

ANALYSIS OF DECISION NUMBER 742/PDT.G/2017/PN MDN CONCERNING GONO-GINI ASSET DISPUTES

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Abstract: During the marriage bond, wife and husband work together for the benefit of married life. Talking about it here is not just about making money but also educating children and meeting children's needs. But the marriage bond does not last forever, after the husband and wife divorce, a joint property is formed. Joint property is the result of divorce. This has become the essence of Article 35 paragraph (1) of Law Number 1 of 1974 concerning Marriage. The formulation of the problem that arises as a result of the dispute is how the panel of judges views it in assessing the case and what are the consequences related to the occurrence of marriage breakups in Indonesia from a legal and justice point of view. This research is juridical-normative in nature, namely tracing laws and regulations related to joint assets and case studies.

Keyword: Joint Property, Decision Number 742/PDT.G/2017/PN MDN Concerning Gono-Gini Disputes, Civil Law

I. INTRODUCTION

The family is the smallest unit in the building of society. It is a subsystem of the social system in which ethical, moral, religious and legal norms apply, as well as interacting with subsystems of other social systems and with their ecosystems. Therefore, changes that occur in other subsystems and with the ecosystem affects the family. The Ministry of Health of the Republic of Indonesia (2016) defines the family as the smallest unit of society consisting of the head of the family and several people who are gathered and live in a place under one roof in a state of interdependence.¹

The birth of the Marriage Law on January 2, 1974 which applies to all citizens of the Republic of Indonesia has largely fulfilled the demands of the Indonesian people. The emergence of Law Number 1 of 1974 was motivated by four objectives, namely: (1) to limit and even abolish child marriage, (2) to limit polygamy, (3) to limit the unilateral rights of talaq (arbitrary talaq), and (4) establish equal rights for husband and wife.²

In pemlegal formations must fulfill: (1) philosophical values with the core of a sense of justice and truth; (2) sociological values in accordance with the prevailing cultural values in society; and (3) juridical value in accordance with the applicable laws and regulations.³

Government Indonesia Also arrange marriage with Constitution. Chapter 1 Constitution Marriage No. 1 Year 1974 state: "Marriage is bond born inner between a man with a woman as husband wife For form family (House ladder) Which happy And eternal based on faith to Lord Which Maha One based Deity". Every person Which Marry must register her marriage in office notes civil. Matter That arranged in marriage law apply in Indonesia form deed marry as proof physique that they has Marry in a manner legitimate. Marriage only can done between a man And a woman.

Then if the family is the smallest and fundamental unit of society. When there is a divorce between husband and wife, it affects the joints of society. In the case of divorce, of course, it is necessary to refer to marriage or matrimonial law. Therefore, the author discusses marriage first before discussing divorce, especially about how the panel of judges views the case. Technological developments in this modern era include ease of connection or contact between one party and another. It can also affect marital waivers which can lead to easy divorce.

The term "Divorce" is contained in article 38 of Law Number 1 of 1974 concerning Marriage which contains provisions regarding *facultativethat* "marriage can break up because:

a. Death, b. Divorce, c. By court decision ". So, the term Divorce legally means the breakup of a marriage, which results in breaking up of the relationship as husband and wife or stopping having a husband and wife.⁴

Man And Woman is two individual Which personality No The same, even Can opposite. Characteristic features And behavior bad husband or wife Which No preferred by person other No revealed until journey they through sheet wedding, Which can raises dispute or quarrel. Matter This No only ends on fight mouth or quarrel, even Possible conflict Because Wrong One or both of them No can withhold her emotions when face problem together, problem his son And problem ownership together. With the occurrence of divorce in a marriage causing a number of legal consequences for ex-husbands and wives, the author wants to answer what effects will arise if the marriage bond breaks up in Indonesia from the perspective of law and justice. According to provision UU Marriage, treasure Which obtained during marriage become treasure together. From facet jurisprudence formal can understood

¹Indonesian Population Journal | Vol. 13 No. 1 June 2018 | 17

²Islamic Law Vol. 21, No. June 1, 2021

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⁴Muhammad Syaifuddin, et al, Divorce Law cet. 2, Sinar Graphics: Jakarta, 2014.

that treasure together is treasure owned by husband wife Which obtained during marriage. Temporary That, Civil Code, based on principle strength marriage in Chapter 124 (1) And (2) KUH Civil, arrange that "husband must look after treasure his marriage Alone without mix hand wife. .husband can sell, divert Andburdento wife.By analogy related to marriage, divorce and its effects the author wants to analyze the decisionNumber 742/PDT.G/2017/PN MDN Concerning Gono-Gini Asset Disputes.

