

An Analysis of The Juridical Implications of Decision No.1301/Pdt.G/2023/Pa.Smn on The Principle of Justice In Post-Divorce Marital Property Distribution

Melania Irawati^{1*}, Lego Karjoko², Sapto Hermawan³

^{1,2,3} Master of Notary Program, Faculty of Law, Universitas Sebelas Maret,
Surakarta, Central Java 57126, Indonesia.
Email: Melaniaira94@gmail.com

Abstract.

This study aims to examine the application of the distribution of marital property after divorce through an analysis of Decision Number 1301/Pdt.G/2023/PA.Smn. The research focuses on the division of marital property and the extent to which theories of justice are applied in the adjudication process. This study is significant as the distribution of marital property constitutes a sensitive issue within society, where justice plays a crucial role in shaping judicial decisions. Accordingly, it is necessary to analyze the factors considered by the panel of judges in adjudicating disputes concerning the division of marital property. This research employs a normative legal research method by examining applicable laws and regulations, supported by primary, secondary, and tertiary legal materials. The findings indicate that existing statutory provisions governing the distribution of marital property have not fully fulfilled the criteria of justice for wives who bear a double burden within marriage. In this context, judges are permitted to depart from positive law by applying the principle of contra legem in order to achieve substantive justice for all parties to the marriage.

Keywords: Marital Property; Justice and Divorce.

I. INTRODUCTION

Human beings, by their very nature, are social creatures who inevitably interact with others. Marriage constitutes both a physical and spiritual bond between a husband and a wife, aimed at forming a household characterized by *sakinah*, *mawaddah*, and *rahmah*. The purpose of marriage is to establish a harmonious family and to serve as a means for human beings, as creations of Allah SWT, to procreate and sustain life. Article 2 of the Compilation of Islamic Law (*Kompilasi Hukum Islam*—KHI) defines marriage under Islamic law as a contract (*akad*) of a very strong nature (*mitsaqan ghalidzan*), entered into in obedience to Allah's commands and regarded as an act of worship. Within family life, two aspects are highly desired, namely offspring and lawful property. Offspring are regarded as a source of continuity, while property functions as an essential means to sustain life. Property acquired within marriage constitutes economic capital that may be utilized by the husband or wife to meet daily household needs, including those of their children. In various regions of Indonesia, marital property is known by different local terms, such as *harta seuhareukat* in Aceh, *harta suarang* in Minangkabau, *harta pencaharian* in Jakarta, *harta gono-gini* or *barang gono* in Java, *drube-garbo* in Bali, *barang perpantangan* in Kalimantan, *cakara* in Sulawesi, and *ghuna-ghana* in Madura. Despite these terminological differences, all refer to property acquired after the marriage contract has been concluded.

Under the Compilation of Islamic Law, marital property is defined as property acquired during the subsistence of a marriage, whether obtained individually or jointly by the husband and wife, regardless of whose name the property is registered under. Accordingly, any property acquired from the time the marriage contract is concluded until the dissolution of the marriage is legally classified as marital property. A marriage that can no longer be sustained ultimately results in the dissolution of the marital bond through divorce. Divorce terminates the rights and obligations arising during marriage and gives rise to new rights and obligations following the dissolution of the marital relationship. One of the most significant post-divorce issues concerns property rights, particularly the division of marital property, commonly referred to as *harta gono-gini*. In practice, when divorce occurs between a husband and wife, marital property is generally

divided equally, with each party receiving an equal share. This practice is reflected in the jurisprudence of the Supreme Court, which in numerous cassation decisions has consistently applied a fifty-fifty (50:50) distribution. In the field of marriage, the Religious Courts (*Peradilan Agama*) possess the authority to adjudicate and resolve disputes concerning family matters and marital property, as well as to determine the legal status of individuals within the family and the legal status of property acquired during marriage.

