

## Mediating Role of Employee Readiness to Change in the Relationship of Change Leadership with Employees' Affective Commitment to Change

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### Abstract

*Joint assets are assets obtained by a husband and wife as long as they are bound by a marriage rope, or in other terms it is explained that gono-gini property is property obtained by means of syirkah between husband and wife which causes an association of one property with another other assets and cannot be separated or differentiated anymore. In this writing, the author conducts research using the type of empirical normative research, where the author combines library data such as books, laws, combined with field research based on facts obtained in the field. The legal consequences in a divorce, in this case what is most felt is every husband or wife regarding the issue of joint property. As for the division of joint property which in this case is carried out, if the husband or wife is divorced, then for that they can claim that their rights to the assets obtained can be owned. As for this case, according to the provisions contained in Article 37 of Law no. 16 of 2019 on the amendment to Law no. 1 of 1974 concerning Marriage, then regarding the distribution of joint property, it must be given to the parties concerned, which is the husband or the wife. after the establishment of a new policy by the management team.*

### Keywords

joint assets; dispute resolution;  
judge's consideration



## I. Introduction

Marriage is a worship given by Allah SWT to His creatures, which is based on mutual love between a man and a woman as husband and wife. The purpose of marriage is forever and eternal happiness (eternal) for the husband and wife concerned. According to Islamic law, marriage is marriage, which is a very strong contract to obey Allah's commands and doing so is worship.

Likewise, in Article 1 of Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage, it is further stated that the Marriage Law states that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a family. (household) that is happy and eternal based on the One Godhead.

Family life is bound by the existence of relationships between family members (Djamarah in Hendra, Y. et al. 2019). From the explanation of the article above, it is hoped that the formed family will last forever, unless separated by death. But in reality not all marriages can run well. There are families whose marriages often have quarrels and eventually lead to divorce. Termination of marriage for reasons other than death is subject to strict restrictions. So that a severance of marital ties in the form of a life divorce is the last resort, because after that there is no other way.

In Article 39 paragraph (1) of the Marriage Law it is stated that divorce can only be carried out in front of a court session after the court concerned has tried and failed to reconcile the two parties. Paragraph (2) states that in order to divorce there must be sufficient reason, that the husband and wife will not live in harmony as husband and wife. In the event of a divorce, the legal consequences will be emphasized. One of them is regarding the distribution of joint assets that have been found during the conduct of domestic life by husband and wife.

The definition of joint property is assets obtained by a husband and wife as long as both are bound by a marriage partner marriage ties, or in other terms it is explained that gono-gini assets are assets obtained by means of syirkah between husband and wife which causes an association of one property with another and cannot be separated or differentiated again.

Meanwhile, in the rules of Law Number 1 of 1974 concerning marriage, which was revised by Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning marriage, it is stated that the point is that joint assets / or gono-gini are assets obtained during the marriage bond.

The settlement of the distribution of gonorhea assets in court is regulated in Article 35 paragraph 1 and Article 37 of the Marriage Law which states that: Article 35 paragraph (1) "property acquired during marriage becomes joint property", Article 37 "if the marriage is dissolved due to divorce the property together are regulated according to their respective laws". And in the Compilation of Islamic Law Article 97 it is stated that: "Widows or widowers divorce marital property as long as it is not stipulated otherwise in the marriage agreement, each is entitled to one-half of the marital property".

Although the distribution of joint property has been regulated in the articles mentioned above, the author wants to know how the implementation of the distribution of joint property in reality is.

### **Problem Formulation**

The problems that are interesting to study are:

1. What is the procedure for resolving disputes over joint property claims due to divorce based on Law Number 16 of 2019 on the amendment to Law Number 1 of 1974 concerning marriage?
2. How is the judge's consideration in determining the distribution of joint assets due to divorce based on decision Number 1537/Pdt. G/2021/PA. Rap. ?

## **II. Research Method**

In this writing, the author conducted research using this type of empirical normative research, where the author combines from library data such as books, laws, is also combined with field research based on facts obtained in the field. In this empirical normative research method, it is also about the application of normative legal provisions (law).

### III. Results and Discussion

#### 3.1 Procedures for Settlement of Disputes Against Joint Property Lawsuits Due to Divorce Based on Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 concerning Marriage

Marriage is very important for every individual, in marriage a family will be formed which is expected to survive until the couple is separated by circumstances where one of them dies.

