



THE POSITION OF JOINT PROPERTY IN MIXED MARRIAGES (STUDY DECISION NUMBER 550/PDT.G/PA.SOR)

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Abstract

Mixed marriages often result in marital property located outside Indonesia. In the event of a divorce, according to the provisions of the Marriage Law, marital property is a typically divided equally, with half going to the husband and half to the wife. However, one party is often disadvantaged in the division, particularly when they feel they have contributed more during the marriage. As a result, the division of marital property in mixed marriages cannot be treated as a standard case, as one party may demand a greater share if they believe they have contributed more. One example of a mixed marriage case that was filed for a resolution concerning marital property is the case between Sieska Sagita Nasution, an Indonesian citizen (WNI), and Pepijin Joehem De Blecourt, a foreign national (WNA), which was decided by Decision Number: 550/Pdt.G/PA.Sor. This research seeks to address the following legal issues: (1) the legal consequences for marital property, such as land and buildings, in cases of divorce within mixed marriages; (2) the legality of foreign national, after divorce, in granting power of attorney to sell their portion of the marital property, specifically land in Indonesia; and (3) how the law was applied by the panel of judges in the mixed marriage case between Sieska Sagita Nasution, an Indonesian Citizen (WNI) and Pepijin Joehem De Blecourt, a Foreign national (WNA), as decided in Decision Number: 550 / Pdt.G / PA.Sor. The research method used in this study is a combination of normative legal research method and empirical legal research. This research is descriptive analytical, with data collection carried out through documents studies, library research, and supported by field research. The findings of this study show that the legal consequences for marital property, such as land and buildings, in divorce cases involving mixed marriages are that both the Indonesian and foreign nationals involved in the marriage remain entitled to half of the total value of the marital property, unless otherwise specified in a prenuptial agreement. As a result, marital property in these mixed marriages may include ownership of movable assets, such as land and anything attached to it by natural, human actions, or its intended use.

Keywords: *Marital Property, Mixed Marriage*

INTRODUCTION

Marriage is a basic element in the formation of a harmonious and loving family, so in the implementation of the marriage, legal norms are needed to regulate it. The application of legal norms in the implementation of marriage is especially needed in order to regulate the rights, obligations, and responsibilities of each family member in order to form a happy and prosperous household. Mixed marriages between Indonesian citizens and foreign citizens are a real consequence of the development of the times and the rapid development of tourists coming to Indonesia. The event of mixed marriage is a legal act that causes a problem and has legal consequences that are civil in nature, but also causes problems and public legal consequences, especially in the field of citizenship. When Indonesian citizens enter into a mixed marriage where they retain their citizenship and their rights as citizens are lost to be able to have their rights to land in Indonesia. Foreign citizens (WNA) are essentially not prohibited by law from owning buildings and land in Indonesia, but are given restrictions on the rights granted, namely the right to use but with restrictions. The restrictions imposed by the government on foreign nationals are intended to ensure that the opportunity for ownership does not deviate from its purpose, namely to provide reasonable support for the foreign nationals while living in Indonesia. Ownership of buildings and

land for foreign nationals is regulated through a legal mechanism with the aim that no party is harmed because the law is an institution that functions to make residents feel prosperous and happy. Foreign citizens who carry out legal acts in Indonesia also have the right to receive legal protection because the law was created as a means or instrument to regulate the rights and obligations of legal subjects.

One example of a mixed marriage case that submitted an application to resolve the problem of the consequences of marriage on joint property is the mixed marriage between Sieska Sagita Nasution, an Indonesian citizen (WNI) and Pepijin Joehem De Blecourt, a foreign citizen (WNA) which has been decided with Decision Number: 550/Pdt.G/PA.Sor. On January 7, 1996, in Bandung City, Sieska Sagita Nasution (Defendant) had married Pepijin Joehem De Blecourt (Plaintiff) at the Religious Affairs Office of Margacinta District. For their marriage, the Plaintiff and Defendant never separated their assets, so that everything obtained by the Plaintiff and Defendant in the marriage 'will become Joint Assets (Gono-gini) of the Plaintiff and Defendant.

During the marriage, the Plaintiff and Defendant had joint assets (Gono-gini) in the form of: A plot of land measuring 320 M², including a house building standing on it measuring 220 M² (lily type), located at Jalan Iris Garden No. 3, Lot No. 93 Spring Hills, Mekarsaluyu Village, Cimenyan District, Bandung Regency, as stated in the Sale and Purchase Agreement Number: 93/SH-BV/XIII/10-12, dated October 25, 2012, in the name of the Defendant.

