

The Form of Officer of Land Deed Officer (PPAT) in Distribution of Rights to Land Joint Assets Post Divorce

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Abstract. *The distribution of land rights to joint assets after the divorce needs to use a deed made by PPAT, because basically PPAT is a Land Deed Maker Official whose main task is to carry out some land registration activities by making a deed as evidence that a legal action has been taken regarding land rights or property rights. For the Flats Unit, which will be used as the basis for the registration of changes in land registration data caused by the legal act. The type of research used is normative legal research, with a research approach to legislation and concepts. Legal materials consist of primary and secondary legal materials. The analytical method used is description, evaluation, argumentation and interpretation. The deed of collective agreement can be used as the basis for entering the name of the ex-wife or ex-husband that has not been recorded in the certificate due to joint ownership which must be divided due to divorce as stated in PP 24 of 1997 Article 37 paragraph (2) regarding land registration. As long as the head of the national land agency office judges that the truth is sufficient, it can be implemented, because the National Land Agency is a government institution that has discretionary authority as stated in Act No. 30 of 2014 concerning government administration. From the names that have emerged between the ex-husband and the ex-wife, the process of Sharing Joint Rights is carried out using the APHB Deed (Deed of Sharing Joint Rights) made by PPAT.*

Keywords: Divorce; Joint; Land; Property; Rights.

1. INTRODUCTION

Marriage is an important thing in life. From marriage, a person will be able to obtain a balance of life both biologically, psychologically and socially. Marriage as stated in Article 1 of the Act No. 16 of 2019 concerning Amendments to Act No. 1 of 1974 concerning Marriage which formulates :

“The inner and outer 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 One Godhead”.

So the occurrence of a marriage bond does not only have consequences for civil relations such as the rights and obligations of husband and wife, as well as joint property, children's position, rights and obligations of parents but also concerns the relations of inheritance, kinship, kinship and customs and regarding traditional and

religious ceremonies.¹ A divorce will bring various legal consequences, one of which is related to joint property in a marriage that must be divided. Act No. 16 of 2019 concerning Amendments to Act No. 1 of 1974 concerning marriage regulates joint assets, among others:

Article 35 paragraph (1) states that property acquired during the marriage becomes joint property. Paragraph (2) The innate property of each husband and wife and the property obtained by each as a gift or inheritance are under their respective control, husband and wife have the full right to carry out legal actions regarding joint assets.

Article 37 if the marriage is terminated due to divorce, the joint property shall be regulated according to their respective laws. In the explanation of Article 37, it is emphasized that the respective laws are religious law, customary law and other legal laws related to the joint property.

The joint assets discussed in this issue are joint land rights that must be divided. In connection with the above, the Land Deed Making Official (PPAT) is the most important bridge in terms of the distribution of joint property rights to land due to the above divorce, therefore the Land Deed Maker (PPAT) is a public official who is authorized to make authentic deeds regarding certain legal actions regarding land rights or property rights over flat units. Article 2 paragraph (1) Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning the Regulation of the Position of the Land Deed Maker Official has the main task of carrying out some land registration activities by making a deed as evidence that legal actions regarding land rights have been carried out or Ownership Right to the Flat Unit, which will be used as the basis for the registration of changes to the land registration data caused by the legal act.

Article 2 paragraph (2) Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning the Position Regulation of the Official Making Land Deeds The legal actions as referred to in paragraph (1) are as follows:

- a. Buy And Sell;
- b. Exchange;
- c. Grant;
- d. Entry Into The Company (*Inbreng*);
- e. Sharing Of Joint Rights;
- f. Granting Of Building Use Rights/Use Rights On Land With Ownership Rights;
- g. Granting Mortgage Rights;
- h. Granting Power To Impose Mortgage Rights.

So in this case the PPAT is only authorized to make the deed as specified in the PP, therefore it is related to the problem of the distribution of rights to the joint property land after the divorce if it refers to the PP which regulates the PPAT's main task in making the deed as referred to in Article 2 PP 37 years 1998 there has been no legal action regarding the distribution of land rights to joint property after the divorce.

¹Hilman Hadikusuma, (2007), *Hukum Perkawinan Indonesia Menurut Perundangan Hukum Adat dan Hukum Agama*, Mandar Maju, Bandung, p. 8.

