

FAMILY DISPUTE RESOLUTION IN CIVIL LAW: AN ANALYSIS OF DIVORCE AND THE DIVISION OF JOINT MARITAL PROPERTY

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ABSTRACT

Family disputes are one of the common types of civil disputes, especially those related to divorce and the division of joint property (gono-gini). In Indonesian civil law, the resolution of family disputes is regulated by the Civil Code (KUH Perdata), Marriage Law No. 1 of 1974, and the Compilation of Islamic Law (KHI) for Muslim couples. This study uses a normative juridical method with a qualitative approach to examine the laws and regulations governing the resolution of family disputes, particularly concerning divorce and the division of joint property (gono-gini). According to Article 119 of the Civil Code, marriage automatically establishes joint property between husband and wife unless a marriage agreement is made beforehand. The most fundamental consequence of the dissolution of marriage is the issues regarding the husband-wife relationship, division of joint property, alimony, and child custody for the welfare of their children. Legal education is important in increasing public awareness of their rights, obligations, and the legal procedures they must follow. The resolution of family disputes related to divorce and the division of joint property in Indonesia is comprehensively regulated through various laws, including the Civil Code, Marriage Law No. 1 of 1974, and the Compilation of Islamic Law (KHI), particularly Article 86 in the context of Islamic law.

Keywords: Family Law, Divorce, Joint Property (gono-gini), Property Division, Mediation, Justice, Women's Rights, Regulation, Conflict.

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INTRODUCTION

Family disputes are among the most common types of civil disputes, especially those related to divorce and the division of joint marital property (commonly called *gono-gini*). In Indonesian civil law, the resolution of family disputes is governed by the Indonesian Civil Code (KUHPerdata), Law No. 1 of

1974 on Marriage, and the Compilation of Islamic Law (KHI) for Muslim couples (Putri and Wahyuni 2021). Joint property in Marriage is regulated under Law No. 1 of 1974 on Marriage. Disputes regarding joint marital property (*gono-gini*) are sensitive matters that often lead to conflicts between divorced husbands and wives, who legally are both entitled to a share of the joint property (Limbong, Siregar, and Yasid 2023).

Many studies have explored the division of joint property after divorce. These studies highlight various aspects. Normatively and juridically, it has been found that, first, if the Marriage ends in divorce, the joint property (*gono-gini*) shall be divided according to the applicable laws. Second, couples need to make prenuptial agreements to limit or exclude joint ownership as stated in the Marriage Law. The division of joint property after divorce is based on Article 36 of the Marriage Law, where the husband and wife may divide the property based on mutual consent and deliberation, considering their equal standing in Marriage. Alternatively, the division may follow other mutually agreed arrangements. This joint property is regulated in Law No. 1 of 1974 on Marriage (Chapter VII on Property in Marriage, Article 35), the Indonesian Civil Code (Article 119), and the Compilation of Islamic Law (Article 85) (Muttaqin and Usqak 2020).

The division of joint property in Marriage is carried out after a divorce ruling. According to the Compilation of Islamic Law, Article 97 stipulates that joint property should be divided equally, with each spouse receiving half. Meanwhile, under the Civil Code, the division is determined based on the evidence presented by the plaintiff and the defendant. Judges consider two main principles when making decisions in such cases under KHI: deliberation and justice. The duties and roles of the Religious Court in resolving joint property cases include receiving, examining, adjudicating, and settling cases brought by the plaintiff. In dividing joint property, judges typically allocate equal halves ($\frac{1}{2}$) to each party. However, judges are not always bound strictly to the provisions of the law; they must consider justice since judges may act on the principle of *contra legem* (Anindya Harimurti 2021).