II. RESEARCH METHODS

The research method used in this research is normative juridical through a statutory approach. In this case the approach in question is an approach that states in the study and analysis of laws related to the legal cases being studied as well as their implementation in society.

The type of research used in writing this research is normative juridical research, namely legal research methods with library materials. This study uses a philosophical approach and a statutory approach to explore the research object, namely the Medan District Court decision

In accordance with various methods of approach, the author uses a normative juridical approach by focusing on literature studies to explore the meaning and intent of the Medan District Court decision.

Data collection techniques in this study were obtained by means of secondary data collection in literature, namely based on literature such as Law No. 1 of 1974, journals, books and cases in reality in society.

III. RESULT AND DISCUSSION

A law that has privileges, it regulates all members of society who have reached adulthood who will get married.⁵

1. The Principle of Monogamy and the Conditions of Marriage

a. Monogamy Principle

The concept of monogamy in marriage, this concept is that it has been explained in the Marriage Law which has been regulated in the Civil Code (KUH Per) based on having the meaning of monogamy and being absolute cannot be contested in its implementation, this understanding, that each husband is only allowed to have one wife, and vice versa the wife only has a husband, we can see this understanding in the provisions of Article 27 of the Indonesian Civil Code (KUH Per), this emphasizes that marriage is monogamous, marriage in the Indonesian Criminal Code only ensures that marriage is only based on civil matters, this can be understood as marriage only as a civil matter, nothing more than that, contained in Article 26 of the Indonesian Civil Code (KUH Per). 2 That the marriage will become legal if the conditions and legal provisions in the civil law regulations have been fulfilled. The Civil Code (KUH Per) does not see elements of religion or belief as a legal part of a marriage relationship.⁶

b. Material Terms

Material requirements are also referred to as core or internal requirements, namely conditions that

concerning the personalities of the parties who wish to enter into a marriage and the permits that must be granted by third parties in matters determined by law. Material requirements include absolute material requirements and relative material requirements.

⁵Moh Zahid, *Twenty-Five Years of Implementing the Marriage Law*, Ministry of Religion of the Republic of Indonesia Religious Research and Development Agency and Religious Education and Training, 2002. Pg. 2.

⁶Journal of the Faculty of Law, University of Tulungagung Khoirul Anam, S.Sy., MHI

Absolute material requirements are requirements regarding a person's personality that must be respected for marriage in general, these material requirements include, among others:

1. The parties to the bride and groom are not married (Article 27 BW).
2. Each party must reach the minimum age determined by law, male 18 years old, female 15 years old (Article 29 BW)
3. A woman is not allowed to remarry before 300 days have passed since the dissolution of the marriage (Article 34 BW).
4. Must have permission from a third party.
5. With free will, no coercion (Article 28 BW), and so on⁷

c. Formal Terms

Formal requirements or birth conditions (external) are conditions related to procedures or formalities that must be fulfilled before the marriage process. According to the UUP, that in order to enter into a marriage, one must meet the following requirements:

1. Marriage must be based on the agreement of the two prospective bride and groom (Article 6 Paragraph 1 UUP).
2. To enter into a marriage, a person who has not reached the age of 21 must obtain permission from both parents (Article 6 Paragraph 2)
3. In the event that one of the parents has left the world or is unable to express his will, it is sufficient to obtain permission from the parent who is still alive/able to declare (Article 6 Paragraph 3).
4. In the event that both parents die/are unable to express their will, permission is obtained from the guardian, the person who maintains/family who has blood relations in a straight line (Article 6 Paragraph 4).
5. In the event that there is a difference of opinion between the people mentioned in Article paragraphs (2), (3) and (4), the court can grant permission after hearing the said people first.⁸

2. Consequences of Marriage

a. Rights and Obligations of Husband and Wife in Marriage

According to the Marriage Law, the Marriage Law regulates rights and obligations of husband and wife in chapter V articles 30-34. Article 31 of the Marriage Law regulates the position of husband and wife explaining:

1. The rights and position of the wife are in balance with the rights and position of the husband in domestic life and coexistence in society.
2. Each party has the right to take legal action.
3. The husband is the head of the household and the wife is the housewife.