Cases within the domain of marriage are governed by specific civil procedural rules, while general civil procedural law applies insofar as no special provisions exist. Decision Number 1301/Pdt.G/2023/PA.Smn concerns a dispute over marital property initiated by a former husband against his former wife. During the course of the marriage, the plaintiff did not function as the primary breadwinner and failed to fulfill his obligation to provide financial support, whereas the defendant assumed a dominant role as the economic provider for the family. Ultimately, the panel of judges departed from positive law by allocating forty percent (40%) of the marital property to the husband and sixty percent (60%) to the wife. This decision warrants further examination, particularly given the sensitivity of marital property distribution in post-divorce disputes within the context of both civil and family law. Moreover, the application of theories of justice plays a crucial role in shaping judicial reasoning in such cases. Accordingly, a more focused and in-depth analysis is required to examine the factors considered by the panel of judges in rendering a decision that deviates from existing statutory provisions.

II. METHODS

This study employs a normative juridical research method (normative legal research), which examines the prevailing legal norms and regulations in Indonesia through a systematic and structured analysis. The case study analysis is conducted on Decision Number 1301/Pdt.G/2023/PA.Smn, with reference to the applicable legal provisions governing marital property. The approach to the legal issues applies a statute approach, which involves examining and analyzing laws and regulations that are currently in force, as well as understanding their substance and normative content. The focus of this research is on the division of ownership of marital property based on statutory provisions. An analytical approach is also applied to analyze legal materials, the implementation of court decisions, and relevant statutory regulations. The legal materials used in this study consist of primary legal materials, including the 1945 Constitution of the Republic of Indonesia, the Indonesian Civil Code, Law Number 1 of 1974 on Marriage, and the Compilation of Islamic Law. Secondary legal materials include papers, journals, articles, books, and other relevant scholarly works. In addition, this research employs a library research method to collect and examine the relevant legal materials.

III. RESULT AND DISCUSSION

Marriage is fundamentally intended to achieve lasting happiness for a husband and wife. However, in reality, various factors often give rise to conflicts within marital life, leading couples to conclude that divorce is the final and most viable solution. Divorce does not necessarily resolve all family-related issues, as it often leaves unresolved matters such as child custody (if children are involved) and the division of property acquired during the marriage. Property obtained during the subsistence of marriage is referred to as marital property, also known as *harta seuhareukat*, and its settlement is of significant importance for both parties in order to achieve fairness. When a marriage is dissolved due to divorce, various legal issues arise, including the division of marital property. The regulation of marital property division depends on the applicable legal system, such as religious law, customary law, or other legal frameworks. This indicates that upon divorce, marital property acquired during marriage may be regulated differently depending on the applicable customary or legal system outside of statutory law. Marital property constitutes one category among the various types of property owned by an individual. In daily life, property holds substantial importance, as ownership enables individuals to meet their basic needs and attain social standing within society. However, marital property ceases to retain its status as joint property once a marriage is dissolved due to death or divorce. The division of marital property is not carried out arbitrarily but is governed by specific rules stipulated in marriage law and the Compilation of Islamic Law.

The division of marital property must be conducted through court proceedings at the Religious Court and must involve both parties, namely the husband and the wife. Generally, the division of marital property following divorce is carried out on an equal basis, whereby each party receives one-half ($\frac{1}{2}$) of the marital property. This practice is in accordance with Article 97 of the Compilation of Islamic Law and aligns with the provisions of the Indonesian Civil Code. The commingling of property concerns both *activa* (assets, including money or other valuables measurable in monetary terms) and *passiva* (liabilities or obligations). Such commingling may include premarital property and property acquired during marriage, which subsequently becomes marital property. Essentially, the commingling of property does not pose a legal issue as long as it is based on mutual agreement between the husband and wife. Disputes over marital property commonly arise when conflicts occur between spouses or when divorce takes place, particularly in the absence of a prenuptial agreement concerning the separation of property. In such cases, each party may claim that certain assets constitute personal property rather than marital property.

In some instances, the wife may suffer losses and experience injustice in the division of marital property based on court decisions. These circumstances often serve as the initial trigger for marital property disputes. Ideally, the division of marital property should be conducted fairly so as to prevent injustice in determining the respective rights of the husband and the wife. According to Erna Wahyuningsih and Putu Samawati, the division of marital property may be pursued through the following mechanisms: the claim for division of marital property may be submitted concurrently with the filing of a divorce lawsuit by specifying the marital assets and providing evidence that such assets were acquired during marriage in the *posita* (grounds of the claim). The request for property division is stated in the *petitum* (relief sought). Alternatively, the division of marital property may be pursued after a divorce decision has been rendered, through a separate lawsuit concerning marital property. For Muslims, such claims are submitted to the Religious Court in the jurisdiction of the wife's residence, while for non-Muslims, claims are submitted to the District Court where the respondent resides.

