

## Civil Law and Juridical Aspects in the Distribution of Marriage Joint Property

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### Abstract

*In a marriage, there is a mechanism that must be borne by both parties if a divorce has occurred, including the distribution of joint property or what we often know as 'gono gini' assets. This study uses a descriptive method with a qualitative approach and data triangulation analysis, the results of the study explain that the distribution of joint property in marriage is decided based on the Constitution as the legal basis that regulates the mechanism of the divorce process, court decisions require husband and wife to divide their marital property equally, fair and unanimous, because in its stipulations Gono Gini property is an asset that is produced from marriage wealth, the law is absolutely joint property and is used for household purposes, so the conclusion is that the process of dividing joint assets resulting from marriage can be used jointly, but the innate property of each of the proceeds before the legal marriage becomes private property.*

### Keywords

property; marriage;  
civil law



### I. Introduction

Marriage is a physical and spiritual bond that occurs between a man and a woman to unite them in a husband and wife bond, in every marriage, of course, it does not only involve a man and a woman, but more than that, there are legal consequences that must be followed, borne by the husband and wife, including children, as well as jointly owned inheritance (Al-Mashri, 2016; Usman, 2017; Rahman et al, 2020).

Marriage is the process by which two people make their relationship public, official, and permanent. It is the joining of two people in a bond that putatively lasts until death, but in practice is increasingly cut short by divorce. Over the course of a relationship that can last as many as seven or eight decades, a lot happens. Personalities change, bodies age, and romantic love waxes and wanes. (Jamaluddin, 2018)

Marriage according to Nowan, is an expression of faith, that is, there is a union of two different bodies and individuals, in which a person places the meaning and happiness of his life in someone else. According to Blood (1969), marriage itself is a unitary role of elements that are bound to interact with each other and influence each other. If one experiences obstacles or does not carry out its role there will be inequality so that sometimes other elements must replace to carry out this role. (Batubara, M. et al, 2019)

In times like today, there are so many marriages that must end in divorce, the sacred marriage contract is no longer considered something sacred, holy, maybe the meaning of marriage in this era of globalization has changed, and divorce is a taboo and has become public consumption and can be used as a means to increase prestige or popularity especially among artists, public figures, and upper middle class people, "The law of marital property is a legal regulation that regulates the consequences of marriage on the assets of husband and wife who have married" (Satrio, 1993; Dewi et al, 2011; Srisudanti et al, 2013).

So it can be said that divorce is happening more and more not only among ordinary people, but also occurs a lot among the intellectual class community, so related to the existence of a divorce process, a family must bear the legal burden that must be resolved both religiously and legally. according to civil law, for this reason, the Indonesian state expressly regulates a divorce process in the form of civil law as stipulated in Law No. 1 of 1974 concerning Marriage which was promulgated on January 2, 1974, which came into effect on October 1, 1975, and Article 126 of the Civil Code stipulates that divorce results in the dissolution of joint property so that the joint property must be divided between husband and wife. Along with the definition of marital joint property as regulated in Law Number 1 of 1974 and the Civil Code, the Compilation of Islamic Law also regulates the notion of joint property which is the same as adopted in Law no. 1 of 1974 and the Civil Code above (Achmad W, 2021).

Shared assets of marriage in the Compilation of Islamic Law are termed "syirkah" which means assets obtained either individually or with husband and wife during the marriage bond, without questioning whether it is registered in anyone's name Hilman Hadikusuma (2009) explains the legal consequences relating to joint property Based on Article 37 of the Marriage Law, it is left to the divorced parties about which law and what law will apply, and if there is no agreement between the ex-husband and wife, the judge can consider according to a reasonable sense of justice, thus, the consequences of a divorce on property for each person can be different, depending on what law and which will be used by the parties to regulate joint property.

Basically, the problems surrounding joint property or gono gini in the perspective of Indonesian society are still considered taboo, often ordinary people only look down on the issue of gono gini ini assets, usually husband and wife will question the joint property after there is a divorce decision from the religious court institution. In fact, there are often disputes between the two regarding the distribution of assets, and even worse, there is one party who complicates the distribution process even though this point is clearly stated in Law Chapter VII Article 35 of the Marriage Law which regulates property in marriage. There is a provision in Article 35 of the Marriage Law which stipulates that, Paragraph (1) stipulates: "Wealth acquired during marriage becomes joint property",

When viewed in customary law, what is meant by gono gini property or marital property are all assets owned by husband and wife as long as they are bound by marriage.a marriage bond, including in relation to individual assets derived from inheritance, grant assets, income assets, and including items purchased jointly, gono gini assets are considered as capital assets owned by a husband and wife to finance all household needs. Then the property must be divided equally in accordance with applicable legal procedures, during the process both parties must act professionally, fairly, and not act against the law, which includes joint property in marriage including assets acquired during the marriage, Furthermore, the property obtained as a gift, or inheritance is also about debts and receivables that arise during the marriage, except for the personal property of each partner (Darmabrata et al, 2016:).

