

## RESOLUTION OF CASES ON POST-DIVORCE DIVISION OF JOINT ASSETS (CASE STUDY OF SUPREME COURT DECISION CASE NUMBER 1969 K/Pdt/2017)

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### ABSTRACT

*Resolution of disputes over the division of joint assets after divorce is one of the legal problems that often occurs in Indonesia. The Supreme Court Decision Number: 1969 K/Pdt/2017 is one of the decisions that contains cases regarding the division of joint assets. However, this decision was considered detrimental to the defendant so that the decision was not implemented. Therefore, the Supreme Court Decision Number: 1969 K/Pdt/2017 is a dispute for both the defendant and the plaintiff in this case. This research was conducted to find a solution to the dispute over the division of joint assets after divorce in the Supreme Court decision Number: 1969 K/Pdt/2017. This research refers to legal norms contained in statutory regulations and court decisions. Therefore, the author used normative juridical research methods with a qualitative approach. The assets acquired during the marriage, whether from the wife or husband who acquired the assets, will all become joint assets.*

*Keywords:* marriage, divorce, joint property

### INTRODUCTION

Marriage is one way to maintain the survival of every person and maintain human honor and dignity which is carried out voluntarily without any compulsion between both parties to create a happy family life filled with a sense of love and peace based on the belief in the Almighty God. According to Law Number 1 of 1974 concerning Marriage, it is explained that: "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 or household based on the belief in the Almighty God."<sup>1</sup>

Marriage aims to unite two different individuals to achieve one goal of forming a happy family, continuing offspring which is a connection of life and connecting ideals, as well as protecting oneself from doing things that are forbidden by God, and fostering a sense of love between husband and wife. each other. With the ever-dynamic development of society's life and behavior, problems in marriage are becoming increasingly complex.

For those who embrace Islam, what determines whether a marriage is valid or not depends on the rules of Islamic law. Brides and grooms who are Christians, Hindus, Buddhists, Confucians, and adherents of the belief in God Almighty carry out their wedding according to the provisions of their respective religions and beliefs. In terms of registration, marriage is considered the same as important registrations in a person's life, such as birth or death, which are stated in an official certificate or statement contained in the registration register. The provisions for marriage registration can be concluded that the event of marriage registration is the same as the registration of births and deaths which is constitutive and therefore does not determine whether a marriage is valid or not. When the marriage registration is officially issued, the rights and obligations of husband and wife as Indonesian citizens who are subject to marriage regulations apply.

Basically, marriage has the aim of being forever, but many things happen because of certain reasons, the marriage ends or breaks up in the middle of the road or in other words a divorce occurs between husband and wife. The reason for divorce is caused by many factors, one of the most common being economic factors. The cause of divorce is due to economic factors not only because of below average economic conditions, but also because of a hedonistic lifestyle.<sup>2</sup> This condition causes disputes between husband and wife because their hedonistic lifestyle results in economic problems. Divorce is not a solution to resolve a problem in a marriage, in fact divorce will cause new problems, one of which is the division of joint property obtained by the husband or wife during the marriage.

The division of joint assets is carried out after a divorce decision is made by filing a lawsuit over joint assets. For husband and wife who are Muslim, a lawsuit regarding the division of joint property is submitted to the Religious Court in the area where they live, while for non-Muslims, a lawsuit is submitted to the District Court where the respondent lives. For example, the dispute over the division of joint assets in Supreme Court Decision Number: 1969 K/Pdt/2017, was caused by the defendant in the case assuming that all assets obtained during the marriage were not included in joint property. The husband, or in this case the defendant, assumes that all the assets obtained during his marriage to the plaintiff were the result of the defendant's own hard work. This statement is contrary to the provisions of Article 128 of the Civil Code which explains that the division of joint property does not matter from which party the property was obtained. In general, the party who is defeated in a civil case is entitled to carry out the court's decision, but the losing party does not want to carry out the contents of the decision, this is an

<sup>1</sup>. Raymond Ginting and I Ketut Sudantra, 2014, *Legal Consequences of Marriage Not Registered at the Civil Registry Office on Joint Assets*, <https://ojs.unud.ac.id/>

<sup>2</sup> Nibras Syafriani Manna, Shinta Doriza, Maya Oktaviani, 2021, *Divorce Court: Study of Divorce in Families in Indonesia*, <https://d1wqtxts1xzle7.cloudfront.net/>

interesting study in this paper.

