstacles. Obstacles can come from the Court itself, such as unclear verdicts, incomplete considerations, vague verdicts, lack of knowledge about execution from the Court leadership to the Registrar.

### **3) Lack of Professional Officer Bailiffs**

The limitations of the bailiff official on the provisions that should be controlled will result in losses for the parties, it is not impossible that it will have fatal consequences. Thus, responsible intellectual knowledge and morality are indispensable in carrying out executions.

Based on these constraints, for the parties, both from the executor and from other parties, efforts are made to have a high sense of responsibility and solidarity so that the execution can be carried out according to the intention of the applicant and the validity of the decision which has permanent law. Aside from that, the implementation of the distribution of joint assets with a peace deed can be described as straightforward. This is because it will be easier to resolve a joint property case amicably, and a peace deed made in court has permanent legal force and cannot be appealed again.

## **5. CONCLUSION**

As explained in Law number 7 of 1989 concerning Religious Courts Article 86 paragraph, the distribution of joint assets can be carried out through trial after a divorce occurs (1). Mediation can be used first to resolve disputes over the division of joint assets as a result of divorce. The Religious Courts provide mediation services through a mediator appointed by the Panel of Judges. If you do not get a bright spot, the trial process can be repeated. Settlement of the dispute over the division of joint assets in Decision Number 209/Pdt.G/2020/PA.Sr obtained the result of punishing the convention Plaintiff and the convention Defendant to divide the Joint Assets mentioned above into 2 (two) equal parts, or one of the parties replaces it with money with the amount agreed upon, or sold with the proceeds of the sale of money divided in half, namely half for the convention Plaintiff and the other half for the convention Defendant.

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