Implementation of the Division of Joint Assets Due to Divorce Based on Pancasila Justice

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Abstract

The division of joint assets resulting from divorce in Indonesia is regulated by Law no. 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage, which also includes a Compilation of Islamic Law, is considered to still not fulfill a sense of justice. This research aims to identify and analyze how the distribution of joint assets due to divorce is based on the Pancasila value of justice, because Pancasila is a philosophy of life and the source of all legal sources that apply in Indonesia. This research was conducted using a normative juridical approach. The results of research on the implementation of the distribution of joint assets as a result of divorce show that the distribution of joint assets as a result of divorce is carried out casuistically based on contributions, taking into account the benefits and negative impacts. The implementation was deemed not to be fair because the judge, when deciding on a case he handled, paid little attention to the substance of the case he handled and did not understand the meaning behind the words in the articles of the statutory regulations, the judge only based on the sound of the article in the statutory regulations. Many judges' decisions are based on article 97 KHI, even though article 97 KHI is deemed unfair if husband and wife both work or even the wife makes a greater contribution than the husband. Apart from that, when a judge decides on a case he is handling, the judge is influenced a lot by one of the parties in the case so that the judge's decision on a case does not embody justice or does not reflect justice.

I. Introduction

The legal basis for the divorce process in Indonesia is Law no. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 concerning the Implementation of Law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning Marriage. Based on this law, divorce is defined as the severing of the marriage bond. Divorce can be made possible by one of the parties, namely the husband or wife, filing a divorce suit. Based on Article 1 of Law Number 16 of 2019 concerning Marriage, marriage itself is defined as an inner and outer bond between a man and a woman as husband and wife with the goal of forming a happy and eternal family (household) based on the belief in the Almighty Godhead. Indonesian citizen husband and wife couples who are legally bound by marriage, both religiously and by state law, have boundaries regulated by positive law in force in Indonesia. The matters regulated include the marriage process and even divorce. Discussions about divorce cannot be separated from discussing marriage, even though divorce is not something that is generally expected by married couples who have decided to build a household together.

Divorce can indeed affect aspects of social relations and economic aspects of the divorcing couple, both men and women. It cannot be denied that often in Indonesia the divorce process, especially those related to the division of joint assets, can cause disputes. According to the provisions of the marriage law, property acquired during marriage becomes joint property. From a formal juridical perspective, it can be understood that joint property is the property of husband and wife acquired during marriage. Therefore, the division of joint assets is one of the things that is also regulated in Indonesian laws and regulations. Indonesia as a country that makes Pancasila the basis of the state and the source of all sources of law, of course in the context of marriage law, is also based on the values of Pancasila. In accordance with what is stated in Article 2 of Law Number 10 of 2004 concerning the Formation of Legislative Regulations that Pancasila is the source of all sources of state law. Pancasila as the source of all sources of state law means that Pancasila as the ideology of Indonesian law with its collection of values must be behind all Indonesian law. Based on this, it is necessary to analyze the implementation of the distribution of joint assets as a result of divorce in Indonesia, whether it is in accordance with the principles of Pancasila values of justice or not .

2. Research Method

The research method used in this journal is a normative juridical research method. The research method with a normative juridical approach is a legal research approach that is carried out by examining library materials or secondary data as a basis for research by conducting searches on regulations

and literature related to the problem being studied (Soekanto, 2015). The legal material for this research consists of primary legal material in the form of statutory regulations, secondary legal material comes from scientific references such as journals, websites, final thesis assignments, final dissertation assignments, etc.

