

The Result of Divorce on the *Gono Gini* Assets Decision on Case No: 1451/Pdt.G/2016/PA Kdl

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Abstract. *Humans by nature are zoon politicon, which are social creatures. This means that humans are destined to live in society and interact with each other. Humans cannot live alone without help from others, because they always seek and need other humans to live together and then organize socially. In this case the smallest form of human life together begins with the existence or by forming a family. All Indonesian people have the same legal guidelines that regulate marriage issues, namely Act No. 1 of 1974 concerning Marriage. Which is also equipped with implementing regulations, namely Government Regulation Number 9 of 1975. The sound of Act No. 1 of 1974, in Article 1 has explained that what is meant by "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 or household based on Almighty God". In a marriage, what is meant by physical and mental ties is that the marriage that is carried out is not sufficient only with the existence of a physical bond or an inner bond. However, there must be both, so that there will be a physical bond and an inner bond which is a strong foundation in forming and fostering a happy and eternal family.*

Keywords: Divorce; Gono Gini; Assets; Decision.

1. Introduction

One of the consequences of a legal marriage is the association of assets that existed after the marriage was carried out¹. This means² that by marrying the husband and wife, their assets are merged into one. Thus, in a family, there is one common property or what is often referred to as joint property.³

¹ Lili Rasjidi. (2006). *Hukum Perkawinan dan Perceraian (Di Malaysia dan Indonesia)*. Bandung: PT Remaja Rosdakarya. p. 1.

² H. M. Djamil Latif. (2000). *Aneka Hukum Perceraian di Indonesia*. Jakarta: Ghalia Indonesia. p. 22.

³ J. Satrio. (2004). *Hukum Harta Perkawinan*. Bandung: PT Citra Aditya Bakti. p 38.

Joint assets have been described in Article 35 paragraph (1) of the Marriage Act No. 1 of 1974, which states that "Assets acquired during marriage become joint assets". Judging from the contents of the article, it means that what is called joint property only includes property obtained by husband and wife during/during the marriage. The assets obtained by Salain during the marriage period are not called joint assets.⁴

2. Research Methods

The approach method used is: Legislative Approach, Conceptual Approach and Case Approach. The specification of this research is Normative Empirical legal research. The data collection method used in this study is divided into two types, namely primary data in the form of interviews with respondents who have experienced firsthand events and secondary data or library data in the form of analysis of books, literature, journals and scientific papers. The analytical method used is qualitative analysis.

3. Result and Discussion

The law of proof in civil procedural law occupies a very important place. We know that procedural law or formal law aims to maintain and maintain material law. So formally the law of proof regulates how to conduct proof as contained in the RBg and HIR. Meanwhile, materially, the law of evidence regulates whether or not evidence is accepted by certain evidence at trial as well as the strength of evidence from such evidence.

In responding to answers before the court, the parties in a case can state events that can be used as a basis for affirming their civil rights or for denying the civil rights of other parties. Of course, it is not enough for these incidents to be presented simply, either in writing or orally. However, it must be accompanied or accompanied by valid evidence according to law so that its accuracy can be ascertained. In other words, these incidents must be accompanied by juridical evidence.

Thus, what is meant by proof is the presentation of legal evidence to the judge examining a case in order to provide certainty about the truth of the events presented.⁵

Proof is needed in a case that adjudicates a dispute before the court (*juridicto contentiosa*) or in petition cases that result in a decision (*juridicto voluntair*). In a

⁴ Ibid. p. 189.