Article 32 of the Marriage Law regulates position

1. Husband and wife must have a permanent residence
2. The house where the residence referred to in paragraph (1) of this article is determined by husband and wife together. Likewise Article 33, Husband and wife must love each other, respect, be loyal and provide physical and spiritual assistance to one another.

Article 34 states that:

⁷DR.TITIK TRIWULAN TUTIK,SH,MH Civil Law in the National Legal System 2015 page 111 (Kencana Prenada Media Group)

⁸DR.TITIK TRIWULAN TUTIK,SH,MH Civil Law in the National Legal System 2015 page 112 (Kencana Prenada Media Group)

1. The husband is obliged to protect his wife and provide everything necessary for household life according to his ability, and
2. The wife is obliged to manage household affairs as well as possible.
3. Position of Joint Assets in Marriage According to Indonesian Positive Law

Provisions regarding marital assets in Law Number 1 of 1974 are regulated in chapter VII with the title "marital property" which consists of three articles, namely articles 35, 36 and 37. In the provisions of Article 35 of Law Number 1 of 1974 it is explained that the marital assets consist of joint assets, inherited assets and acquired assets. Joint property is property acquired during the marriage bond and therefore becomes joint property of husband and wife. Because of its nature, the husband and wife can only act on joint property with mutual consent. Inherited assets are assets owned by each husband or wife before marriage while acquired assets are assets obtained by each husband and wife in the form of gifts or inheritance while in a marriage bond. Inheritance and acquired assets become the rights and are fully controlled by each husband or wife. Based on the sound of Article 35 paragraph (1) of Law no. 1 of 1974 basically states that joint property is property acquired during marriage between husband and wife. In Article 35 paragraph (1) it is not stated clearly about whose labor or work the joint property was obtained, whether the result of the work of the husband or wife. In this article, what is clear is that property acquired during marriage becomes joint property that is jointly owned by husband and wife without taking into account who works to produce these assets. In Article 35 paragraph (1) of Law Number 1 of 1974 it has been emphasized that property acquired during marriage is joint property, This means that the joint property is formed from the date of the marriage or from the time the marriage contract is held until the marriage is broken up either due to death or divorce. Provisions regarding an item or object including joint property or not is determined by factors during the marriage between husband and wife, all goods or assets acquired during the marriage become joint property except for assets obtained by each husband and wife in the form of inheritance, wills and grants by one party, this property becomes the personal property of the recipient.⁹

4. Property According to Positive Law in Indonesia

Assets are all assets that are tangible or intangible. Assets are also called assets, assets can be calculated in currency values to determine the amount of the value of these assets. According to the provisions of the marriage law, property acquired during marriage becomes joint property. From a formal juridical point of view, it can be understood that joint property is the property of husband and wife acquired during marriage.

Three kinds of Assets according to Law NO1. Year 1974 Article 35 paragraph (1) is:

1. The husband's personal property is the husband's innate property, namely that which was brought before marriage, and the assets obtained as gifts or inheritance
2. The wife's personal property is the wife's innate property, that is, what she has brought before marriage, property obtained as a gift or inheritance.
3. Personal property of husband and wife is property acquired either individually or jointly by husband and wife while in a marriage bond, without questioning whether it is registered in anyone's name.¹⁰

Meanwhile, according to the Civil Code, it has provisions that are different from the marriage law, namely: The Civil Code in Article 119 states that since the start of the marriage there has been a mixing between the husband's wealth and the wife's wealth, this decision is coercive and must be obeyed by the husband and wife.¹¹

⁹Khaira Ummah Law Journal Vol. 12. No. June 2, 2017

¹⁰Law NO1. Year 1974 Article 35 paragraph (1)

¹¹Civil Law Code Article 119

5. As a result of the breaking of the marriage bond

In essence, a marriage is carried out for a noble purpose, but for certain reasons that can break the marriage bond.

1. According to article 38 of Law Number 1 of 1974 concerning Marriage, three things can break up, namely: Death
2. Divorce and
3. By Court Decision

Meanwhile according to the Civil Code regarding the dissolution of marriage ties it is also regulated in articles 199,200-206b,207-232a and 233-249

Regarding divorce, it is also emphasized that divorce can only be carried out before a court hearing after the court concerned has tried and failed to reconcile the two parties. And even then there must be sufficient reasons that the husband and wife will not be able to reconcile as husband and wife¹²

As for explaining the breakup of the marriage bond as follows:

1. Consequences of Dissolution of Marriage due to Death

Death is a condition that cannot be avoided in human life. Death in marriage is an event where one of the parties or both parties who become a legal subject in marriage dies.