3. Results and Discussion

1. Understanding Divorce

Basically, marriage is intended to last forever (divorce) but many things happen because of certain reasons, the marriage ends or breaks up in the middle of the road or in other words there is a divorce between husband and wife. Even though divorce is permissible, Islam still views that divorce is something that is contrary to the principles of Islamic law. This can be seen in the Hadith of the Prophet:

Rasulullah Saw, said:

"The halal thing that Allah hates most is divorce (HRAbu Daud and declared Shaheh by Al Hakim as quoted by Soemiyati)"

Law Number 16 of 2019 concerning Marriage and Government Regulation Number 9 of 1975 do not explain the meaning of divorce, so scholars provide different definitions. Soemiyati said that divorce is the dissolution of a marriage by a judge's decision or the demands of one of the husband or wife based on reasons determined by law. Subekti said that divorce is the abolition of a marriage by a judge's decision or the demands of one of the parties to the marriage. Divorce in fiqh terms is called talak or furqah. The meaning of talak is breaking ties, canceling an agreement, while furqah means divorce, the opposite of gathering. Then these two words are understood by fiqh experts as one unit, which means divorce between husband and wife. Divorce is regulated in Article 14-36 of Government Regulation Number 9 of 1975 and is based on the provisions contained therein.

According to Article 117 of the Compilation of Islamic Law, Talak is a husband's vow before a Religious Court session which is one of the causes of the dissolution of a marriage, in the manner as intended in Articles 129, 130 and 131, from the sound of the article it can be seen that divorce talak is a divorce institution that especially for a man who has entered into a marriage according to the Islamic religion. According to the Qur'an Surah Al Baqarah verse 229 it says: talak twice after that you can "reconcile" (return to your wife) well or if you don't reconcile, then "wife released well." So, if a husband says talak three times, then that statement will result in divorce where reconciliation can no longer be carried out, unless the wife has married someone else and has divorced again from her second husband. On the other hand, a husband who does not pay attention to his obligations towards his wife, does not provide birth support or in the heart for quite a long time, treating his wife badly, abusing him and so on. In circumstances like this, Islam does not allow a wife to live in abuse, she is given the right to ask for her marriage to be dissolved by means of khulu (talak ransom) through the courts. The meaning of contested divorce is a divorce that is caused by a prior lawsuit by one of the parties to the court and the divorce occurs with a court decision.

A divorce lawsuit is filed by the husband or wife or their attorney to the court whose jurisdiction includes the defendant's residence. Meanwhile, in the explanation of the article, it is stipulated that the divorce lawsuit in question can be filed by a wife who has entered into a marriage according to the Islamic religion, and by a husband or wife who has entered into a marriage according to a religion or belief other than Islam. Based on the provisions above, it can be seen that this institution of divorce is used by a wife who has

entered into a marriage according to the Islamic religion and by a husband or wife who has entered into a marriage according to a religion and belief other than Islam.

2. Joint Assets According to Law no. 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage

Marriage Law No.16 of 2019 defines joint assets as assets acquired during marriage. This means that the formation of joint property in marriage is from the date of the marriage until the marriage is dissolved due to divorce or death. This is different from the assets inherited by each husband or wife and the assets obtained by each as a gift or inheritance, which are called personal assets which are completely under their respective control as long as the parties do not determine otherwise. According to article 35 of Marriage Law no. 16 of 2019 as well as in article 86 paragraph 1 of Law no. 7 of 1985 and article 85 of the KHI, the assets of husband and wife during the marriage period have been given the name "Joint assets". In Acehnese society it is known as "Treasure of the same price". In Malay society it is known as "Harta Guild". And in Javanese-Madurese society it is known as "Harta gono-gini". Until now, the use of these names still colors judicial practice. Since marriage begins, a mixture of the husband's wealth and the wife's wealth naturally occurs. This is a general rule if no agreement is entered into. This situation continues forever and cannot be changed during the marriage. If someone wants to deviate from these provisions then he must enter into a marriage agreement.

3. Joint Property According to Islamic Law

The study of joint property in Islamic law cannot be separated from the discussion of the concept of syirkah in marriage. Many Ulama are of the opinion that joint property is included in the concept of syirkah. Considering that the concept of joint property is not found in references to the texts of the Koran and Hadith, we can actually carry out qiyas (comparison) with existing fiqh concepts, namely regarding syirkah itself. So, it cannot be said that since the issue of joint property is not mentioned in the Al-Quran, the discussion of joint property has become far-fetched. According to Yahya Harahap, the Islamic Law perspective on joint property is in line with what was put forward by Ismail Muhammad Syah in his dissertation that the search together with husband and wife they should enter rub'u mu'amalah, but apparently this is not specifically discussed. This may be because in general the authors of fiqh books are Arabs who are not familiar with the customs regarding joint searches between husband and wife. However, they talked about partnership which in Arabic is known as syirkah.