Until the lawsuit was registered at the Soreang Religious Court Clerk's Office, the assets had not been separated and divided. However, the Plaintiff argued that he and the Defendant were previously husband and wife who were legally married, but had been officially divorced at the Soreang Religious Court. During the marriage, the Plaintiff and Defendant had obtained joint assets. Regarding the assets, the Plaintiff requested that they be designated as joint assets and that the Plaintiff and Defendant's share be determined, namely that each party receives 1/2 (half) of the joint assets.

The plaintiff as a foreign citizen gave power of attorney to sell the disputed land. This raises problems from the legal aspect. Because the marriage of the Plaintiff and Defendant is a mixed marriage and the plaintiff is a foreign citizen. This incident is a legal act that raises a problem and has legal consequences that are civil in nature, but also raises problems and public legal consequences, especially in the field of citizenship.

When Indonesian citizens enter into a mixed marriage where they retain their citizenship and their rights as citizens are lost to be able to have their rights to land in Indonesia. Foreign citizens (WNA) are essentially not prohibited by law from owning buildings and land in Indonesia, but are given restrictions on the rights granted, namely the right to use but with restrictions. The restrictions imposed by the government on WNA are intended to ensure that the opportunity for ownership does not deviate from its purpose, namely to provide reasonable support for the WNA while living in Indonesia.

Ownership of buildings and land for foreign citizens is regulated through a legal mechanism with the aim that no party is harmed because the law is an institution that functions to make residents feel prosperous and happy. Foreign citizens who carry out legal acts in Indonesia also have the right to receive legal protection because the law was created as a means or instrument to regulate the rights and obligations of legal subjects.

LITERATURE REVIEW

Theory of Legal Certainty

Legal rules, both written and unwritten, contain general rules that serve as guidelines for individuals to behave in society and serve as limitations for society in burdening or taking action against individuals. The existence of such rules and the implementation of these rules creates legal certainty. So it can be concluded that normative legal certainty is when a regulation is made and enacted with certainty because it regulates clearly and logically, so that it does not cause doubt (multi-interpretation), is logical and has predictability. Legal certainty is a condition where human

behavior, both individuals, groups, and organizations, is bound and within the corridor that has been outlined by legal rules.

Theory of Legality of Power

The legality of the power of attorney in the Deed of Sale and Purchase Agreement as the basis for making the deed of sale and purchase and to find out the legal consequences of using the power of attorney as the basis for making the deed of sale and purchase. The Deed of Sale and Purchase Agreement which contains the power of attorney is a form of authentic deed that is valid when viewed from the perspective of the Law of Agreement where the requirements for a valid agreement contained in Article 1320 of the Civil Code have been met, but when viewed from the Agrarian Law, the Deed of Sale and Purchase Agreement is not a valid deed as a requirement for a land sale and purchase transaction because the land sale and purchase transaction will be valid or legal if the deed of sale and purchase is made by the PPAT.

Positive Legal Theory

Positive law is also called *ius constitutum*, which means a collection of written legal principles and rules that are currently in force and are binding in general or specifically and enforced by or through the government or courts in the Republic of Indonesia.

METHOD

Types and Nature of Research

The types of research used are normative legal research and empirical legal research. Normative legal research is "library legal research conducted by examining library materials or secondary materials alone". While empirical legal research is research conducted by a legal researcher to research, study, and analyze the workings of law in society.

Approach Method

In this study, it was conducted through an approach using a normative legal approach and an empirical legal approach. The normative legal approach was conducted by using laws and regulations as the initial basis for conducting the analysis.

Data source

To obtain the data needed in this study, primary data and secondary data are used. Primary data, namely data obtained directly from the field, both related to the research location, legal events that occurred at the research location and respondents who provided information. While secondary data is used as a supporter or support for primary legal materials. Secondary data, namely data obtained from research documents in the form of reports, theses, dissertations and laws and regulations.

RESULTS AND DISCUSSION

LEGALITY OF FOREIGN CITIZENS (WNA) WHO HAVE BEEN DIVORCE IN MIXED MARRIAGES IN GRANTING POWER OF ATTORNEY TO SELL PART OF JOINT PROPERTY IN THE FORM OF LAND IN INDONESIA

A. Legality of Divorce Between Indonesian Citizens and Foreign Citizens

The validity of divorce between Indonesian citizens and foreign citizens is related to the competence and choice of applicable law (choice of law). For foreign citizens domiciled in Indonesia, the District Court can issue a divorce decision if both parties live in Indonesia. This situation does not cause problems. Problems arise if one party is in Indonesia while the other party is abroad. In this case, the divorce suit is filed with the District Court and if the parties do not mention their citizenship, the Judge will use Indonesian law without considering aspects of International Civil Law (IPL). If the parties mention their citizenship, then the "choice of law" needs to be considered. Based on the principle of citizenship, a divorce decision pronounced abroad

between two parties who are Indonesian citizens can only be recognized by an Indonesian Judge if the decision is based on reasons recognized in Indonesian law.