## PROBLEMS

The main problems in this paper are as follows:

1. How to resolve disputes over the division of joint assets in Supreme Court Decision Number: 1969 K/Pdt/2017.
2. What legal action should be taken if the losing party does not want to carry out the contents of Supreme Court Decision Number: 1969 K/Pdt/2017.

## LIBRARY REVIEW

### 1. Definition of Marriage

Marriage is an action carried out by a man and woman who want to make a joint commitment to form a family and continue their offspring based on feelings of love and affection based on the provisions of religion and applicable law. The commitment between men and women to achieve goals together encourages them to bind themselves in a bond called marriage. This definition explains that marriage bonds are carried out according to applicable legal provisions and based on religious provisions, so that the goals of marriage can be achieved in accordance with legal norms and religious norms.

Marriage is an agreement, but the intended meaning of the agreement is different from the agreement as set out in Book III of the Civil Code. Marriage is an agreement whose purpose is to create happiness between both sides of a husband and wife, not limited to a certain time and having a religious nature. Marriage has a close relationship with religion/spirituality, so marriage does not only have physical or physical elements, but inner or spiritual elements also have an important role.

According to Law Number 1 of 1974 concerning Marriage, it states that "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God." Marriage can be interpreted as an inner and outer bond formed by a man and a woman to build a happy and eternal family with a goal based on the Almighty Godhead.

A physical bond is a relationship between a man and a woman to live together as husband and wife, and an inner bond is a soul connection that exists because of the same and sincere desire between a man and a woman to live together as husband and wife. Based on belief in the Almighty God, it can be interpreted that Indonesia has the ideology of Pancasila which is found in the first principle which reads "Belief in the One Almighty God", therefore the implementation of marriage and the legal provisions that apply in Indonesia must be in accordance with the principle of belief in the One Almighty God.

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### 2. Legal Basis for Joint Property

The scope of joint property has been stipulated in Law Number 1 of 1974 concerning Marriage which explains that property acquired during marriage becomes joint property and inherited property and property obtained as gifts or inheritances are under the control of each person. To clarify the status of property ownership in marriage between joint property and personal property, it can be divided into several scopes:

1. Property purchased during marriage.

All property purchased during the marriage is joint property. Joint property does not involve purchasing the property from the husband or wife. Purchasing joint property that originates purely from personal property, then the goods purchased are not considered joint property.

2. Personal income of husband and wife.

All income of husband and wife obtained from profits through their respective personal acquisitions becomes joint property. As long as the husband and wife's personal income is not separated, it is automatically combined into joint assets. Joint husband and wife's income occurs by law, as long as it is not specified otherwise in the marriage agreement.

3. Assets that can be proven and obtained during marriage.

In every case regarding the division of joint assets, the defendant often objects that the joint property being sued is personal property. The defendant's ownership rights can be transferred based on purchase, inheritance or gift. This case can be refuted with the plaintiff's evidence that the assets obtained are joint assets and were not purchased with personal money.

### 3. Resolution of Disputes on the Division of Joint Assets in Supreme Court Decision Number: 1969 K/Pdt/2017

Joint assets between husband and wife is a legal consequence of marriage. Property acquired by a husband or wife during the marriage automatically becomes joint property if there is no marriage agreement. Joint assets are formed from the income and acquisition of assets of husband and wife which include immovable objects, movable objects and securities. Assets obtained from

inheritance, grants and gifts are not included in joint assets.

The formation of joint assets does not rule out the possibility for a husband or wife to have personal assets. Personal property is inherited property acquired by a husband or wife before the marriage took place. Assets obtained from inheritance, grants and gifts are included in inherited assets, and are fully the rights and responsibilities of each husband or wife.

In accordance with statutory regulations, joint property does not matter where the goods or assets come from, whether from the husband's money or the wife's income, if the property was obtained during the marriage and in a way that is not against the law then the property is joint property. Each husband and wife have the same rights and responsibilities regarding joint property. Actions and legal actions regarding joint assets are carried out with the consent of both parties.

In general, marriage is considered a sacred agreement, so it is unethical if its implementation is followed by a marriage agreement that seems worldly. It is possible that the sacred bond of marriage can also be broken because of worldly desires. A lack of understanding of the law regarding joint property is the background to disputes when a marriage breaks up due to divorce. Divorce is a legal action that also has legal consequences for the joint ownership of property between husband and wife.