Because the issue of joint search between husband and wife is a partnership, to know the law it is necessary to first discuss the various types of partnerships as discussed by Fiqh experts in their books. According to Amir Syarifuddin, Islamic law regulates that marriage agreements must be made at the time the marriage contract takes place or afterward and must be carried out with a special contract in the form of syirkah. If these two elements are not applied, then the personal property belonging to each husband and wife cannot be categorized as joint property and remains their respective personal property. Shirkah is a contract between people who are associated in terms of capital and profits. Basically, Islamic law does not recognize the mixing of personal property into joint property, but mutual understanding between them is recommended. When husband and wife manage their personal assets, don't let this management result in damage to the relationship resulting in divorce. So in this case Islamic law allows a marriage agreement to be entered into before the marriage is carried out. The agreement can take the form of merging each individual's personal property into joint property, or it can also stipulate that

there will be no merging of personal property into joint property. If the agreement is made before the marriage takes place, then the agreement is valid and must be implemented. Islamic law regulates a separate system between the husband's property and the wife's property as long as the person concerned does not determine otherwise (not specified in the marriage agreement). Islamic law also provides leeway for the two of them to make a marriage agreement according to both of their wishes, and the agreement ultimately binds them legally.

The view of Islamic law which separates the assets of husband and wife actually makes it easier to separate which is the husband's property and which is the wife's property, which is the husband's inherited property and which is the wife's inherited property before the marriage, which is the property acquired by the husband and which is the property the wife obtained individually. during the marriage, as well as joint assets acquired jointly during the marriage. This separation will be very useful in separating the husband's assets and the wife's assets if a divorce occurs in their marriage. The provisions of Islamic law remain in effect until the marriage ends or one of the two dies.

4. Division of Joint Assets

a. Consequences for the parties (husband and wife)

Marriage is an agreement that arises from the consent of husband and wife, so the existence of marriage naturally gives rise to rights and obligations for both parties. What is meant by rights is something that belongs to or can be owned by a husband or wife obtained as a result of marriage. Meanwhile, what is meant by obligations are things that must be done or carried out by one of the husband or wife to fulfill the rights of the other party. Considering that the rights and obligations of husband and wife arise because of marriage, it is natural that the rights and Obligations are terminated by divorce. In Law Number 16 of 2019 concerning Marriage, the possibility of providing support to a former wife is recognized, and not vice versa for a former wife to do so to an ex-husband. This is from Article 41 paragraph 3 which determines:

Article 41

(3) The court may require the ex-husband to provide living expenses and/or determine obligations for the ex-wife

Meanwhile, Article 149 of the Compilation of Islamic Law determines the following:

Article 149

"If the marriage breaks up due to divorce, the ex-husband is obliged to:
a. Giving proper mut`ah to his ex-wife, whether in the form of money or objects, unless the ex-wife is qobla al dukhul
b. Providing food, food and kiswan to the ex-wife during the iddah, unless the ex-wife has been sentenced to talak ba`in or nusyuz and is not pregnant
c. Pay off the dowry that is still owed in full, and half if qobla al dukhul
d. Providing hadhonal fees for children who have not yet reached the age of 21 years."
From the sound of this article it is clear that the possibility of providing maintenance due to divorce is only available to the ex-husband and not vice versa.