The following is the divorce procedure for the Plaintiff (the party filing the divorce petition) and the Defendant (the party accused in the divorce petition) who live abroad, in accordance with Article 66 paragraph (4) of Law No. 7 of 1989 concerning Religious Courts:

1. If the Plaintiff and Defendant are abroad, but the marriage was conducted in Indonesia, a divorce application can be submitted to the Religious Court with jurisdiction in the area where the marriage was conducted or to the Central Jakarta Religious Court.
2. If the Plaintiff and Defendant are abroad, and the marriage was conducted abroad, proof of marriage must be registered or reported to the Office of Religious Affairs (KUA) within one year.
3. A divorce application can be submitted to the Central Jakarta Religious Court in cases where the plaintiff and defendant are abroad and evidence of marriage has never been registered or reported to the Religious Affairs Office in the area where the couple lives.

In other words, the field of international private law is increasingly important in regulating international relations. This is because international private law is basically part of the national legal system that regulates legal relations and events involving more than one national legal system. International Private Law consists of national legal principles, principles, and rules used to regulate events or legal relations that cross national borders. The principles of international private law must be fully complied with when using references from other countries to resolve international private law issues. Family issues such as marriage, parenthood, child transfer, divorce, marital property, etc., all of which involve foreign elements, are common principles in international private law, especially in some civil law systems. Thus, Mokhtar Kusmartmaja explains the limitations of international private law as follows: International private law is a collection of principles that regulate civil legal relations between countries that have different civil laws.

B. Legal Consequences of Divorce in Mixed Marriages on Assets in the Form of Land Acquired During the Marriage

Marriage between Indonesian citizens and foreign citizens conducted with a marriage agreement, Indonesian citizens can still have absolute land rights, without having to consider the interests of foreign citizens who are bound by marriage with them. The making of this marriage agreement cannot simply protect the couple alone but must also consider the third party involved if there is one, this marriage agreement must not violate the boundaries of religious law, morality, and because this is an agreement, it must also meet the requirements for the validity of the agreement as stated in Article 1320 BW, so that the marriage agreement that can currently be made during the duration of the marriage must not contain bad intentions in it.

It is expected that with the time of making a marriage agreement that can be made during the marriage, it will provide an opportunity for Indonesian citizens who have mixed marriages to be able to have land rights like other Indonesian citizens, thus the possibility of committing legal smuggling related to land rights ownership will be reduced. With the separation of assets, the land rights owned by Indonesian citizens are in their own control, in the sense that the name listed legally is the name of an Indonesian citizen directly related to the physical control of the land rights, with this separation of assets, the partner who is a foreign citizen does not have any rights to the land because it is not included in the joint assets.

Based on the results of the interview with Mr. Ikhsan Lubis, the settlement of joint property in a divorce of a mixed marriage between a foreigner and an Indonesian citizen involves an in-depth analysis of the interaction between national law and the principles of international law. The goal is to understand the various legal implications that arise and how existing regulations govern the rights and obligations of each party. Foreign legal terms such as *droit de partage* (the right to divide property) and jurisdiction (jurisdiction) will provide a more comprehensive understanding. Notaries play a role in making divorce deeds and division of joint property, which must comply with the provisions of applicable law both in Indonesia and in the country of origin of the foreign

couple. The application of *lex loci celebrationis* or the law of the place where the marriage took place, which requires legal adjustments to ensure compliance with the principles of division of property in an international context.

In the case of divorce of mixed marriages between foreigners and Indonesian citizens, the division of joint property reflects the interaction between Indonesian domestic law and the principles of international law. Based on Law No. 1 of 1974 and Government Regulation No. 9 of 1975, joint property must be divided fairly between husband and wife. Notaries must ensure compliance with domestic and international legal provisions in the preparation of divorce deeds and division of property. Experience from real practices and case studies show how courts and notaries handle the division of joint property in an international context. The effectiveness of the division of joint property in the divorce of mixed marriages requires careful adaptation to domestic and international regulations and careful handling by notaries and related parties.