Divorce results in the dissolution of joint property ownership between husband and wife. In accordance with the provisions of the Civil Code, after the joint property is dissolved due to divorce, the property included in the joint property is divided between the husband and wife and each gets half of the total joint property. All debts that are part of joint assets are also included in the distribution.

In practice, cases of dividing joint assets often do not go as easily as they should. The division of joint assets can be carried out in a non-litigation manner between ex-husband and wife through mediation, however, the lack of good faith on both parties is a factor in the failure of the division of joint assets.<sup>3</sup> The failure of the non-litigation dispute resolution process encouraged the parties to resolve the dispute through litigation by filing a lawsuit in court.

In the case of Supreme Court Decision Number: 1969 K/Pdt/2017, the dispute over the division of joint assets was motivated by the ex-husband as the defendant assuming that all the assets obtained during his marriage to the plaintiff were not joint property. During the marriage, the plaintiff and defendant never made a marriage agreement. This view is contrary to the provisions of Article 128 of the Civil Code which explains that, joint property acquired during the marriage period is divided between the husband and wife after a divorce decree is issued without looking at where the property was obtained, whether from the husband or wife who bought the property. that thing. Based on the principle of legal fiction, if a piece of legislation has been enacted then at that very moment everyone without exception is deemed to know, and these provisions apply absolutely and are binding on everyone, in accordance with statutory regulations and applicable legal principles, the defendant's statement cannot be justified.

Based on the Pati District Court Decision Number: 51/Pdt.G/2014/PN Pti, the plaintiff and defendant in the Supreme Court Decision Number: 1969 K/Pdt/2017 have officially divorced. Full custody of the child falls to the mother or in this case the plaintiff. In accordance with the provisions of Article 41 of Law Number 1 of 1974 concerning Marriage, as a father and mother are obliged to care for and educate their children. The plaintiff, as a mother, objected to having to bear the costs of maintaining and educating her minor children herself. As an ex-husband, the defendant never carried out his obligations as a father as stipulated in law. These considerations encourage the ex-wife to try to divide joint assets as capital and savings if one day their children need them in an urgent situation.

The plaintiff or ex-wife in the case of Supreme Court Decision Number 1969 K/Pdt/2017 feels that she has been harmed by the attitude and actions of her ex-husband or in this case as the defendant. The ex-husband in this case began to show suspicious movements by hiding several land certificates for joint property objects when the ex-wife started asking and asking for a division of the joint property. The defendant's actions are also not in accordance with Article 36 of Law Number 1 of 1974 concerning Marriage which explains that actions regarding joint property must be with the consent of both parties.

The plaintiff's negotiation efforts to request rights in the joint property were ignored by the ex-husband. Various non-litigation efforts have been made by the plaintiff to obtain a share of the joint assets but have produced no results at all.

#### **4. Legal Action Required If the Defendant Does Not Implement the Supreme Court Decision Number 1969 K/Pdt/2017.**

Resolution of disputes submitted to the Court aims to obtain legal certainty. One way to obtain legal certainty is through a court decision. A court decision is a legal product based on the facts in the trial which are in accordance with the juridical results of the case examination process at the trial. The purpose of a court decision is to end and resolve a dispute that is the claim of the party who submitted the case to court. Court decisions that have legal force remain a reference for parties in resolving disputes through court.

Basically, a judge's decision which has legal force remains a final decision which must be obeyed and implemented by the parties involved in a court case who are able and willing to implement the judge's decision voluntarily. The unwillingness and inability of the losing party to implement court decisions voluntarily becomes an obstacle in resolving civil disputes.

Implementing court decisions that have legal force remains an obligation for the parties involved in resolving disputes and creating justice. In practice, the implementation of decisions in civil cases is different from criminal cases. In implementing criminal case decisions, there is a prosecutor whose job is to execute the judge's decision, which is different from civil case decisions which impose the execution process on the court concerned.