2. RESEARCH METHODS

This study uses normative legal research methods, which examines the law from an internal perspective with the object of research is a legal norm.² The type of approach used is *statute approach* and *conceptual approach*. The legal materials used in this writing were collected through the study of literature³ that is by examining primary legal materials in the form of legislation related to legal issues written, secondary legal materials in the form of legal opinions from books, research results, internet media, scientific journals, newspapers, speakers. The analysis techniques used in this writing, namely description, evaluation, argumentation and interpretation techniques. After all the material is collected then the legal material is analyzed with relevant theories and then conclusions are drawn to answer the problem.

3. RESULTS AND DISCUSSION

3.1 Arrangement For The Division Of Land Rights Of Joint Property After The Breakup Of Marriage

The dissolution of marriage according to Act No. 1 of 1974 on marriage is not regulated limitatively. Provisions regarding the reasons for divorce are limitative regulated in Government Regulation No. 9 of 1975 concerning the implementation of Act No. 1 of 1974 concerning marriage (hereinafter referred to as PP 9/1975), compilation of Islamic law and in the Book of Civil Law can be seen in book I Title X Article 199.

In Article 19 PP 9/1975 stipulates that, " divorce can occur for reasons or reasons:

1. One of the parties commits adultery or becomes a drunkard, stuffing, gambler, etc. that is difficult to cure;
2. One party leaves the other party for 2 (two) consecutive years without the other party's permission and without a valid reason or because of other things beyond its ability;
3. One party leaves the other party for 2 (two) consecutive years without the other party's permission and without a valid reason or because of other things beyond its ability;
4. One party leaves the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or because of other things beyond its ability;
5. One party leaves the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or because of other things beyond its ability;
6. One of the parties leaves the other party for 2 (two) consecutive years without the other party's permission and without a valid reason or because of other things beyond its ability;"

Furthermore, Article 116 of the compilation of Islamic law also restrictively regulates the reasons for divorce, namely " divorce can occur for reasons or reasons:

1. one of the parties commits adultery or becomes a drunkard, stuffing, gambler and so forth that is difficult to cure;

²I Made Pasek Diantha, (2019), *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Cetakan ke-3, Prenada Media, Jakarta, p. 12.

³Amiruddin and Zainal Asikin, (2016), *Pengantar Metode Penelitian Hukum*, PT. Raja Grafindo Persada, Jakarta, p. 68.

2. one party leaves the other party for 2 (two) consecutive years without the permission of the other party and without a valid reason or because of other things beyond its ability;
3. one of the parties received a prison sentence of 5 (five) years or more severe punishment after the marriage took place;
4. one party commits atrocities or severe mistreatment that endangers the other;
5. one of the parties receives a disability or illness with the consequence of not being able to carry out his obligations as a husband or wife;
6. between husband and wife there are continuous disputes and quarrels and there is no hope of living in harmony again in the household;
7. Husband violates *taklik talak*;
8. Conversion of religion or apostasy that causes disharmony in the household.”

Furthermore, in the Civil Code we can see in book I Title X Article 199 limitatively also regulates the reasons for divorce can occur for reasons or reasons:

1. Death;
2. The absence of one of the spouses for ten years and followed by marriage with a new marriage thereafter by the wife or husband in accordance with the provisions of the fifth part of Chapter 18 (eighteen).
3. The decision of the judge after the separation of the table and bed (hanging divorce) and the registration of the breakup of the marriage in the civil registry register, in accordance with the provisions of the second part of this chapter.
4. Divorce in accordance with the provisions of the third part of this chapter.”

3.2 Division Of Joint Property After The Breakup Of Marriage Based On The Civil Code, Marriage Law, Compilation Of Islamic Law, And Balinese Customary Law

At first marriage was intended to achieve eternal happiness for married couples, but in reality many factors that trigger problems in marital life so that the couple decided the last and best way is by divorce.⁴ After the divorce does not mean that the family problems have been completed all, but still leave the rest of the marital problems such as children (if you have children) and property acquired during marriage, property acquired during marriage is called joint property or better known *seuharkat* property, it is very important to be resolved by both parties for the common good.⁵ The division of joint property should be done fairly, so as not to cause injustice between which is the right of the husband and which is the right of the wife. According to Erna Wahyuningsih and Putu Samawati explained that how to get joint property, as follows: the division of joint property can be filed simultaneously with when filing a divorce lawsuit by mentioning joint property and evidence that the property was obtained during marriage in "*posita*" (reason for filing a lawsuit). The request for the division of property is mentioned in the *petitum* (lawsuit). The division of joint property is filed after a divorce ruling, which means filing a lawsuit over joint property. For those who are Muslims, a lawsuit for joint property is filed with the religious court in the region where the wife lives. For non-Islamic joint property division lawsuit filed with the District Court of residence of the respondent. However, filing a lawsuit against the

⁴Syaikhul Hakim, (2015), "Reaktualisasi Pembagian Harta Bersama Dalam Mazhab Syafii Dan Kompilasi Hukum Islam Di Indonesia", *Akademika*, Vol. 9, No. 2, p. 45.