Divorce is indeed a very big disaster for those who really crave a relationship that is eternal, eternal and certainly far from all the problems that will result in a divorce, so if the divorce process has entered the realm of law, the settlement of the distribution of assets should be done. Gini is done in an orderly way, one of which is through deliberation to reach peace and consensus, the process is felt to be very helpful and provides many solutions, because the purpose of the division of property is not to make the husband and wife into disagreements and misunderstandings, but if viewed from a different angle, Islamic law

prioritizes deliberation and consensus as a way out to avoid debate between the two. Because most married couples who have been divorced will be busy with problems surrounding the gono gini property, the term ono gini itself is actually, is a legal term that is popular in society. In the Big Indonesian Dictionary, the term used is "gana-gini", which legally means "Wealth that has been collected during the household so that it becomes the right of both husband and wife, but in other concepts regarding joint property or gono gini is a tradition. Javanese as "a child with only two siblings, a boy and a girl (from one father and one mother)." The term "gono gini" was later developed as a concept of the union between a man and a woman in marriage (Adillah, 2016; Supriyatni et al, 2021).

Of course, in order to better understand the meaning of Gono's property, it's good religion or civil law, there is a need for a basic understanding of how the distribution of joint property is in accordance with applicable provisions and procedures and after the divorce process does not cause ongoing problems, because in fact the distribution of property or inheritance is desired by religion and the law. is a fair, prosperous and mutually beneficial distribution between the two parties, the number of married couples who are at odds over the property is due to a lack of public knowledge about the law and the basics in the process of dividing inheritance, as a result, many monopolistic practices are found which have a very bad impact. for the two spouses who are carrying out the process of dividing the assets of Gono Gini in court, For this reason, in order to avoid all forms of injustice in the distribution of inheritance, as well as everything related to marital property, it is necessary to have an understanding of the legal basis that is appropriate, valid and consensus (Fitri, 2021).

Regarding the problem of treasure gono gini which is now starting to be familiar to the ears of the Indonesian people, in fact the concept comes from a custom or habit of an area that began to develop and become popular in almost all regions in Indonesia, and in the end the method began to be supported and applied in Islamic law and civil law, both academically and juridically, but still in the corridor and based on the provisions and guidelines of the 1945 Constitution. The problem of the distribution of property going on, in fact, will not occur if it is resolved with the legal standards that have been set, but all of them back again to the principles and egos of each couple in conflict, whether the distribution of property brings consensus physically and spiritually or can otherwise bring disaster after marriage, so that one of the problems after divorce is usually a married couple questioning their wealth, property together (Gono gini), each other's property. Conflicts over the distribution of assets gono Gini for married couples are at risk if the distribution is not effective and fair (Susanto, 2008; Himansyah, 2020).

The aims and objectives of this study are to find out how, aspects of the division of joint property according to the view of civil law. Some references and also previous research that the researcher used in the preparation of this study were, Effectiveness of Distribution of Assets gono gini Post-Divorce in Juridical Sociology Perspective, This study uses a normative juridical research method, and is prescriptive. The results of this previous study explain that, joint property is not mixed in marriage, but in article 97 the explanation for the division of assets is divided into two. The regulation of the Marriage Law No. 1 of 1974 concerning Joint Assets does not regulate the limits on the distribution of joint assets in the event of a divorce.

The next research is entitled Joint Property Law Judging from the Perspective of the Marriage Law and the Civil Code, this study was compiled by Evi Djuniarti using normative research methods, or library research, and the results of this previous study explained that according to the provisions of the marriage law that property obtained during the marriage become joint property. In formal juridical terms, it can be understood that the definition of joint property is property of a husband and wife obtained during marriage. Meanwhile,

according to the Civil Code based on the Maritale Macht Principle, then Article 124 paragraph (1) and paragraph (2) of the Civil Code stipulates that, "The husband himself must take care of (beheren) his own marital assets, without the intervention of the wife, the husband is allowed to sell , transfer and burden. The conclusion of the research is that property with individual rights cannot be owned, cannot be combined. All property obtained from the birth of the parties before the marriage can be used together for common interests in the household.

The next research is entitled, Juridical Analysis of Joint Assets (Gono Gini) in Marriage According to the View of Islamic Law and Positive Law, this research is different from other research, because it uses descriptive research methods in qualitative form. Gini must be clear because based on positive law in force in Indonesia, what may be shared between husband and wife is only limited to the assets of gono gini as long as other matters or a marriage agreement are not specified (Rochaeti, 2015).