In this case, if the marriage is broken up due to the death of one of the parties, the property acquired during the marriage will be transferred to the family left by inheritance.¹³

2. Consequences of Dissolution of Marriage due to Divorce

In reality, the principles of marriage are often not carried out, so that the husband and wife no longer feel harmonious and harmonious and lost a sense of mutual love for each other, the worst consequence is divorce.

Article 209 of the Indonesian Civil Code outlines several reasons that can result in divorce.

Meanwhile, Article 41 of the Marriage Law contains several matters resulting from the dissolution of a marriage due to divorce, including;

- a. Both mother and father are still obliged to care for and educate their children, solely based on the interests of the child; if there is a dispute over the control of children, the court gives its decision;
- b. The father is responsible for all the costs of raising and educating the child; if the father is unable to fulfill this obligation, the court may determine that the mother must share these costs;
- c. The court can oblige the ex-husband to provide living expenses and determine an obligation for the ex-wife.

In the event that a marriage is broken up due to divorce, then assets are regulated according to their respective laws, the meaning of the disclosure of the article explains that what is meant by "their respective laws" are religious law, customary law and other positive laws.

3. Dissolution of marriage due to court decisions

The breakup of a marriage due to a court decision is caused by several factors, namely:

1. There is someone who leaves the joint residence

¹²UU no. 1/1974 Article 39 paragraph (1) and (2).

¹³Civil Law Code Article 127

2. There is a request or lawsuit from one of the husband's parties against the wife or family members who do not agree with the marriage being carried out.

As a result of divorce, both father and mother are still obliged to look after and educate their children, solely based on the interests of the child. In this case, the power of parents according to Law No. 1 of 1974 is single. That is, even if a divorce occurs, the power of parents over children who are still underage continues, does not turn into guardianship as stipulated in the Civil Code (article 298- 299).¹⁴

Guardianship does not arise after a divorce, guardianship according to the Marriage Law is for children who have not reached the age of 18 or have not yet married, who are not under parental authority. Those who are under parental authority are legitimate children who are not yet 18 year.¹⁵

Analysis of Decision Number 742/PDT.G/2017/PN MDN

Seftirna Evina Sinambela, better known as Evina Sinambela, a housewife, married Donald Prikando Simanjuntak, better known as Doland Simanjuntak on 21 November 2016 before the Medan High Court, declared officially divorced. The continuity of Evina Sinambela's household with Donald Simanjuntak did not last long, then there was continuous conflict in their marriage.

Evidence that they are divorced has issued a quote from the Divorce Deed No.1271-CR-08112017.003 dated 9 November 2017 by the Head of the Medan City Population Service. That Divorce often leaves problems, especially the issue of children's rights and joint property. In the case of children, the fulfillment of children's rights is still found that some parents have not fulfilled them, in this case the plaintiff Evina Sinambela as the winner of child custody did not optimize and maximize the application of her child's rights. such as education costs, child care, housing and other supporting facilities. Especially if parents already have a new family so that it is possible to reduce the time to fulfill their children's rights. As a result of divorce, the child's psychology can change, which results in children rarely or even not wanting to communicate with their parents, children tend to be lazy, quiet, insecure and tend to be naughty. Recognizing the importance of the position of children, the government issued laws on children's rights, for example in Law Number 1 of 1974 concerning marriage, Law Number 4 of 1979 concerning child welfare, the Convention on the rights of the child as outlined in Decree Number 36 of 1990 , Presidential Instruction No. 1 of 1991 concerning complications of Islamic law, Law No. 39 of 1999 concerning human rights, Law No. 23 of 2002 concerning child protection. which results in children rarely or even unwilling to communicate with their parents, children also tend to be lazy, quiet, insecure and tend to be naughty. Recognizing the importance of the position of children, the government issued laws on children's rights, for example in Law Number 1 of 1974 concerning marriage, Law Number 4 of 1979 concerning child welfare, the Convention on the rights of the child as outlined in Decree Number 36 of 1990 , Presidential Instruction No. 1 of 1991 concerning complications of Islamic law, Law No. 39 of 1999 concerning human rights, Law No. 23 of 2002 concerning child protection. which results in children rarely or even unwilling to communicate with their parents, children also tend to be lazy, quiet, insecure and tend to be naughty. Recognizing the importance of the position of children, the government issued laws on children's rights, for example in Law Number 1 of 1974 concerning marriage, Law Number 4 of 1979 concerning child welfare, the Convention on the rights of the child as outlined in Decree Number 36 of 1990 , Presidential Instruction No.