Article 126 of the Civil Code provides that divorce results in the dissolution of joint property, which must then be divided between the husband and wife. In line with the concept of joint marital property, as outlined in Law No. 1 of 1974 and the Civil Code, the Compilation of Islamic Law adopts a similar definition. In the Compilation of Islamic Law, joint marital property is referred to as *syirkah*, meaning property acquired either individually or jointly by the spouses during the Marriage, regardless of whose name the property is registered under. When Law No. 1 of 1974 on Marriage was enacted, the authority to adjudicate disputes over joint property for Muslims initially became a point of contention. Articles 35 and 36 of the law do not explicitly state that such disputes should be resolved in Religious Courts (Nagara 2016).

In essence, the division of joint property in marriage after divorce is generally carried out fairly and equally between the husband and wife, per

Article 128 of the Civil Code. This equitable distribution aims to avoid injustice in determining each party's rights. If a dispute arises regarding joint property, the matter may be brought to court as one means of resolution as in Case No. 2867/Pdt.G/2023/PA.JT, where the dispute was settled amicably through family deliberation. Provisions on the division of joint property are based on the circumstances surrounding the marriage, such as death or divorce (Sedyo et al. 2024).

Disputes over joint property between spouses may also arise due to differences in opinion, potentially leading to conflict. Such situations can result in an imbalance in property ownership, necessitating policies that ensure fairness for both parties. Neither party wishes to be embroiled in a dispute that adversely affects their marriage, resulting in unfair outcomes in the division of joint property. Therefore, both parties expect a fair resolution and clear legal guidelines to resolve marital asset disputes (Muttaqin and Usqak 2020).

The division of joint property becomes even more complex in marriages not legally registered with the state, such as *Siri* marriages. As previously mentioned, *Siri* marriages, though valid under religious law, do not have legal force. Consequently, disputes arising from such marriages often disadvantage women. This issue is worthy of deeper study and analysis, considering that *Siri* marriages remain prevalent in our society (Mushafi and Faridy 2021).

It is important to note that the resolution of joint property (gono-gini) disputes is not solely about the material division of assets but also involves consideration of the long-term social and economic impacts on the parties involved, especially when children are involved. Therefore, a holistic approach that integrates legal, psychological, and social aspects is essential in resolving joint property disputes (Hakim (2024); Soleh (2024)).

According to Pradoto (2014), judicial considerations affect the division of joint property in Decision No. 0690/Pdt.G/2011/PA.Klt, reviewed in light of the Compilation of Islamic Law. Implicitly, Article 97 of the KHI regulates the proportional division of joint property where each party is entitled to half applied. A fair division of joint property can bring peace to the lives of divorced couples. Islam teaches that life's problems should be resolved with justice, including matters of joint property division. If not handled justly, disputes over joint property will only lead to further conflict.

According to Sarmad (2024) most people who enter into marriage generally do not consider the implications of marriage on their wealth and assets, as they tend to focus more on family law aspects. This situation is understandable, as people marry not only to build a happy family but also to ensure that family life can continue in the long term. Therefore, the existence of property within a marriage is essential. For this reason, the legal relationship between family law and marital property law between husband and wife cannot be separated but can only be distinguished.

According to ARANI (2006), The role of judges in resolving disputes over joint marital property (harta gono-gini) is closely tied to their fundamental functions: receiving, examining, adjudicating, and settling every case submitted to them. Judges serve as the final recourse for those seeking justice and are regarded as wise and knowledgeable in the law. They often become a source of

guidance for the public on various legal matters. Judges are expected to provide thoughtful consideration based on their high legal expertise, integrity, and authority level.

Judges play a highly significant role in resolving joint marital property disputes. They are responsible for ensuring that the distribution of marital property is conducted fairly and equitably. Judges are expected to deliver justice to the parties involved in the dispute through their decisions.

RESEARCH METHOD

This study employs a normative juridical method with a qualitative approach, aiming to examine the laws and regulations governing the resolution of family disputes, particularly those related to divorce and the division of joint marital property (*gono-gini*). The data used in this research are secondary data, including primary legal materials such as Law No. 1 of 1974 on Marriage, the Indonesian Civil Code (KUHPPerdata), and the Compilation of Islamic Law (KHI), as well as secondary legal materials in the form of scholarly articles, books, and court decisions. In addition, literature searches were conducted through internet browsing to obtain relevant and up-to-date legal information.