Based on the positive law in force in Indonesia, these gono gini assets are regulated in Law no. 1 of 1974 concerning marriage, chapter VII concerning property in marriage, article 35, the Civil Code Article 119 and the Compilation of Islamic Law (KHI).

The last research entitled Juridical Review of the Distribution of Joint Assets Obtained During Marriage (Analysis of Decision No. 2191/PDT.G/2018/PA.MEDAN), this research was compiled by Kurniawan (2021) using a qualitative approach, and the results of this previous study explain that, Joint assets according to articles 96 and 97 of the Compilation of Islamic Law are assets obtained during the marriage bond remain joint property, because when the marriage is dissolved, both will remain have the same rights to the said property except for the cases mentioned above. Joint assets are obtained as a result of gifts from the husband's parents and not from the wife so that the evidence and witnesses as well as confessions all support the existence of the property. Religious court judges in deciding the case have used the applicable laws and regulations in their legal considerations, namely Law Number 1 of 1974, Law Number 7 of 1989 as well as compilations of Islamic law,

After observing several previous studies as a reference for researchers in formulating research on aspects of the division of joint property according to civil law views, the researchers found an equation that describes previous research with the research being researched, namely, both raised topics and discussion material about aspects of distribution. marriage property or gono gini which is studied in the perspective of civil law, but the researchers also found a difference in further discussion, namely in previous studies there were points about aspects of the division of inheritance in terms of religion, specifically the view of Islam in looking at the division of inheritance. according to the law of the Qur'an, the Qur'an and the hadith. So in this context the researcher can conclude several points of basic similarities and differences between previous research and research this.

## **II. Research Method**

This study uses a qualitative approach so that the research results are analyzed descriptively, this approach emphasizes data quality so that in the preparation it is required to determine quality data and materials according to the issue (Ashshofa, 2007; Rahayu, 2020; Ali, 2021). The data collection method is a technique used by observation, interviews, literature studies to documentation studies must be based on research relevance, a review of civil law in the analysis of the distribution of property in marriage provides two primary and secondary data results.

### III. Result and Discussion

Based on the results of the research that has been done, by using the observation method on several articles related to the topic of discussion of the aspects of the division of joint property according to the view of civil law, by evaluating and also analyzing the data found in the field, it can be concluded some results and also careful discussion found, namely:

#### 3.1. The Position of Joint Assets in the View of Civil Law

Joint assets are assets that are produced by a husband and wife through a marriage bond, joint property or what we often know as treasure gono gini is wealth that must be divided fairly according to the law and applicable laws, in the process The distribution of gono gini assets is carried out through a religious court after the judge's decision to issue a divorce suit, either directly by the plaintiff or through the services of a lawyer, but the mechanism in deciding the distribution of joint assets must be based on a legal divorce lawsuit decision from the religious court, because one of the parties is concerned or even proven to have lost joint property with a separate application through a joint property lawsuit. Of course, all assets that are collected together during the marriage process are legally owned together, both in the form of money and in the form of objects, of course this explanation is in line with the sound of Marriage Law No. 1 of 1974 Article 35 paragraph (1), it is stated that what is meant by joint property is "Property obtained during the marriage period". This means that assets obtained before the marriage is not referred to as joint property.

Divorce law becomes valid if a marriage is not in line with the provisions of religion and state law, then the process is continued in a legal step for further study, by delegating case files that have been signed by both parties, in the next stage the judge as the party authorized in deciding the divorce decision has reviewed legally through the legislation, then with the descent of the decision the divorce process can be said to be valid, according to Budi Susilo (2009) choosing to divorce means having to face the court. Because the process of filing a divorce lawsuit that is legal according to law, can only be reached through the courts (Saebani et al, 2011; Pradoto, 2017; Padang, 2018).

When the dispute has already been decided in the trial, other legal consequences will be involved including the distribution of joint assets in it, where the distribution of assets is part of the law that must be carried out fairly and does not cause divisions between the two parties, because basically Joint assets are assets that are absolutely legally distributed after the divorce process is carried out, including assets that are purchased together and are in the form of objects. which is used when establishing a marriage, no matter using the wife's money or money especially related to marriage law and ownership of property rights in Indonesia. With the decision of the Constitutional Court, marriage law in Indonesia has experienced significant developments, which initially only entered into a marriage agreement before or at the time of marriage, but now it can be done during the marriage period, and is valid since the marriage is held and the marriage agreement can also be changed/renewed during the marriage . This provision does not apply specifically to mixed marriages, but to all marriages in general. and is valid since the marriage is held and the marriage agreement can also be changed/renewed during the marriage period. This provision does not apply specifically to mixed marriages, but to all marriages in general. and is valid since the marriage is held and the marriage agreement can also be changed/renewed during the marriage period. This provision does not apply specifically to mixed marriages, but to all marriages in general.