In the provisions of article 196 of the Herziene Indonesia Reglement, if the defeated party is unwilling and neglects to comply with the court's decision, the winning party can submit a request to the court to warn and force the losing party to carry out the court's decision. Execution efforts are one of the efforts required if the losing party in a civil case does not implement the court decision voluntarily. Carrying out executions in civil cases is borne by the winning party to submit a request for execution

<sup>3</sup> Asnawi, M. Natsir. 2020., *Joint Property Law Comparative Legal Studies, Norm Studies, Jurisprudence, and Legal Reform*. Jakarta: Kencana. Pg.42.

to the Court.

Based on the Supreme Court Decision Number: 1969 K/Pdt/2017, the author analyzes that this decision is a type of condemnator decision. A condemnator's decision is a decision that contains punishment for the defeated party. In this case, the Defendant as the losing party was sentenced to hand over ½ (half) of the land that was the object of the joint property dispute that had been determined. A court decision that can be executed is a decision that has executorial power. Decisions that have executorial force are decisions that have permanent legal force and are condemnatory in nature. The nature of the condemnator's decision can be seen from the decision which states the punishment for the losing party in the civil case.<sup>4</sup> An example of a condemnator's decision in a joint property dispute reads, "sentencing the Defendant to hand over ½ (half) of the object of joint property".

The resolution of the dispute over the division of joint assets in the case of Supreme Court Decision Number 1969 K/Pdt/2017 experienced obstacles caused by the losing party not wanting to implement the court decision.

The provisions of Article 196-200 Herziene Indonesisch Reglement contain the legal basis for execution procedures which have been concluded by the author, as follows:

1. The party who wins the case submits a request for execution to the Chief Justice of the first instance to enforce the decision by force if the party who loses the civil case is not willing to carry out the contents of the decision voluntarily;
2. The Chief Justice of the first instance summons the applicant and respondent for execution to give a warning (*aanmaning*) to the respondent to be willing to carry out the court's decision voluntarily. The execution respondent is given a grace period of 8 (eight) days to reconsider, if the execution respondent is still unwilling to carry out the decision voluntarily, then the Court can continue the execution process;
3. The Chairman of the Court of first instance issues a warrant of execution to the clerk or bailiff to carry out the confiscation of execution assisted by 2 (two) witnesses;
4. The execution is carried out by the clerk and bailiff with the assistance of 2 (two) people. The execution is carried out in accordance with the orders in the decision which is accompanied by a report of the execution;
5. Based on the execution procedure, the applicant for execution can submit a request for execution to the Chairman of the Court. The Chairman of the Court will summon the respondent to the execution to be given a warning (*aanmaning*) to be willing to carry out the court's decision. The execution respondent is given a grace period to reconsider his position and if the execution respondent is still unwilling, the execution process will continue. Execution can only be carried out against the object of the dispute contained in the content of the decision in the case. The execution process is carried out by prioritizing and paying attention to human values and justice. Once it is completed, it is immediately handed over to the applicant for execution on the same day.
6. Efforts to enforce a court decision regarding the forced division of joint assets can be made by the party who wins by submitting a request for execution to the court adjudicating the case. The winning party can submit a request for execution in accordance with the procedure mentioned above. Successful execution in this case can fulfill what has been stipulated in the decision of the case. The proceeds from the execution and auction sale will be divided between the applicant and the respondent for execution, each of whom will receive half.

## CONCLUSION

Based on the things described above, the author concludes as follows:

1. Joint assets is an absolute legal consequence for married couples who do not have a marriage agreement. The provisions of Law Number 1 of 1974 concerning Marriage state that property acquired during the marriage becomes joint property. The assets acquired during the marriage, whether from the wife or husband who acquired the assets, will all become joint assets. The assets obtained before a marriage takes place and as gifts or inheritance are under the control of each person.
2. Based on the provisions of Law Number 1 of 1974 concerning Marriage, the division of joint assets after divorce is regulated according to each respective law. Regulated according to their respective laws means that the distribution of joint assets after divorce is regulated according to religious, customary and other laws. The distribution of joint property for the disciples of the Islamic religion uses the Compilation of Islamic Law as the legal basis, while for disciples of non-Islamic religions it is based on the provisions of the Civil Code.

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<sup>4</sup> Djuniarti, Evi, 2017, *Joint Property Law Viewed from the Perspective of the Marriage Law and Civil Code*, <https://download.garuda.kemdikbud.go.id/>

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#### **LAWS**

- Code of Civil law
- Herziene Indonesich Reglement
- Law Number 1 of 1974 concerning Marriage

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