C. Legal Aspects of the Power of Attorney to Sell Land Exercised by Foreign Citizens in Indonesia

The provisions of Article 1320 BW can be used as a reference, even though the granting of power of attorney can occur through unilateral legal action. The forms of granting power of attorney contained in Article 1793 BW include: granting power of attorney with an authentic Deed, granting power of attorney in a letter or deed under hand, granting power of attorney with a regular letter, granting power of attorney secretly and/or granting power of attorney orally. The recipient of the power of attorney is a person or person, who is given authority by the principal to act on behalf of the principal to carry out legal actions, including establishing legal relations with third parties, for and on behalf of the principal because the legal consequences arising from the power of attorney befall (or fall to) the principal, which can be very large legal consequences, so it can be assumed that the principal will not carelessly choose the person to be given power of attorney. It can be said that a person who is appointed (designated) as a power of attorney is a trusted person of the principal.

So the power must be exercised in good faith by the principal, and therefore it is very inappropriate if the power over the principal is exercised contrary to the will of the principal, even though the power does not clearly regulate the limits of the authority granted to him. If, even though he has been given the authority to act on behalf of the principal; however, he knows that the principal wants to take legal action himself for which the power has been granted to the principal, the principal must prioritize the will of the principal. If the principal knows that the principal is negotiating to carry out the sale of goods, in the name of which the principal is authorized to sell on behalf of the principal, then the principal may not preemptively sell to prospective buyers, by which action he interrupts the ongoing negotiations between prospective buyers and the principal. Propriety does not allow the principal to compete with the principal, to take action for which he was granted the power. This means that if the principal has an interest in the implementation of the power granted to him, he is still obliged to prioritize the interests of the principal. The legal consequences for transferred land are that in the UUPA it is stipulated that those who have the right to own land in the Republic of Indonesia are Indonesian citizens. Foreign nationals are not allowed to own property rights and the transfer of property rights to foreign nationals is prohibited with the threat of being null and void by law.

Notaries play an important role in ensuring that the granting of power of attorney to sell joint property, such as a plot of land, is carried out in accordance with applicable legal provisions, as well as ensuring compliance with the correct legal procedures. In this case, foreign legal terms such as power of attorney and notaire are used to clarify the role of notaries in this context. Notaries are responsible for ensuring that the power of attorney to sell land meets applicable legal provisions, including the validity of the document and the legality of the power of attorney granted and must verify the legality and compliance with land regulations to avoid legal problems in the future. Power of attorney documents must be officially registered to ensure the validity of land transactions. The process of making a power of attorney by a notary must comply with the

principes de sécurité juridique (legal security principles), which ensure that all parties involved understand their rights and obligations. In the context of granting power of attorney to sell part of a joint property in the form of a plot of land, the role of a notary is crucial to ensure that legal procedures are complied with in their entirety. Based on Law No. 1 of 1974, the Civil Code, and Government Regulation No. 24 of 1997, a notary must ensure that the power of attorney granted is legally valid and complies with the provisions regarding the transfer of land rights. By implementing the principle of acte authentique (authentic deed) and power of attorney, this process can run smoothly and in accordance with applicable legal provisions.

D. Legality of Foreign Citizens (WNA) Who Have Divorced in Mixed Marriages in Granting Power of Attorney to Sell Part of Joint Property in the Form of Land in Indonesia

The making of a marriage agreement between an Indonesian citizen who is bound by marriage with a foreign citizen has legal consequences, that during the marriage, one of the husband/wife parties can still have rights to land in the form of ownership rights, business use rights, and building use rights. In a marriage between an Indonesian citizen and a foreign citizen that is carried out with a marriage agreement, the Indonesian citizen can still have absolute rights to land, without having to pay attention to the interests of the foreign citizen who is bound by marriage to him/her.

The legality of a divorced foreign national in a mixed marriage in granting power of attorney to sell part of the joint property in the form of land in Indonesia is that the foreign national is indeed not allowed to have rights to land in the form of Ownership Rights, Cultivation Rights or Building Use Rights. This is in accordance with Article 35 of the Marriage Law which states that property acquired during marriage becomes joint property. So, there is a mixture of property acquired after marriage, and the foreign national will also become the owner of the joint property. Meanwhile, referring to the provisions of Law Number 5 of 1960 concerning Basic Agrarian Principles, foreign nationals may not have Ownership Rights, Cultivation Rights or Building Use Rights. Therefore, if an Indonesian citizen who is married to a foreign national, after marriage can no longer obtain Ownership Rights, or Building Use Rights, or Cultivation Rights, because it will become part of the joint property owned by him/her and his/her foreign national partner. If the Indonesian citizen still wants to have rights to land after marrying a foreign national, the Indonesian citizen must make a marriage agreement that regulates the separation of property.