However, after marriage, problems began to emerge so that divorce became one of the options considered. Divorce as stipulated in Law Number 16 of 2019 is included as one of the reasons for the dissolution of marriages other than death and court decisions. Article 37 explains that if the marriage is dissolved due to divorce, the joint property is regulated according to their respective laws. If there is a dispute between husband and wife regarding joint assets, the dispute settlement is submitted to the Religious Court.

The division of joint property through the Religious Courts can be submitted simultaneously with the filing of a divorce suit (cumulative) or can also be sued separately after the divorce has been terminated, either directly by the person concerned or using the services of a lawyer. The examination of the distribution of joint assets in cumulative terms is carried out after the examination of the divorce suit. If the divorce lawsuit is rejected, then the distribution of the joint property is usually also rejected. Therefore, the division of joint property leads to a divorce suit. Except when asking for the separation of joint assets, because one of the parties is feared or even proven to have lost joint assets with a separate application.

The requirements for filing a lawsuit for the distribution of joint property are:

- a. File a case or lawsuit to the Religious Court.
- b. The plaintiff registers the case to be filed.
- c. Photocopy of ID card showing as an Indonesian citizen.
- d. There are joint assets that have been obtained during the marriage.
- e. There is a divorce certificate (if you are divorced).
- f. File a persikot case fee or down payment for court fees when the lawsuit is registered at the Registrar's Office.
- g. File court fees after the case is decided in court.

After the conditions for filing a lawsuit are met, the process of dividing the joint property can only be processed in the Religious Courts. Whereas the plaintiff filed a lawsuit for the distribution of joint assets in which the plaintiff submitted an additional application in the form of a request for confiscation of collateral. This confiscation is carried out at the request of the disputing parties, meaning that confiscation can only be carried out if there is an application, the judge cannot place a confiscation without an application. The request for confiscation must state the parties in the case, the reasons for the request for confiscation, the goods requested for confiscation in the petitum confiscation.

In the trial process the distribution of joint property begins with a trial process that can provide a clear picture of an event that occurred in the trial so that the judge can find evidence or facts to be taken into consideration in making a decision in the implementation of the distribution of joint assets.

In principle, the process of examining cases of distribution of joint assets at the Rantau Prapat Religious Court is the same as the process of examining other civil cases conducted before a general court session, the process of examining cases of distribution of joint assets is carried out through the following stages:

1. Mediation
2. lawsuit reading
3. Claim answer
4. Plaintiff's Reply
5. Defendant's duplicate
6. Proof
7. Conclusion
8. Judge's decision

### **3.2 Judge's Considerations in Determining the Distribution of Joint Assets Due to Divorce Based on Decision Number 1537/Pdt. G/2021/PA. Rap.**

Divorce is a legal event which if it occurs will cause legal consequences as well. One of the most basic legal consequences of a divorce felt by a married couple is the distribution of joint property. The demand for the distribution of joint property must be carried out by the ex-husband or wife to claim their respective rights from the share of the property acquired together during the marriage.

Joint assets in marriage are all assets obtained when the marriage is bound until the marriage breaks up. Joint assets in marriage are regulated in legislation, including Law No. 16 of 2019 on the amendments to Law 1 of 1974 concerning marriage and the Compilation of Islamic Law (KHI).

The basis for the judge's consideration means talking about who is adjudicating the case, all of which are carried out at the local judicial institution based on the procedures and procedures that have been regulated. For those who are Muslim, the settlement process is carried out in the Religious Courts. The Court's consideration in establishing a fair decision, by applying standard legal values, as well as the standard of maintaining legal objectives and transparency about legal interests is what the parties want when resolving their dispute in the Court.

The main thing that can be used as a basis for consideration by the judge before making a decision is during the evidentiary process at the trial carried out by the parties. In this case, the judge must be able to explore and reveal the facts at trial. Among others:

- a. Is it true that between the plaintiff and the defendant have ever had a legal husband-wife relationship and has been declared terminated by the Court due to a divorce.
- b. Can the Plaintiff be able to prove that the property that is the object of the dispute is joint property obtained during the period of the marriage, which is from the time of the marriage contract until the divorce occurs. Proof can be done using written evidence (letters), witnesses, confessions, and oaths.