Juridical Implications of Decision Number 1301/Pdt.G/2023/PA.Smn on the Application of the Principle of Justice in the Distribution of Marital Property After Divorce

Decision Number 1301/Pdt.G/2023/PA.Smn concerns a dispute over marital property in which the plaintiff (husband) filed a lawsuit against the defendant (wife). Pursuant to Article 97 of the Compilation of Islamic Law, both the plaintiff and the defendant are each entitled to one-half ($\frac{1}{2}$) of the marital property. However, the substance of the case reveals that during the marriage, the defendant (wife) played an active role as the primary income earner, working as an entrepreneur, while the plaintiff (husband) failed to fulfill his obligations as the family breadwinner. It was established that the defendant bore a dual role by continuing to perform domestic responsibilities while simultaneously contributing dominantly to the family's economic needs over an extended period. This imbalance ultimately led to persistent conflict and the dissolution of the marriage through divorce. One of the most significant factors influencing the division of marital property is the responsibility for earning a livelihood within the family. Article 128 of the Indonesian Civil Code stipulates that marital property is considered a single entity regardless of the source of ownership. Conversely, Article 34 of the Marriage Law provides that the husband is obligated to provide financial support and property for the family, while the wife is responsible for managing household affairs. Accordingly, the obligation to earn a livelihood primarily rests with the husband, not the wife. In circumstances where the wife earns an income while the husband lacks employment, consideration must be given to whether the husband has made genuine efforts to fulfill his obligation to provide for the family.

If the husband has demonstrated good faith in seeking employment despite limited success, principles of justice require that the wife's earnings remain part of the marital property, within which the husband retains a proprietary interest. Such circumstances reflect the husband's good faith in attempting to fulfill his responsibilities. The legal considerations in this case highlight the wife's dual role as both the primary breadwinner and a homemaker, roles that should ordinarily be fulfilled by the husband as stipulated in Article 80 paragraph (4) letter (a) of the Compilation of Islamic Law, which outlines the husband's obligations to provide maintenance (*nafkah*), clothing (*kiswah*), and housing. Based on these considerations, the panel of judges concluded that an equal distributive division of marital property would not achieve

justice, given the wife's dual burden. Consequently, the judges determined that the wife should receive a larger share of the marital property than the husband. Each individual within a family holds distinct rights, obligations, and roles. Traditionally, women are perceived as responsible for household management, while men are expected to earn a living. However, contemporary developments indicate that an increasing number of married women engage in paid employment to assist in supporting the family, thereby assuming dual roles that extend beyond domestic responsibilities. This decision is influenced by various factors, including financial necessity, social and relational needs, and self-actualization. Based on these considerations, the panel of judges elected to set aside the statutory provision mandating equal division of marital property as stipulated in Article 97 of the Compilation of Islamic Law.

In this case, the judges ruled that the wife was entitled to sixty percent (60%) of the marital property, while the husband was entitled to forty percent (40%). The concept of *contra legem* refers to a judicial decision in which a judge departs from the applicable statutory provisions. A judge may render a decision that deviates from positive law when adherence to such law would result in injustice. In such cases, judges rely on their judicial conviction by examining and analyzing the facts of the case in light of principles of justice and evolving social conditions. The application of *contra legem* aims to achieve justice. Article 28 paragraph (1) of Law Number 4 of 2004 on Judicial Power mandates that judges must explore, follow, and understand the legal values and sense of justice that live within society. Accordingly, judges are required to engage in careful analysis and reflection to identify legal norms that uphold the principle of justice within the community. A judicial decision that fairly distributes marital property is one that considers the respective services and contributions of each party during the marriage. The decision of the panel of judges to apply *contra legem* by awarding sixty percent (60%) of the marital property to the wife and forty percent (40%) to the husband is therefore commendable. Nevertheless, although the decision in Case Number 1301/Pdt.G/2023/PA.Smn sufficiently reflects the principle of justice, it would arguably be more equitable if the wife were awarded a greater share, such as seventy percent (70%), given her dual burden as both breadwinner and homemaker and the husband's minimal contribution to the acquisition of marital property. The concept of distributing marital property based on contribution allows judges to explore societal values of justice and to render decisions that reflect substantive justice, as mandated by the Constitution. Judges are not merely *la bouche de la loi* (the mouthpiece of the law); rather, they must engage in legal reasoning to discover the law applicable to the cases they adjudicate in order to deliver just decisions.