⁵Sri Hariati and Musakir Salat, 2013, Ketidakadilan Pembagian Harta Gono Gini Pada Kasus Perceraian The Injustice Of Distributing Marital Property, *Jurnal IUS Kajian Hukum Dan Keadilan*, Vol. 1, No. 3, p. 2.

division of joint property after divorce in court is very time consuming and high enough costs, therefore the division of joint property after divorce, especially land rights (immovable objects) can use an authentic deed made by authorized officials.

There are several rules in terms of the division of joint property after divorce according to the Civil Code, Marriage Law, compilation of Islamic law, and customary law, among others:

a. Division of joint property after divorce according to the Civil Code

Common property is generally divided equally between husband and wife. This is based on the provisions of Article 128 of the Civil Code which states that "after the dissolution of the Union, the unitary property is divided in two between husband and wife, or between their respective heirs, not caring about from which party the goods obtained". Meanwhile, congenital and acquired assets remain automatically the private property of each that does not need to be divided jointly.⁶

b. Division of joint property after divorce according to marriage law

The legal effect of divorce on the division of joint property according to Act No. 1 of 1974 in Article 37 it has been stated that "if the marriage breaks up due to divorce, the property is regulated according to their respective laws". Each of them is subject to the law of religion, customary law, or other applicable law. In the Marriage Law, it is not expressly stipulated how much each of the spouses shares in the joint property. However, in this marriage law apparently provides leniency by submitting to the divorced husband and wife about which law and what law will be applied in resolving the dispute over the division of joint property and if there is no agreement, then the judge can consider according to a reasonable sense of Justice.⁷

c. Division of joint property after divorce according to the compilation of Islamic law

For Muslims, the provisions on the division of joint property stipulated in the compilation of Islamic law (KHI) Article 97 stated that "widows or widowers divorced life each entitled to 1/2 of the joint property as long as not otherwise specified in the marriage agreement"

d. Division of joint property after divorce according to Balinese customary law

The principle in *awig-awig* traditional village that in the event of divorce, the husband and wife have the same right to joint property "*Prade palas perabiane fit...pagunakaya polih pahan*"⁸ which means that each party is entitled to the division of property *gunakaya* (joint property in marriage) with the principle of *pedum pada* (divided equally).

Meanwhile, according to the Marriage Law Article 37 explains "If a marriage breaks up due to divorce, joint property is regulated according to their respective laws." This means that the Act No. 1 of 1974 on marriage provides more flexible rules by giving freedom to the ex-husband and ex-wife to regulate the division of joint property according to their legal beliefs. As stated in Article 37 above. Of all the explanations set forth by the law, for the parties who have the above problems can have a clear legal certainty on the division of land said joint property after the breakup of marriage.

⁶Happy Susanto, (2008), "*Pembagian Harta Gono-Gini Setelah Terjadinya Perceraian*", cet II Jakarta: Visi Media, p. 37.

⁷Hilman Hadikusuma, op.cit, p.189.

⁸I Ketut Sudantra, (2002), "Wanita Bali dan Harta Benda Perkawinan: Suatu Perspektif Normatif", *Jurnal Studi Gender SRIKANDI*, Vol. 2 No. 2, 2002, p. 85.

3.3 The Existence Of A PPAT Deed Related To The Division Of Joint Property On Land Rights After The Breakup Of Marriage

Legal certainty is the guarantee that the law is carried out, that the entitled according to the law can obtain their rights and that the judgment can be implemented. Although legal certainty is closely related to justice, law is not synonymous with Justice. Legal certainty is the guarantee that the law is carried out, that the entitled according to the law can obtain their rights and that the judgment can be implemented. Although legal certainty is closely related to justice, law is not synonymous with Justice. Law is general, binding on everyone, is generalizing, while Justice is subjective, individualistic, and non-generalizing.⁹ The division of joint property is also not done haphazardly division, but the division of joint property has rules set forth in the Marriage Act, as well as regulated in the compilation of Islamic law, where the division of joint property is done through a trial process in a religious court that must be attended by both parties concerned (husband and wife). The division of joint property as a result of a divorce, the way the division is usually by dividing equally, each (husband and wife) gets 1/2 (half) part of the *gonogini* property. This is in accordance with the provisions of Article 97 KHI and in line with the provisions of the Civil Code and customary law of Bali, because in Balinese customary law the division of property after divorce is divided into "*pedum pada*" (divided equally).