¹⁴Article 24 Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning Implementation of Law Number 1 of 1974

¹⁵M.Yahya Harahap in Abdul Manaf, Op.cit 2006 .pg 59

1 of 1991 concerning complications of Islamic law, Law No. 39 of 1999 concerning human rights, Law No. 23 of 2002 concerning child protection.¹⁶Fathers and mothers are obliged to care for and educate their children who are not yet mature, even though the right to assume parental authority or the right to be a guardian is lost. However, it is not a burden that they do not provide an allowance equal to their income to finance the maintenance and education of their children¹⁷

For this reason, in the decision, the author sees that the plaintiff, namely Evina Sinambela, did not give children's rights to Nathania Karenza Simanjuntak, namely not sending them to school, even though the plaintiff as the holder of custody had promised the defendant, namely Donald Simanjuntak, that he would implement homeschooling at home, but only made promises in his mouth. For this reason, the author also feels that the child was abandoned by the mother, this can be a bad project for the future of the child, in accordance with Article 49 of the PKDRT Law paragraph (1) and paragraph (2) can be sentenced to a maximum imprisonment of 3 (three years) or a maximum fine of Rp. 15,000,000.00 (fifteen million rupiah).

In the matter of joint property in this decision, the plaintiff sued the defendant because the joint property is in the form of land, which is actually the object of the case, it is not clear

Whereas according to the decision of the Supreme Court No. 1149 K/Sip/1975 dated 17 April 1971 which stated "because a claim does not clearly state the location of the disputed land, the claim cannot be accepted".

The plaintiff's basis for reporting the defendant was because the plaintiff doubted the good faith of the defendant who said the property in the form of a plot of land would be divided, in fact the defendant until the time the plaintiff reported the defendant the joint property had not been divided, while the reason the defendant did not want to share was because the defendant wanted the property to be donated to the defendant's children and the plaintiff for education capital because until now the plaintiff seems to have abandoned their child because they were not given an education, it is on that basis that the defendant wants to give the property to the child for education and success capital so that he can finance his own life. Or at least the property is divided by 4, namely $\frac{1}{4}$ for the plaintiff, $\frac{1}{4}$ for the defendant, and $\frac{1}{2}$ for the two children of their marriage.

According to the author, this cannot be realized because it is in accordance with Supreme Court Regulation No. 2253 K/Pdt/1984 "That the division of assets with husband and wife due to divorce even though there are children born out of marriage, the division is not into 3 parts, but is divided into 2 parts which are the same" between the divorced husband and wife, the children do not yet have rights because their parents are still alive.¹⁸

IV. CONCLUSION

As a result, the dissolution of this marriage bond has an extraordinary impact, the most important of which is the problem of husband-wife relations, distribution of joint assets, maintenance, and maintenance for the survival of their children. The reasons for divorce that can be accepted by the Panel of Judges are regulated based on Government Regulation Number 9 of 1974 concerning the implementation of Law Number 1 of 1974 concerning Marriage and Complications of Islamic Law.

The basic considerations of the Panel of Judges at the Medan District Court in dividing joint assets have been based on a sense of justice, because the division of assets goes

¹⁶Mufidah, Ch. Psychology of Gender-oriented Islamic Families(Malang: UIN Press, 2008), pp. 340-341

¹⁷Hilman Hadikesuma, Indonesian Marriage Law, Mandar Maju, Bandung, 2007, page 131

¹⁸Supreme Court No.2253 K/Pdt/1984

back and forth between husbands and wives for the purpose of protecting the wife, because in general in Indonesian society those who seek wealth are usually the husband while the wife takes care of the household and children, so that in the event of a divorce the wife's life insurance can be maintained, after becoming a widow before getting a new husband, so the ex-wife who is divorced is not abandoned. So of course it should be based on the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 424.K/Sip.1959 dated December 9, 1959 that the judge's decision was very formal so as to provide a genuine sense of legal certainty, while at the same time achieving the goal of the decision itself to create public justice.

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