The concept of community property in mixed marriages between individuals of different nationalities requires in-depth analysis to understand how applicable law governs the division of property in cases of divorce. In the Indonesian legal system, this involves the application of the principle of community property and an assessment of the influence of jurisdictional conflicts. A deductive-inductive legal analysis approach will provide insight into how national and international law treats community property in the context of mixed marriages, as well as examining relevant jurisprudential examples. In mixed marriages, the law of the country of residence or citizenship may affect the division of community property. Indonesian law stipulates that community property includes all property acquired during the marriage, but may be affected by the laws of the countries of origin of the spouses of different nationalities. The principle of conflict of laws will determine the applicable law for the division of property.

The concept of joint property in mixed marriages between Indonesian and foreign citizens involves the application of domestic and international legal principles. Based on the Civil Code and Law No. 1 of 1974, joint property includes all property acquired during the marriage, but in cases of mixed marriages, the principle of conflict of laws determines the applicable law. Jurisprudence such as Case Number 377/Pdt.G/2017/PN.Jkt.Sel and Number 542 K/Pdt/2013 illustrate how Indonesian courts consider the applicable law in the couple's home country to resolve joint property disputes. Thus, lawyers and notaries must carefully examine applicable laws both domestically and internationally to ensure that the distribution of joint property is carried out fairly and in accordance with the law.

DISCUSSION

APPLICATION OF LAW BY JUDGES BETWEEN INDONESIAN CITIZENS AND FOREIGN CITIZENS IN DECISION NUMBER 551/PDT.G/2020/PA.SOR

A. Chronology of Events and Legal Issues

1. Chronology of Events

On January 7, 1996, in Bandung City, Pepijn Jochem De Blecourt bin De Blecourt as the Plaintiff who is a Dutch Citizen has married Sieska Sagita Nasution binti Drs. HM Ali Nafiah Nasution as the Defendant at the Religious Affairs Office of Margacinta District and was blessed with two daughters, Melody Amelia Suzzane and Megan Isabelle. For the marriage, the Plaintiff and Defendant never separated their assets, so that everything obtained by the Plaintiff and Defendant in the marriage will become Joint Assets (Gono-gini) of the Plaintiff and Defendant.

On September 24, 2019, the Soreang Religious Court has decided the marriage of the Plaintiff and Defendant with divorce, as stated in its Decision No. 1895/Pdt.G/2019/PA.Sor. and at the same time the Soreang Religious Court has issued a Divorce Deed Extract No.2482/AC/2019/PA.Sor. During the marriage, the Plaintiff and Defendant have owned Joint Assets (Gono-gini) in the form of: A plot of land measuring 320 M2, including a house building standing on it measuring 220 M2 (lily type), located at Jalan Iris Garden No. 3, Lot No. 93 Spring Hills, Mekarsaluyu Village, Cimenyan District, Bandung Regency, as stated in the Sale and Purchase Agreement Letter Number: 93/SHBV/XIII/10-12, dated October 25, 2012, in the name of the Defendant.

On January 16, 2020, the Plaintiff filed a Joint Property Lawsuit at the Soreang Religious Court Clerk's Office with registration number 550/Pdt.G/2020/PA.Sor. However, until this Lawsuit was registered at the Soreang Religious Court Clerk's Office, the assets had not been separated and divided between the Plaintiff and Defendant. Based on the reasons above, the Plaintiff requests that the Panel of Judges examining and trying this case be pleased to:

1. Granting the Plaintiff's Claim in its entirety;
2. Declaring as Joint Property (Gono-gini) of the Plaintiff and Defendant, a plot of land with an area of: 320 M2, including a house building standing on it with an area of: 220 M2 (lily type), located at Jalan Iris Garden No.3 Kavling No.93 Spring Hills, Mekarsaluyu Village, Cimenyan District, Bandung Regency;
3. Declaring that the Plaintiff and Defendant are each entitled to ½ (half) of the proceeds from the sale of the Land and Buildings referred to in petitum point 2 above;
4. Ordering the Defendant to sell the Land and Buildings referred to in petitum point 2 above and hand over ½ (half) of the proceeds from the sale to the Plaintiff;
5. Authorizes the Plaintiff to sell the Land and Building, if the Defendant refuses to sign the Deed of Sale and Purchase.
6. Ordering the Plaintiff to hand over ½ (half) of the proceeds from the sale of the Land and Building to the Defendant, immediately after the Plaintiff receives payment;
7. Determine court costs in accordance with applicable provisions;