b. Consequences on joint assets

Regarding joint property, husband and wife can act to do something or not do something with the joint property with the agreement of both parties. All assets acquired by husband and wife during the marriage bond become joint assets, whether the assets were obtained separately or jointly. Likewise, property purchased during the marriage

bond becomes joint property. The size of each person's share of assets depends on how much or how little effort they make to meet household needs. If the businesses are equally large then the assets owned from the acquisition are equal. However, if the husband's business is greater than the wife's, the husband's rights must be greater than the wife's, and vice versa. In addition to the application of the general provisions above, it is also possible to mix assets obtained by husband and wife in the form of an agreement regarding the joint business of husband and wife. . In Islamic marriage law, the wife has the right to support which the husband must fulfill. The property that is entitled to the wife in the marriage is the living obtained from the husband

c. c. Consequences for minors

Regarding the consequences of divorce on children, Law Number 16 of 2019 concerning Marriage in Article 41 determines the following:

Article 41

(1) Whether the mother or father is still obliged to care for and educate their children, solely based on the interests of the child, if there is a dispute regarding child care, the court shall give its decision.

(2) The father is responsible for all maintenance and education costs required by the child. If the father is in fact unable to fulfill this obligation, the court may determine that the mother also bears these costs.

Article 149 of the Compilation of Islamic Law states that if a marriage breaks up due to divorce, the ex-husband is obliged to provide hadlanah costs for his children who have not reached the age of 21 years. From the sound of this article, it can be seen that according to Law Number 16 of 2019 and the Compilation of Islamic Law, parental divorce does not eliminate the parents' obligation to care for and educate their children. It is the father who is responsible for bearing the costs of his child's upkeep and education, provided that if in reality the father cannot fulfill his obligations, then the mother can also be burdened with bearing these costs. The impact of divorce on children concerns the issue of parental authority. With divorce resulting in the dissolution of the marriage, the court determines for each minor child which of the two parents has guardianship. Regarding guardianship, it is up to the judge to determine and who will be appointed as guardian, but in this appointment the interests of the child must be taken into account.

5. Values of Justice Based on Pancasila

The word "justice" in English is " *justice* " which comes from the Latin word "iustitia". The word "justice" has three different meanings, namely; (1) attributively means a quality that is just or fair (synonymous justness), (2) as an action means the act of implementing the law or action that determines rights and rewards or punishments (synonymous judicature), and (3) person, namely a public official who has the right to determine the requirements before a case is brought to court (synonyms judge, jurist, magistrate). To know what is fair and what is unfair does not seem to be a big policy, especially if justice is associated with positive legal rules, how can a action must be taken and distribution to uphold justice, as well as how to advance justice. But of course this is not the case if you want to play the role of upholding justice. Debates about justice have given rise to various schools of legal thought and other social theories. The two extreme points of justice are justice which is understood as something irrational and at other points which is understood rationally. Of course, there are many variants that fall between these two extreme points.

Justice is based on Pancasila which is based on the first principle of Pancasila, namely

Belief in One Almighty God. The justice that emerges is justice that comes from God which is represented to humans to create just and civilized humans and justice for all Indonesian people. The characteristics of justice based on Pancasila which is based on the second principle of Pancasila, namely just and civilized humanity, shows that justice is only in the interests of humans as social creatures. Humanity means that justice provides what is human's right. The rights given are in the form of justice realized by the ruler or government. This character of justice provides protection for humans in obtaining justice. Providing protection for human rights as civilized creatures by humanizing humans as social creatures who need justice. The second principle of Pancasila is just and civilized humanity. In theory as a rule of law, humanity is the main thing in realizing justice. Humans need justice in protecting their human rights as social creatures who must be respected and respected. The concept of a legal state always prioritizes the protection of human rights. The concept of justice based on the second principle of Pancasila provides justice in the form of protecting human rights. Humanizing humans and appreciating and respecting basic human rights in obtaining justice.

The third principle of justice based on Pancasila is to foster unity for the realization of justice in Indonesia. In accordance with the third principle of Pancasila, namely Indonesian unity, realizing justice requires mutual agreement in determining between justice and injustice. The characteristics of justice based on Pancasila are in accordance with the fourth principle of Pancasila, namely democracy led by wisdom in deliberation/representation. This principle upholds the democratic state system in order to realize the justice desired by citizens through their representatives. With a democratic system, it is hoped that justice will be realized through people's representatives in determining policies which of course provide justice.