Although there are already regulations governing the division of joint property, it seems that after a search, it turns out that not all matters related to the division of joint property are regulated in laws and regulations. Because specifically for the making of the deed of division of joint rights, especially for land rights, currently in Indonesia there are no rules that regulate so that PPAT as one of the state officials who have the authority to make the deed there are no definite guidelines for making the deed of division of joint property, especially regarding the distribution of land rights after divorce. Because legally if it is seen in the legislation, namely in the government regulation of the Republic of Indonesia number 24 of 2016 concerning amendments to Government Regulation Number 37 of 1998 concerning the regulation of the position of land deed maker in Article 2 Paragraph 1 and 2 it is asserted that:

1. PPAT principal duty to carry out some land registration activities by making a deed as evidence of certain legal acts concerning the right to land or property rights on the unit flats, which will be used as a basis for registration of changes in land registration data caused by the legal act
2. The legal acts referred to in Paragraph (1) are as follows :
 - a. Buy And Sell;
 - b. Exchange;
 - c. Grant;
 - d. Entry Into The Company (*Inbreng*);
 - e. Sharing Of Joint Rights;
 - f. Granting Of Building Use Rights/Use Rights On Land With Ownership Rights;
 - g. Granting Mortgage Rights;
 - h. Granting Power To Impose Mortgage Rights.

This means that PPAT as a state official only has the authority to make the deeds mentioned in Article 2 Paragraph 2 of government regulation No. 37 of 1998. So in the case of making a deed regarding the division of joint property related to the division of land rights after divorce, there are no rules governing, therefore, the vacancy can be

⁹Sudikno Mertokusumo, (2005), *Mengenal Hukum*, Liberty, Yogyakarta, p. 160.

clarified by the provisions of Article 51 paragraph 1 of government regulation of the Republic of Indonesia number 24 of 1997 concerning land registration which confirms that the division of joint rights to land or property of the apartment unit into the rights of each joint right holder is registered based on a deed made by PPAT authorized according to applicable regulations that prove the agreement between the joint right holders regarding the division of joint rights. Therefore, to overcome this so that the parties who have problems get legal certainty and legal protection, PPAT as an official communicates to the National Land Agency as a government agency that has a role in implementing the provisions on land registration as stipulated in the regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 3 of 1997 on the provisions of the implementation of Government Regulation No. 24 of 1997 on land registration provides advice or input to make a deed of agreement on the division of joint property made by a notary. Because until now there has been no deed of division of land rights of joint property after the breakup of marriage, therefore after the deed of agreement on the division of property is used as a basis only to include the name of the ex-husband or ex-wife to the ownership of the rights to the Joint Land even though the legislation, just do the process of solving the land and made the deed of Division of Joint rights (APHB). And to the government should the laws and regulations used as the basis PPAT make deed needs to be updated considering PPAT a land deed official authorized in carrying out the process of transition of land rights under Article 2 Paragraph (1) so that PPAT also get legal protection against what he made and PPAT can provide benefits for the parties in need.

4. CONCLUSION

Arrangements for the division of joint property regarding the right to land after the breakup of marriage marital property is regulated in the provisions of Article 128 of the Civil Code which states that, "after the dissolution of the Union, the unitary property is divided in half between husband and wife, or between their respective heirs, so that in its implementation there is equal justice, the marriage does not rule out the existence of joint property of husband and wife with no regard to which party the goods were obtained". In addition, the division of joint property is regulated in the KHI, namely in Article 97 it is stated that widows or widowers divorced each have the right to 1/2 of the joint property as long as it is not specified otherwise in the marriage agreement", while according to Balinese customary law the division of joint property for adherents of other religions is regulated in the Civil Code Article 128 which states that "after the dissolution of the union, then the unitary property is divided in half between husband and wife or between their respective heirs, not caring about from which party the goods were obtained". Meanwhile, in Article 37 of the marriage law states that if the marriage breaks up due to divorce, the joint property is regulated according to their respective laws". And according to Balinese customary law arranged through a forum called Pesamuhan Agung III MDP Bali, 15 October 2010, it was decided, among others, that "the legal consequences of divorce is that each party is entitled to the division of property *gunakaya* (joint property in marriage) with the principle of *pedum pada* (divided equally).

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