RESULTS AND DISCUSSION

1. Legal Basis Governing Divorce and Joint Marital Property (Gono-Gini)

Marriage is a union in which two individuals come together, each with numerous differences. These differences may include physical traits, family upbringing, social interactions, perspectives, educational backgrounds, etc. Law Number 1 of 1974 on Marriage also regulates matters related to property within a marriage. There are two types of property in a marriage: separate and joint marital property.

Separate property refers to assets owned by either the husband or the wife that were acquired before the marriage or obtained through inheritance or as a gift. As emphasized in Article 35 paragraph (1) of Law Number 1 of 1974 on Marriage, joint marital property is defined in the same law and article as property acquired by the husband and wife during the marriage. Any property obtained outside the period of marriage is not considered joint property (Mutmainna, Karim, and Syahril 2021).

In the Indonesian Civil Code (KUHPPerdata), Article 119 states that establishing a marriage automatically creates joint property between the husband and wife unless a prenuptial agreement has been made beforehand. Article 126 explains that joint property includes all income, earnings, and business profits acquired during the marriage. In the event of a divorce, Article 128 stipulates that the joint property shall be divided fairly between the husband and wife unless otherwise specified in a prenuptial agreement. These provisions highlight the importance of legal protection for each party's rights in a marriage.

The Compilation of Islamic Law (Presidential Instruction No. 1 of 1991), in Article 85, states: "The existence of joint property in marriage does not preclude the possibility of each spouse having individual property." This article affirms the existence of *gono-gini* (joint marital property) within a marriage. In other words, the Compilation of Islamic Law supports the concept of property

union in marriage; even though joint ownership exists, there remains the possibility for both husband and wife to own separate property.

Articles 86, paragraphs (1) and (2) of the Compilation of Islamic Law reaffirm that: "In principle, there is no commingling of property between husband and wife due to marriage" (paragraph 1). Paragraph (2) further emphasizes that, in principle, the wife's property remains her own and is entirely under her control. Likewise, the husband's property remains his own and is entirely under his control. According to the author, Articles 86 (1) and (2) of the Compilation of Islamic Law contradict the previous provision (Article 85). Upon closer analysis, the provisions in Article 86 are more informative, indicating that under Islamic law, the concept of *gono-gini*, a union of property between husband and wife, is not formally recognized.

2. Legal Consequences of Divorce

Although marriage is intended to last forever, there are times when certain circumstances cause disputes within the marriage, making it impossible to continue. Disputes in marriage can arise from internal or external factors, which, if not appropriately resolved, may lead to further problems such as infidelity by the husband or wife and neglect of their children.

The primary consequences of the dissolution of marriage concern the relationship between husband and wife, the division of joint property, and the provision of maintenance and care for their children's survival. Divorce is not explicitly defined in Law Number 1 of 1974 on Marriage; however, this does not mean that divorce is prohibited. Since the purpose of marriage is to establish a happy and lasting family until the end of life, the law adopts the principle of making divorce complicated to occur (Nunung Rodliyah 2014).

However, if divorce cannot be avoided, it must be carried out through the legal procedures established by law. Law Number 1 of 1974 stipulates that divorce can only be conducted in a court session after the court has attempted but failed to reconcile both parties. In this case, the division of joint property becomes one of the important aspects that must be resolved. According to Articles 119, 126, and 128 of the Civil Code, property acquired during the marriage is considered joint property and must be fairly divided in the event of a divorce unless there is a prenuptial agreement stating otherwise. These provisions aim to provide legal certainty and protect each party's rights, including the children.

3. Dispute Resolution Process

"Mediation is not easy to define," as a way to explain mediation. This is because mediation does not provide a single model that can be described in detail and distinguished from other decision-making processes. Etymologically, mediation comes from the English word *mediation*, which means resolving disputes through intervention. A mediator is a person who acts as an intermediary in resolving conflicts.