The characteristics of justice based on Pancasila are in accordance with the fifth principle of Pancasila, namely social justice for all Indonesian people, providing fair equality for all Indonesian people. This equality provides citizens with the most fairness and justice to obtain legal protection. Equal legal protection reflects legal protection to be treated equally before the law for all citizens in order to realize justice. There are several characteristics related to justice based on Pancasila. Pancasila itself has the following characteristics or characteristics:

(1) Flexible in the sense of being able to adapt to changing conditions. The flexible nature of Pancasila has proven that Pancasila is able to follow changing times from the old order period, the new order period, and the reformation period until now.
(2) The five precepts are a unified whole that cannot be separated. In interpreting the substance of Pancasila, it is an obligation that the substance of Pancasila cannot be separated. This prevents multiple interpretations of Pancasila from occurring.
(3) Pancasila is the Republic of Indonesia and the Republic of Indonesia is Pancasila because Pancasila and the Republic of Indonesia are an agreement that will not be changed. Pancasila exists because the Republic of Indonesia and the Republic of Indonesia exist based on Pancasila. This shows the close relationship between Pancasila and the Republic of Indonesia.
(4) Able to provide a basis for justice in accordance with the style and culture of the Indonesian nation. Because Pancasila is recognized as being coherent, consistent and pragmatic in its truth, of course Pancasila has been recognized since Pancasila was born. Pancasila is recognized as true by many people and functions as a guideline for the Indonesian nation that has been recognized from the past until now.

The characteristics of justice based on Pancasila include the value of justice which originates from the principles of just and civilized humanity and the principles of social

justice for all Indonesian people which are the embodiment of the Unitary State of the Republic of Indonesia. The value of justice that emerges from these two precepts reflects the values of the other precepts. It can be concluded that the value of Pancasila justice is a reflection of a complete unity of the principles contained in Pancasila which emerged from the realization of the Unitary State of the Republic of Indonesia (NKRI).

6. Division of Joint Assets Due to Divorce Based on Pancasila Justice Values

Law Number 16 of 2019 concerning Marriage and the Compilation of Islamic Law basically recognizes and applies the concept of joint property, namely that all assets acquired during the marriage period automatically become joint property. This quite strict statement also limits joint assets by not including assets brought by each husband and wife as well as those obtained specifically, for example in the form of inheritances or gifts. Thus, according to Law Number 16 of 2019 concerning Marriage, all assets acquired during the marriage period become joint assets, except for assets brought by each husband and wife before the marriage contract and special income such as inheritances and gifts.

Law Number 16 of 2019 concerning Marriage recognizes the rights of each husband and wife to manage their respective property and for joint property, the consent of both is required to take legal action against the joint property (Susanto, 2011). Recognition and application of the concept of joint property according to the Marriage Law, this is confirmed in Law Number 16 of 2019 concerning Marriage. To see whether this concept is included because it adopts the concept of joint property which already exists in the Civil Code (Bugerlijk Wetboek), further research is needed. Law Number 16 of 2019 concerning Marriage has its drawbacks if it is used in dividing joint assets as a result of divorce. The weakness of Article 37 of Law Number 1 of 1974 concerning Marriage when used in dividing joint assets as a result of divorce is that Article 37 of Law Number 16 of 2019 concerning Marriage does not explain in totality and in detail regarding the division of joint assets as a result of divorce. Apart from that, Article 37 of Law Number 16 of 2019 concerning Marriage does not differentiate between husband and wife who provide maintenance.

With the advantages and disadvantages in Article 37 of Law Number 16 of 2019 concerning Marriage as the foundation or basis for dividing joint assets as a result of divorce, to find the ideal law for dividing joint assets as a result of divorce based on the value of justice, Article 37 of the Law Number 16 of 2019 concerning Marriage needs to be reconstructed or renewed. Renewal of Article 37 of Law Number 16 of 2019 concerning Marriage, so that it becomes a statutory regulation which has the following two provisions:

(1) The principle of fairness in the distribution of joint assets as a result of divorce is determined based on the amount of contribution and benefit.
(2) Serves as a legal umbrella for the division of joint assets due to divorce.