This principle is concretely reflected in the standard judicial dictum: "For the Sake of Justice Based on the Almighty God," rather than "For the Sake of Legal Certainty Based on Statutory Provisions." Under the contribution-based approach to marital property division, judges may award equal shares to the husband and wife if both parties have contributed equally to the acquisition of marital property. While the husband is obligated to earn a livelihood, the wife's role as a homemaker—managing household affairs, caring for children, and supporting the family is regarded as an equally valuable contribution. In such circumstances, upon divorce, both parties are entitled to an equal share of the marital property. Conversely, if the husband earns a livelihood while the wife fails to perform her domestic obligations, including caring for the household or fulfilling marital duties, and engages in conduct such as *nusyuz*, the wife's contribution is considered disproportionate. In the event of divorce, the husband may therefore be entitled to a larger share of the marital property, such as sixty percent (60%) or seventy percent (70%), while the wife receives a lesser portion. Similarly, if the wife assumes the role of the primary breadwinner while also managing household responsibilities, thereby bearing a dual burden, and the husband fails to actively fulfill his obligation to earn a livelihood or neglects the family's financial welfare, the wife is entitled to a greater share of the marital property. In such cases, the wife may receive sixty percent (60%) or seventy percent (70%), while the husband receives a smaller share. In certain cases, where the court finds that the husband not only failed to fulfill his obligations but also caused harm to the wife through acts such as domestic violence, excessive spending, gambling, or alcohol abuse, the judge may decide not to award any share of the marital property to the husband.

IV. CONCLUSION

The decision of the panel of judges to apply *contra legem* to Article 97 of the Compilation of Islamic Law by awarding a larger share of marital property to the wife, namely sixty percent (60%) to the wife and forty percent (40%) to the husband, deserves appreciation. Although the decision in Decision Number 618/Pdt.G/2012/PA.Bkt has sufficiently reflected the principle of justice, it would be more equitable if the panel of judges had awarded a share greater than sixty percent (60%) to the wife, such as seventy percent (70%) for the wife and thirty percent (30%) for the husband. This consideration is based on the existence of a dual burden borne by the wife as both the primary breadwinner and a homemaker, as well as the minimal contribution of the husband to the acquisition of marital property during the marriage. The division of marital property based on contribution within marriage constitutes a method of distribution that evaluates the extent of each party's contribution. This concept is inherently aligned with Aristotle's theory of distributive justice (*justitia distributiva*), which posits that justice entails granting each person a share proportionate to their services or contributions.

Under the contribution-based approach to marital property division, if the husband earns a livelihood while the wife fulfills her domestic obligations, devoting herself to the family by managing household affairs, caring for and educating the children, and supporting the husband, the wife's role is regarded as an equal contribution to that of the husband's work outside the home. Accordingly, in the event of divorce, both the husband and the wife are entitled to an equal division of the marital property. Conversely, if the husband earns a livelihood while the wife fails to perform her domestic obligations, including caring for the household, serving the husband, educating the children, or engages in conduct amounting to *nusyuz*, the wife's contribution is deemed disproportionate to that of the husband. In such circumstances, upon divorce, the husband is entitled to a larger share of the marital property, such as sixty percent (60%) or seventy percent (70%), while the wife receives a smaller portion. Similarly, if the wife assumes the role of the primary breadwinner while also managing household responsibilities, thereby bearing a dual burden, and the husband fails to fulfill his obligation to provide financial support or neglects the family's economic welfare, the wife is entitled to a larger share of the marital property. In such cases, the wife may receive sixty percent (60%) or seventy percent (70%), while the husband receives only forty percent (40%) or thirty percent (30%).

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