Normatively, the legal basis for mediation in Indonesia is found in the following regulations: First, Article 130 of the *Herzien Inlandsch Reglement* (HIR) and Article 154 of the *Rechtsreglement Buitengewesten* (Rbg), which regulate peace institutions. Judges must first attempt reconciliation between the disputing parties before examining the case. Second, Supreme Court Circular

(SEMA) No. 1 of 2002 concerning the Empowerment of Peace Institutions. Third, Supreme Court Regulation (PERMA) No. 2 of 2003 concerning Mediation Procedures in Court. Fourth, PERMA No. 1 of 2016 concerning Mediation Procedures in Court. Fifth, PERMA No. 1 of 2008 concerning Mediation Procedures in Court (Zahid 2020).

Mediation is an alternative dispute resolution method that emphasizes deliberation with the assistance of a neutral third party, called a mediator. In divorce cases, mediation is a mandatory stage before the case proceeds to court examination, as regulated in Article 130 of HIR, Article 154 of RBg, and reinforced by Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in Court. The main objective of mediation is to reconcile the parties so that divorce can be avoided if there is still a possibility to maintain the marriage. If mediation fails, the case will proceed to trial. Through mediation, dispute resolution is expected to be achieved peacefully, efficiently, and with the preservation of good relations between the parties.

4. Challenges in Property Division

In practice, the division of joint property (*gono-gini*) often does not proceed by existing legal provisions. Many wives struggle to claim their rights to joint property, especially in divorce cases. Wives must be aware of their rights and seek legal assistance if necessary. Mediation and counseling can also be reasonable solutions for resolving disputes over joint property. According to Suhendra, A. (2021), the wife's position in the division of joint property under Islamic family law and the Marriage Law in Indonesia acknowledges women's rights. However, challenges remain in its implementation, especially within cultural contexts that do not always support gender equality. Therefore, education and advocacy regarding women's rights in marriage are crucial to ensure fairness in the division of joint property (Don et al. 2024).

One of the main issues is the difficulty in determining the value and types of assets included in the joint property, mainly when movable and immovable assets are acquired during the marriage. Additionally, disputes often arise regarding the proof of the origin of the assets—whether they were obtained before or during the marriage—which affects the ownership rights of each party. Another complicating factor is the existence of prenuptial agreements that may not be fully known or understood. These conditions make dividing assets complex and require careful legal handling to ensure the fair division complies with legal provisions.

5. Efforts for Protection and Legal Education

Legal protection efforts for women after divorce at the Belopa Religious Court include ensuring that the rights of women and children are protected by ordering the husband to provide alimony, fairly dividing joint property (*gono-gini*), and ensuring that the children have clear custody rights (Muhctar 2025). Legal education is important in raising public awareness about their rights, obligations, and the legal procedures they must follow. Through outreach, seminars, and socialization efforts conducted by the government and non-governmental organizations, the community can better understand the importance of resolving disputes peacefully and the mediation procedures recommended before taking legal action. This education helps prevent prolonged

conflicts and minimizes errors in legal processes, enabling the public to make informed and responsible decisions in resolving legal issues.

CONCLUSION

The resolution of family disputes related to divorce and the division of joint property (gono-gini) in Indonesia is comprehensively regulated through various regulations, including the Civil Code (KUH Perdata), Marriage Law No. 1 of 1974, and the Compilation of Islamic Law (KHI). In the context of Islamic law, notably KHI Article 86, the concept of joint property (gono-gini) is not recognized, so the division of property after divorce must follow Indonesian positive law provisions emphasizing justice and mediation procedures as an initial step in dispute resolution. The main challenges in property division include determining the value and origin of assets and prenuptial agreements. Therefore, protecting women's rights and legal education are crucial to preventing prolonged conflicts and ensuring a fair resolution process. Peaceful dispute resolution through mediation is mandated as a compulsory stage before court proceedings to maintain good relations and justice for all parties involved.

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