Often the wife is disadvantaged and experiences injustice in the distribution of joint assets. This injustice is related to the issue of standardizing the roles of husband and wife in Law no. 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage which states that the husband is the head of the household and the wife is the housewife. The Marriage Law has also placed the wife as the manager of the household with regulations that require the wife to manage household affairs as well as possible. The impact is that many wives do not have the opportunity to work and earn their own living so they cannot use their skills to earn an income. Another injustice that often occurs is the double burden that burdens the wife. Sometimes the wife works outside the home as a breadwinner (even as the main breadwinner) and is also burdened with household work when she returns home. Most husbands who feel that household work is only the wife's

business are generally reluctant to do household work even though their wives have been working outside the home since morning.

Therefore, it is unfair for women if the rules for dividing joint assets are limited to dividing half of the joint assets because there are quite a few wives whose contributions are greater than their husbands. Provisions for the distribution of joint assets should be regulated proportionally and fairly according to the contribution and role of each party. The division of joint assets resulting from divorce based on the amount of contribution and role of each husband and wife is an embodiment of the fifth principle of Pancasila, namely social justice for all Indonesian people, as mandated by TAP MPR Number 1 of 2003 concerning the 45 points of Pancasila in the 5th principle, namely, developing fair attitude towards others and maintaining a balance between rights and obligations as well as respecting the rights of others .

The concept of "Social Justice" is another name for justice (Sumadi, 2012). It is also explained in (Fadil, 2012), that the substance of justice is formulated at three levels, namely: First, at the outcome level, the meaning is that justice is related to distribution and exchange, in this case justice is very closely related to an object, which can be in the form of goods or services. Second, at the procedural level, procedures relate to the method of determining and the system of links between applicable structures. In distribution and exchange justice, namely justice at the first level related to outcomes, the practice often occurs unequally in the process. Third, at the system level. As for procedural justice, it is the second level of justice, which relates to the method of determination, which is related to the process and treatment of the people involved in it, including the division of joint assets as a result of divorce, so there needs to be procedural justice, namely determining the amount of distribution based on contributions and roles. each.

Furthermore, considering that apart from the European legal system as a legacy of the colonial era as positive law, in Indonesia there is a customary legal system and an Islamic legal system, the definition of living legal values in the provisions above must be interpreted as customary legal values and Islamic legal values. If a husband and wife who are going to divorce take a case regarding their shared assets to the Religious Court, then there are special provisions that apply in the Compilation of Islamic Law, Article 97, which states that a divorced widow or widower is each entitled to half of the joint assets, as long as it is not specified otherwise in marriage agreement. As stipulated in Article 29 of Law Number 1 of 1974. However, if the husband and wife do not litigate in the Religious Court, that is, they hold their own deliberations, then the mutually beneficial assets can actually be divided in another way, namely divided on the basis of agreement and willingness on the part of the husband. wife, or divided according to the percentage of each party if the amount is known.

This shows that the rule of distribution of gono gini that applies in Indonesia / fifty-fifty distribution is not a mandatory provision according to sharia'. Because if it were mandatory, of course the provisions would be the same between Indonesia, the Philippines and Malaysia, therefore it can be concluded that the provisions in the Compilation of Islamic Law, the fifty-fifty division of Sharia law is not mandatory, but permissible. Therefore, as has been stated above, the resolution of property disputes can be carried out outside the Religious Courts based on deliberation by taking the path of peace.