Next, the Panel of Judges attempted to reach a settlement, but to no avail. Then, the Chairperson of the Panel ordered the parties to undergo mediation in accordance with the Supreme Court Regulation (PERMA) of the Republic of Indonesia Number 01 of 2016 concerning Mediation Procedures in Court by appointing Drs. Mahbub, a registered Mediator at the Soreang Religious Court. However, based on the report from the mediator judge, mediation had been carried out and attended by the Plaintiff and Defendant, but the mediation did not succeed in reaching a settlement agreement.

2. Legal Issues In The Case

The legal problem in Case Decision Number 551/Pdt.G/2020/PA.Sor is that according to the Plaintiff, the Joint Assets (Gono-gini) in the form of a Plot of Land measuring 320 M2, including a House Building standing on it measuring 220 M2 (lily type), located at Jalan Iris Garden No. 3, Lot No. 93 Spring Hills, Mekarsaluyu Village, Cimenyan District, Bandung Regency have not been separated and divided between the Plaintiff and Defendant.

Meanwhile, according to the Defendant, the assets obtained during the marriage, in addition to the land object and the house building on it with an area of 320 M2, located in the Dago Pakar Resort Complex, Jalan Iris Garden No. 3, Lot No. 93 Spring Hills, RT/RW 003/007, Mekarsaluyu Village/Sub-district, Cimenyan District, Bandung Regency, West Java Province, Indonesia, as argued by the Plaintiff, there are other assets, namely the remaining money from the sale of 1 (one) Casafina apartment unit located at 211 Bedok South Avenue 1 Singapore amounting to \$342,816.86 (equivalent to Rp. 3,531,013, - (three billion five hundred thirty one million thirteen rupiah) with a Sing dollar exchange rate of \$1 at the time of sale of Rp. 10,300, - (ten thousand three hundred rupiah)) and part of the CPF Funds which will be disbursed around July 2020.

The Defendant also questioned the basis for the Plaintiff to request the Court to decide with a verdict such as the contents of lawsuit number 5, namely "Granting the Plaintiff power of attorney to sell the Land and building, if he refuses to sign the Deed of Sale and Purchase." What is the legal basis so that the Plaintiff, who is clearly a Foreign Citizen, considers himself entitled to receive power of attorney to sell the land and building? The provisions of the law on marriage of different citizenships, namely between a foreign citizen and an Indonesian citizen whose marriage took place or was held in Indonesia, the property that can be owned by a foreign citizen is only movable property, while immovable property such as land and that which is equated with land cannot be owned by the foreign citizen. In the Marriage Law or in the Compilation of Islamic Law, there is no article that regulates the position of marital property in a mixed marriage, namely the marriage of a foreign citizen with an Indonesian citizen carried out in Indonesia.

B. Legal Considerations of the Panel of Judges in Decision Number 551/Pdt.G/2020/PA.Sor

The legal considerations of the Panel of Judges in Decision Number 551/Pdt.G/2020/PA.Sor are:

1. Legal Considerations Regarding Property

In *petitum* number 2, the Plaintiff requested that the object be determined as joint property of the Plaintiff and Defendant, namely a plot of land measuring 320 m2, including a house building standing on it measuring 220 m2 located at Jalan Iris Garden No. 3 Kavling No. 93 Spring Hills, Mekarsaluyu Village, Cimenyan District, Bandung Regency. In response to the lawsuit, the Defendant has submitted its response which in essence confirms some of the Plaintiff's arguments and denies some of them. The Defendant confirmed that during the marriage the Plaintiff and Defendant had owned property, but not only the land and buildings located in the Dago Pakar Resort Complex that were sued by the Plaintiff. However, the Plaintiff and Defendant have other assets, namely 1 (one) Casafina apartment unit in Singapore which was sold by the Plaintiff in 2018 and some CPF funds in Singapore. Regarding the money from the sale of the Cassafina apartment, it is fully controlled by the Plaintiff, so there is a legal basis that the housing unit located in the Dago Pakar Resort Complex is the Defendant's right.