The determination of the distribution of the assets of gono gini is not carried out unilaterally but is carried out by deliberation and ends in consensus because everything must



be based on applicable law, as stated in Article 119 The Civil Code stipulates that, starting from the time the marriage takes place, legally there is a unanimous union between the wealth of husband and wife, only regarding this with a marriage agreement, not with other provisions. The union of assets as long as the marriage is carried out and may not be abolished or changed with an agreement between any husband and wife.

However, in a different article, there is a difference between inheritance in a family, where the property is divided into two types, the first is inherited property, and the second is joint property. Fundamental assets, which are classified as innate assets here include, assets brought by each partner for their efforts or results and for themselves, both those brought by the wife and those brought by the husband are basically the same as included in the inheritance, but if before marriage there has been a mutual agreement concerning the innate property, it is fitting for both parties to conduct deliberation first before the property is distributed, and the second is joint property, for this joint property the provisions are very clear, because what belongs to the depth of the joint property is property that is collected by a husband and wife on the basis of joint property and with the aim of meeting their household needs, then the distribution of the property is very clear. In a marriage there are three kinds of assets, namely: First, the husband's personal property is the husband's innate property, which was brought before the marriage, and the property he obtained as a gift or inheritance. Second, the wife's personal assets are: the wife's innate property, which is what she brought before the marriage, and the property she got as a gift or inheritance. Third, Joint assets of husband and wife are assets that are obtained either individually or together with husband and wife during the marriage bond, without questioning whether it is registered in the name of anyone. (Mukti, Arto, 1998: 70).

### **3.2. Aspects of Justice for Shared Assets (*Gono Gini*) According to Civil Law**

Justice in the distribution of joint property is based on several aspects, the values of justice include gratitude from each party during the divorce trial process, one aspect that has always been a point of trouble and a point of dispute is the loss of respect from each other. - each pair, which was followed by a split between the two, when the legal process was running and an agreement was reached to continue with the judge's decision, then everything had indeed returned to their respective interests, but the full trial process had not ended there, Of course, other legal issues must be resolved in the fairest manner possible, including regarding the distribution of joint assets, because in this process a sense of justice must be raised from each partner.

Married couples will usually have very diverse assets, as previously explained there are several types of property owned by the husband and wife starting from joint property after marriage, personal property brought by each partner, there is also property gifts, inheritance, and the last is property Normative Jurisdiction Joint assets (*gono gini*) are regulated in the Constitution No. 1 of 1974 concerning marriage, Article 35 stipulates that assets obtained during marriage become joint assets. Inherited property and each husband and wife and property obtained by each as a gift or inheritance, is under the control of each as long as the parties do not determine otherwise.

The regulation on the distribution of joint property which has been widely discussed in the law is a necessity regarding how big the property is, and how the mechanism is divided, because before the distribution of the property, of course, the judge must listen to the testimonies of each partner, this is handled, To avoid things that are not wanted during the process of dividing the joint property, if it refers to the provisions that are legally valid then the distribution should be explained in detail regarding the origin of the property the first time it is obtained, the determination of joint property in marriage very important as control and

distribution, namely the control of joint property in the case of marriage is still takes place and the distribution of joint property is carried out when it occurs.

We can conclude that what is meant by the sound of the article is that the division of property in a family that has convened a divorce process is divided fairly with a maximum percentage of 50:50, so if the law has regulated it in such a way, it can be said that the division is new. limited to formally dividing assets, the court may decide on other percentages with certain considerations based on the testimony of each spouse, if viewed in the article of the Marriage Law, this law provides for the distribution path as follows: First, it is carried out based on Religious Law if the Religious Law is a living legal awareness in regulating divorce procedures; Second, the distribution rules will be carried out according to customary law, if the law is a legal awareness that lives in the community concerned; Third, or other laws. (Harahap, M. Yahya, 1975, Djuniarti, 2017; Priambodo, 2017).

#### IV. Conclusion

Based on the research that the researchers conducted on the discussion of the aspects of the division of joint property according to the view of civil law, the researchers can conclude several main points that can be concluded, the results of various observations that researchers found in the field, namely, marriage is a sacred bond that has sacred value and noble before God Almighty, but in marriage, of course, always find sparks of problems that eventually lead the couple to a divorce. A divorce process will certainly cause several points of problems that must be resolved both religiously and civilly, the context of this research discusses aspects of the division of joint property from the point of view of civil law, the division of property according to the civil law requires a mechanism that will benefit both parties, of course all of this is based on the decision of a judge who is authorized to issue a divorce decision, of course there are several types of property in a marriage and these assets must later be distributed and resolved with applicable legal procedures. *Gono Gini* assets which are often termed by the Indonesian people are joint assets produced by husband and wife during the marriage process, therefore *Gono Gini* assets are assets that are owned and shared, so the distribution must be divided equally fair by deliberation and produce an agreement.

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