Based on the description above, the provisions of article 37 of Law no. 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage and article 97, article 105 and article 156 of the Compilation of Islamic Law require changes or reconstruction of the law, namely as follows:

Table 1. Juridical Overview of Marriage, Divorce, and Division of Joint Property

No	Legal Hierarchy	Advantages of the Old Law	Disadvantages of the Old Law	Reasons for Reconstruction
1.	Article 37 of Law no. 16th 2019.	Used as a legal basis for the division of joint assets	1. It is not clear about the division of joint assets. 2. It does not differentiate between husband/wife who acquire joint property	Law no. 16 of 2019 concerning Marriage updated: 1. The principle of fairness in the distribution of joint assets is determined based on the amount of contribution and benefit 2. Serves as a legal umbrella for the division of joint assets.
2.	Article 97 KHI	It has been arranged for the distribution of joint assets, namely half for the widower and half for the widow	It does not regulate the distribution of joint assets if the wife works or the husband and wife both work or the wife is more dominant in meeting family needs.	Make changes to the contents, at a minimum: 1. Division of joint assets if the husband provides the living and the wife is the housewife. 2. Division of joint assets if the wife provides maintenance and the husband does not work. 3. Division of joint assets if husband and wife both work or the wife is more dominant in meeting family needs. 4. The distribution of joint assets as a result of divorce is carried out casuistically based on contributions taking into account the benefit and prosperity.

Source: Author's Process, 2022

Reconstruction of article 37 of Law no. 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage, article 97, article 105 and article 156 of the Compilation of Islamic Law

Table 2. Reconstruction of Islamic Law Articles

No.	Legislation	Before reconstruction	After reconstruction
1	Article 37 UU no. 16 of 2019	he marriage is broken up due to divorce, joint property is regulated according to each respective law	(1) If the marriage is dissolved due to divorce, joint assets are regulated according to their respective laws (2) a. Widows and divorcees each receive ½ share of the joint assets, as long as the parties do not specify otherwise in the marriage agreement. b. The provisions of paragraph (2) a cannot be implemented if the wife is more dominant in carrying out her obligations in fulfilling the family's needs. c. If the wife's contribution to

			meeting the family's needs is greater, then the divorced widow is entitled to a share of the joint assets that is greater than the share of the divorced widower. d. The division of joint assets as a result of divorce must be based on the goal of benefit

Source: Author's Process, 2022 .

4. Conclusion

The implementation of the distribution of joint assets as a result of divorce is currently not fair, meaning that the construction of the distribution of joint assets as a result of divorce is currently provided by Law no. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law still does not fulfill a sense of justice. Factors that influence the distribution of joint assets as a result of non-justice-based divorce are:

a. Legal Substance Factor, namely that the judge in deciding a case he is handling does not pay attention to the substance of the case he is handling and the judge does not pay attention to and does not understand the meaning behind the words in the articles of statutory regulations so what law must be applied to a case he is handling, but the judge only based on the sound of the articles in the statutory regulations. There are still many judges' decisions that are based on article 97 KHI, even though article 97 KHI is deemed unfair if husband and wife both work or even the wife makes a greater contribution than the husband, so it seems as if the judge is only a mouthpiece for the law.
b. Structural Factors/Legal Institutions, namely: When a judge decides on a case he is handling, the judge is influenced by one of the parties to the case so that the judge's decision on a case does not embody justice or does not reflect justice. The judge decided on the division of joint assets as a result of divorce based on article 97 KHI, namely half for the husband and half for the wife because this was requested by the plaintiff based on his lawsuit letter.
c. Legal Culture Factor, namely that the judge in deciding a case he is handling does not explore, does not follow and does not understand the living legal values and sense of justice in society to be applied to a case he is handling, but the judge only applies the sound of the articles of the statutory regulations - invitation.

Suggestion

From the conclusions above and by examining the research results further, the author can provide input or suggestions as follows:

1. If a husband and wife are divorcing and there is a dispute regarding the division of joint assets, it should be resolved first amicably to reach a consensus.
2. To facilitate the division of joint assets in the event of a divorce, it would be better if before the husband and wife got married they made a *marriage agreement first.*

3. Judges in deciding cases regarding the division of joint assets as a result of divorce are casuistic, taking into account the beneficial objectives
4. Recommend to the President of the Republic of Indonesia to immediately, together with the DPR RI, revise or amend article 37 of Law Number 16 of 2019 concerning Marriage and article 97 and article 105 of the Compilation of Islamic Law.

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