As for this matter in Court Decision Number 1537/Pdt. G/2021/PA. Rap. which in this Decision regarding the distribution of assets *gono gini*, then that the plaintiffs and the defendant are married, at the trial stated that they were married and both had:

1. A plot of land on which stands 1 (one) unit of permanent housing with an area of 446M2 (four hundred and forty-six square meters) located in Bakaran Batu Village, Rantau Selatan District, Labuhanbatu Regency based on Certificate of Ownership Number 5463 on behalf of the defendant, issued by the Head of the Office Labuhanbatu Regency Land on March 10, 2017;

2. A plot of vacant land with an area of 557M2 (five hundred and fifty-seven square meters) located at Jalan AMD Ujung Bakaran Batu Sub-district, Rantau Selatan District, Labuhanbatu Regency based on Ownership Certificate Number 2436 in the name of the defendant, issued by the Head of the Land Office of Labuhanbatu Regency on December 26, 2005 ;
3. A plot of land on which stands 1 (one) unit of a 3 (three and a half) storey shop house located on Jalan SM. Raja Number 181 C, Bakaran Batu Village, Rantau Selatan District, Labuhanbatu Regency (currently the Certificate of Ownership is at the National Pension Savings Bank Rantau Barat Branch), which is currently still collateralized by Bank BTPN Credit with Credit Agreement Number 0004150-SPK-7045-0217 on behalf of the plaintiff;
4. A plot of land on which 1 (one) unit of permanent housing stands at Block A1 Cendana Asri Housing located on Jalan H. Adam Malik, Padang Bulan Village, Rantau Utara District, Labuhanbatu Regency, which is currently still not paid off at the State Savings Bank on behalf of the plaintiff;
5. 1 (one) piece of pure gold weighing 25 grams (twenty five) grams which is stored at Perum Pegadaian Syariah Rantau Barat Branch with Order No. 015230.000008;
6. 1 (one) piece of pure gold weighing 50 (fifty) grams which is kept at the Perum Pegadaian Syariah Rantau Barat Branch with Noble Order Number: 015230,000057;
7. 1 (one) piece of pure gold weighing 50 (fifty) grams which is stored at the Perum Pegadaian Syariah Rantau Barat Branch with Noble Order Number: 015230,000039;
8. 1 (one) piece of pure gold weighing 50 (fifty) grams which is kept at the Perum Pegadaian Syariah Rantau Barat Branch with Noble Order Number : 015230,000013;
9. 1 (one) piece of pure gold weighing 50 (fifty) grams which is stored at the Perum Pegadaian Syariah Rantau Barat Branch with Noble Order Number: 015230,000051;
10. Savings money at Bank Mandiri Rantau Barat Branch on behalf of the defendant, amounting to ± 125,000,000, - (approximately one hundred and twenty five million rupiah);
11. Savings money at May Bank Rantau Barat Branch on behalf of the defendant, amounting to ± 220,000,000 (approximately two hundred and twenty million rupiah);
12. Savings at May Bank Rantau Barat Branch on behalf of the defendant, amounting to ± 30,000,000 (approximately thirty million rupiah);

So for that, the property must be divided in two, which strives for peace between the two by means of mediation, then thus the claim has sufficient reason to be granted.

So it is also with an existing statement, the legal consequences of the distribution of the joint property, the plaintiff and the defendant have a share of the joint property, but are limited, in which the joint property becomes legally valid and has permanent legal force which is voluntary. to be divided into two, so that the parties can use the goods, in accordance with what has been agreed.

As for in a discussion on the Case of Joint Assets in Decision Number 1537/Pdt. G/2021/PA. Rap. the panel of judges at the Rantau Barat Religious Court issued its decision, namely:

### **a. In Convention**

1. Granted the Plaintiff's claim in part;
2. Determine the joint assets between the Plaintiff and the Defendant in the form of:
  - a) A plot of land on which stands 1 (one) unit of permanent housing with an area of 446M2 (four hundred and forty-six square meters) located in Bakaran Batu Village, Rantau Selatan District, Labuhanbatu Regency based on Certificate of Ownership Number 5463 on behalf of the defendant, issued by the Head of the Office Labuhanbatu Regency Land on March 10, 2017;
  - b) A plot of vacant land with an area of 557M2 (five hundred and fifty-seven square meters) located at Jalan AMD Ujung Bakaran Batu Sub-district, Rantau Selatan District, Labuhanbatu Regency based on Ownership Certificate Number 2436 in the name of the defendant, issued by the Head of the Land Office of Labuhanbatu Regency on December 26, 2005 ;
3. Sentencing the Plaintiff and the Defendant to divide the 2 (two) joint assets obtained during the marriage (gono-gini), (half) part for the Plaintiff and (half) part for the Defendant, and if it cannot be divided naturally, then it can be sold by public auction, and the proceeds are divided into 2 (two) half for the Plaintiff and the other half for the Defendant;
4. Determine the debt of the Plaintiff and the Defendant in the amount of Rp.764,000,000,- (seven hundred and sixty-four million rupiah), half of the total debt becomes the debt of the Plaintiff or an amount of Rp.382,000,000,- (three hundred and eighty-two million rupiah) , half of which becomes the debt of the Defendant or in the amount of Rp.382,000,000, - (three hundred and eighty-two million rupiah);
5. Punish the Plaintiff and Defendant to pay their respective debts as mentioned above (point 4), and if one of the parties (Plaintiff or Defendant) is unable to pay or in installments (in cash), the property of the Plaintiff or Defendant is sold by auction to pay the debt;
6. Punish the Plaintiffs and Defendants to obey and enforce this decision;
7. Refuse and or cannot accept other than and the rest;