⁵H. Riduan Syahrani. (2004). *Buku Materi Dasar Hukum Acara Perdata*. Bandung: PT. Citra Aditya Bakti. p. 83.

civil process, one of the duties of a judge is to investigate whether a legal relationship on which the lawsuit is based actually exists or not. The existence of this legal relationship must be proven if the plaintiff wants victory in a case. If the plaintiff fails to prove the arguments on which the lawsuit is based, then the claim will be rejected, but otherwise the claim will be granted.⁶

The Kendal Religious Court has the authority to examine cases in accordance with its absolute authority in Articles 2 and 49 of Act No. 3 of 2006 in conjunction with Act No. 50 of 2009 concerning amendments to Act No. 7 of 1989 concerning Religious Courts and insist on the principle of Islamic personality. . Based on these provisions the Semarang Religious Court determines who can file a case, then regarding cases that can be submitted for examination at the Religious Court are the fields of Marriage, Will, Grant, Endowment, Zakat, Infaq, Shodaqoh, and Sharia Economics, on this basis. a case can be submitted for examination by the parties at the Religious Court. One of them is the distribution of assets *Gono Gini*.⁷

According to the Marriage Act No. 1 of 1974, if a person is going to carry out a marriage, he must complete the terms and conditions of the marriage, but not all people who are going to do the marriage can fulfill all the terms and conditions of marriage. And if that happens, a legal consequence will arise, namely the cancellation of the marriage. According to Article 22 of the Marriage Law, it states that a marriage can be canceled if the parties do not meet the requirements for a marriage.

The Shari'a does not divide the assets of this *Gono Gini* with their respective portions with certainty, for example wife 50% and husband 50%. Because, there is no text that requires this - we know - either from the Koran or the sunnah. However, the division can be viewed from several possibilities:

1. If it is known with certainty, the calculation of the husband and wife's assets

It is known that the husband's work results are deducted by the income for his family, as well as the wife's work is known with certainty. Then the calculation of the financial assets is very clear, that is, in accordance with these calculations.

2. if the calculation of the assets of the husband and wife is not known

Husband and wife work together or cooperate with each other in building the family economy. And the needs of the family are borne by both of their work. so that the remaining portion of the husband's property and

⁶Retnowulan Sutantio & Iskandar Oeripkartawinata. (2009). *Hukum Acara Perdata dalam Teori dan Praktek*. Bandung: Mandar Maju. p. 53.

⁷Interview with Drs. Noor Shofa SH, MH, judge at the Kendal Religious Court on October 2, 2018 at 13.00 WIB.

how much of the wife's property is unclear. And this is the picture of most families in Indonesia.

In such a condition, it is impossible to share the *Gono Gini* assets except by means of *sulh*, *'urf* or *qadha* (verdict). *Sulh* itself is an agreement between husband and wife based on deliberation on the basis of mutual approval.

The arguments for husband and wife peace include: From Katsir bin Abdillah bin Amr bin Auf al-Muzani, from his father from his grandfather, that the Prophet sallallaahu 'alaihi wa sallam said: "Peace is permissible between Muslims, except for a peace that forbids what is lawful. or justify what is haram. And the Muslims depend on their conditions, except for the conditions that prohibit what is lawful or justify what is haram. " (HR. Tirmidhi no.1370, Ahmad 2: 366, and Abu Dawud no. 3594)

4. Closing

The Shari'a does not divide the assets of this *Gono Gini* with their respective portions with certainty, for example wife 50% and husband 50%. Because, there is no text that requires this - we know - either from the Koran or the sunnah. However, the division can be viewed from several possibilities.

5. References

Books:

- [1] H. M. Djamil Latif. (2000). *Aneka Hukum Perceraian di Indonesia*. Jakarta: Ghalia Indonesia
- [2] H. Riduan Syahrani. (2004). *Buku Materi Dasar Hukum Acara Perdata*. Bandung: PT. Citra Aditya Bakti
- [3] J. Satrio. (2004). *Hukum Harta Perkawinan*. Bandung: PT Citra Aditya Bakti. p 38.
- [4] Lili Rasjidi. (2006). *Hukum Perkawinan dan Perceraian (Di Malaysia dan Indonesia)*. Bandung: PT Remaja Rosdakarya
- [5] Retnowulan Sutantio & Iskandar Oeripkartawinata. (2009). *Hukum Acara Perdata dalam Teori dan Praktek*. Bandung: Mandar Maju

Interview:

Interview with Drs. Noor Shofa SH, MH, judge at the Kendal Religious Court on October 2 2018 at 13.00 WIB.