To strengthen the argument of the lawsuit, the Plaintiff has submitted evidence P.2 in the form of a Sale and Purchase Agreement No. 93/SH-BV/XIII/10-12, dated October 25, 2012, made by/before a Notary. At the trial, the Plaintiff did not show the original evidence so that the evidence did not meet the formal requirements as evidence as referred to in Article 1888 of the Civil Code, but it is valuable and is only an initial indication that needs to be strengthened with other evidence. Although the Plaintiff's evidence P.2 does not meet the formal requirements of proof, the object of the dispute has been acknowledged by the Defendant in his response and the evidence P.2 has been acknowledged and confirmed by the Defendant and the evidence P.2 is in accordance with evidence T.8 submitted by the Defendant, thus indicating that the object of the dispute is indeed the property obtained during the marriage of the Plaintiff and Defendant.

Regarding the Defendant's rebuttal argument and evidence T.23 and T.24 submitted by the Defendant which shows that the Plaintiff and Defendant have agreed where the Casafina Apartment Singapore is for the Plaintiff and the Plaintiff provides (grant) a house located in the

Dago Pakar Housing Complex for the Defendant. Against this evidence, the Plaintiff denies in the conclusion that the evidence is only a conversation on social media that has no legal force.

The Panel of Judges has conducted a local inspection (*descente*) on the disputed object in order to ascertain the disputed object and to comply with the provisions in the Circular of the Supreme Court (SEMA) No. 7 of 2001 concerning Local Inspection. During the inspection, the Plaintiff was able to show the land and the permanent house building, the area of the land and building in accordance with the lawsuit and based on the local inspection (*descente*) the following boundaries were obtained:

- North side: empty land owned by PT. Dago Pakar;
- South: Jl. Iris Garden;
- East side: house owned by Mr. Ali Murdani;
- West side: house owned by Mr. Hendra Setiadi.

Therefore, with the approval of the joint property object, the seizure of collateral on the object as stated in the Minutes of Collateral Confiscation Number 550/Pdt.G/2020/PA.Sor dated August 28, 2020 and has been declared valid and valuable as per the Interim Decision Number: 550/Pdt.G/2020/PA.Sor dated August 31, 2020, must be declared valid and valuable.

2. Consideration of Portions of Joint Property

The Plaintiff requests the Court to determine the portion of the joint property that has been determined above for the Plaintiff and Defendant, each $\frac{1}{2}$ (half) of the portion. The legal norm on the division of joint property as regulated in the Compilation of Islamic Law Article 97 stipulates that the portion of each widow and widower is half of the joint property. Based on these provisions, the Panel of Judges determines $\frac{1}{2}$ (half) of the portion for the Plaintiff and $\frac{1}{2}$ (half) of the remaining portion for the Defendant from the joint property of the Plaintiff and Defendant.

Therefore, the punishment of dividing joint property, even if it is controlled by one party, is still a punishment for both parties, because the division of joint property needs to involve the Plaintiff and Defendant actively. With the determination of joint property and their respective portions as mentioned above, the parties (Plaintiff and Defendant) or anyone who (later) controls the property is punished to divide the joint property in question according to the respective portions of the Plaintiff and Defendant and if it cannot be divided in kind, then a public sale is carried out and the proceeds of the sale are given to the Plaintiff and Defendant according to their respective portions.

3. Legal Considerations of the Grantor of Power of Attorney to the Plaintiff to Sell Joint Property

The Plaintiff in *petitum* number 3 requested that the Plaintiff be given power of attorney to sell the Land and Building. Regarding the *petitum*, the Panel of Judges has considered that the sentence to divide joint assets, even if controlled by one party, is still a sentence for both parties, therefore the division of joint assets needs to involve the Plaintiff and Defendant actively. Based on these legal considerations, the Plaintiff's *petitum* in number 3 is not based on law and must be declared rejected. With all that has been considered above, the Panel of Judges is of the opinion that there are sufficient reasons to grant the Plaintiff's lawsuit in part.

4. Legal Considerations Regarding the Sale Proceeds of Casafina Apartments

Regarding *petitum* number 2.2 in the counterclaim, namely where the counterclaim Plaintiff demands that the remaining proceeds from the sale of 1 (one) Casafina apartment unit in Singapore sold by the Defendant in 2018 for \$ 342,816.86 (equivalent to Rp. 3,531,013, - (three billion five hundred thirty one million thirteen rupiah) be used as joint property. Regarding the counterclaim, the counterclaim Defendant has submitted its response which in essence rejects all of the counterclaim Plaintiff's arguments except those that are explicitly and clearly acknowledged. Joint property that was sold before the divorce and no longer exists when they divorced, such as the Casafina Apartment at 211 Bedok South Avenue 1 Singapore, cannot be divided, because it is no longer theirs because it has been sold.