### **b. In Reconvention**

1. Granted the Plaintiff's claim, dr. For some;
2. To determine Defendant dk/Plaintiff dr as the holder of custody/hadhonah against the 2 (two) biological children of Plaintiff dk/Defendant dr and Defendant dk/Plaintiff dr named: 1. FN (pr) born on December 1, 2005, 2. NM (pr) was born on December 19, 2008, while still giving access to the Defendant, dr. To meet and pour out his love for the child.
3. Sentencing Plaintiff dk/Defendant dr to pay the living expenses of Plaintiff dk/Defendant dr's children amounting to Rp. 2,000,000,- (two million rupiah) every month excluding education and health costs through Defendant dk/Plaintiff dr as their biological mother until the children are mature and independent.
4. Rejecting the Plaintiff's claim, dr. For other than and the rest.

In his consideration, the Judge referred to Article 97 of the Compilation of Islamic Law which reads that a divorced widow or widower is each entitled to one-half of the joint property as long as it is not otherwise specified in the marriage agreement.



### **c. In Conventions and Reconvension**

Charge the Convention Plaintiff/Reconvensional Defendant to pay the cost of this case in the amount of Rp. 1,300,000,- (one million three hundred thousand rupiah).

Joint property dispute which ended with decision no. 1537/Pdt. G/2021/PA. Rap originated from the plaintiff's lawsuit asking for the distribution of joint assets. By being determined as joint property, of course, these assets will be divided between the plaintiff and the defendant. In accordance with the concept of the division of joint property which has been regulated in Article 97 of the Compilation of Islamic Law, the divorced widow or widower is each entitled to one-half of the joint property as long as it is not specified otherwise in the marriage agreement. So that if there is a divorce and there is a division of joint property, it can be divided according to positive law and the Compilation of Islamic Law.

Based on interviews with judges at the Rantauprapat Religious Court that in resolving disputes over the distribution of joint assets, the panel of judges referred to Law No. 16 of 2019 and the Compilation of Islamic Law as applied law in the Religious Courts.

In the decision of case No. 1537 Pdt.G/2021/PA. Rap judge has tried to provide justice in terms of the distribution of joint property. This is sufficient to provide justice for the plaintiff and the defendant in the case, the joint property is divided in half for each party based on the statements of the witnesses and the available evidence. According to the author, the panel of judges in deciding the case was in accordance with Law No. 16 of 2019 and the Compilation of Islamic Law.

## **IV. Conclusion**

Based on the results of the research conducted, the following conclusions can be drawn:

1. In Law Number 16 of 2019 concerning marriage, it is explained that if the marriage is dissolved due to divorce, the joint property is regulated according to their respective laws. The division of joint property in the Religious Courts can be submitted simultaneously with the filing of a divorce suit or can be sued separately through a lawyer by fulfilling the specified conditions. In the trial process for the distribution of joint assets, the judge can find evidence or facts to be taken into consideration in making a decision. In principle, the process of examining cases of the distribution of joint assets in the Court is the same as the process of examining other civil cases.
2. The basis for the judge's consideration in deciding the above case is based on the procedures and procedures that have been regulated. The judge decides the case between the plaintiff and the defendant regarding the distribution of joint assets in the fairest manner based on the evidence or facts obtained during the trial. The judge partially granted the plaintiff's claim and determined the distribution of joint assets from the marriage between the plaintiff and the defendant by dividing 2 (two) assets of both parties in accordance with Law Number 16 of 2019 concerning marriage and the Compilation of Islamic Law.

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