To strengthen the argument of the lawsuit, the Plaintiff has submitted evidence T.19, T.20 and T.21. Based on the evidence, it shows that the Defendant bought the Cassavina apartment

based on the proceeds from selling the Plaintiff's and Defendant's houses in Singapore. Related to the argument of the Plaintiff's counterclaim for the remainder of the sale of the Cassavina Apartment, the Plaintiff has submitted evidence T.22. The evidence is in the form of a copy of the detailed sales record of 1 (one) Casafina apartment unit located at 211 Bedok South Avenue Singapore from Lee Chai & Boon LLP Advocates & Solicitors Singapore addressed to the Defendant. The evidence was not shown in the original trial by the Plaintiff, so that in accordance with the provisions of Article 1888 of the Civil Code it states that "The power of proof with a writing lies in the original deed. If the original deed does not exist, then the copy and quotation can only be trusted as long as the copy and quotation are in accordance with the original which can always be ordered to be shown". So the panel is of the opinion that the evidence is only an initial indication that must be strengthened by other evidence.

Against the evidence there is no other evidence that strengthens evidence T.22. So related to the Plaintiff's lawsuit argument regarding the sale value of the Cassafina apartment, there is a lack of evidence. Thus, with the unclear sale value of the Cassafina apartment, the Panel is of the opinion that the Plaintiff's counterclaim argument is not proven and therefore the Plaintiff's lawsuit must be declared unacceptable (*niet ontvankelijk verklaard*).

5. Legal Considerations Regarding CPF Funds

In response to the counterclaim, the counterclaim Defendant has submitted its answer which essentially states that the Central Provident Fund (CPF) paid by the company should become joint property; Considering, that in response to the counterclaim, the counterclaim Defendant in its answer essentially states that if the counterclaim Plaintiff wants funds in his name, then he may seek it himself. There is no obligation for the counterclaim Defendant to take care of it and submit the results to the counterclaim Plaintiff.

To prove the arguments of his lawsuit, the Plaintiff in the counterclaim has submitted evidence T.13, T.14, T.15, T.16, T.17 and T.18, namely in the form of written evidence related to a copy of the Plaintiff's employment contract with the company and funds in the central provident fund (CPF). As in the Plaintiff's counterclaim which essentially states that the Central Provident Fund (CPF) is a mandatory social security savings scheme funded by employer and employee contributions, functioning to meet pension, housing and health needs. CPF is paid routinely every month by the company and CPF funds can be disbursed in installments when the age of 55 is reached, or CPF funds can be disbursed in full if the Permanent Residence (PR) permit is revoked / stopped / canceled. Therefore, at that time the company run by the Defendant and Plaintiff paid CPF contributions on behalf of the Defendant and Plaintiff.

So it can be understood that CPF is a social security savings paid by the Counter Defendant as a permanent resident who runs the Stitch Pte.Ltd company business. With another meaning that CPF funds are funds paid by the company to the Singapore government as a form of social security. Matters related to everything paid by the company are included in the company's assets. Regarding the lawsuit, which includes company assets in the form of a Limited Company (Ltd). A corporate company under the holding company of its parent company. Based on this, the Panel is of the opinion that the Plaintiff's lawsuit contains an error in persona because the lawsuit in question should have been sued by a legal entity (*rechtspersoon*) namely to Stitch Pte.Ltd. not to the Counter Defendant who is a (*natuurlijkpersoon*), therefore because the Plaintiff's lawsuit is an error in persona, it must be declared unacceptable (*niet ontvankelijk verklaard*).

The verdict of the Panel of Judges is as follows:

1. Granting the Plaintiff's claim in part;
2. Determine as joint property of the Plaintiff and the Defendant, namely the land and permanent house building located on a plot of land measuring 320 m², including the house building standing on it measuring 220 m², located at Jalan Iris Garden No. 3 Kavling No. 93 Spring Hills, Mekarsaluyu Village, Cimenyan District, Bandung Regency, with the following boundaries: North: vacant land owned by PT. Dago Pakar; South: Jl. Iris Garden; East: house owned by Mr. Ali Murdani; West: house owned by Mr. Hendra Setiadi;

3. Determines that the Plaintiff and Defendant are entitled to the joint property with the details that the Plaintiff receives ½ of the share and the Defendant receives ½ of the share;
4. To order the Plaintiff and Defendant or anyone else who controls the object of the joint property in question to divide the joint property as in dictum number 2 above to the Plaintiff and Defendant according to their respective portions and if it cannot be divided in kind, then a public sale is carried out with the proceeds of the sale being given to the Plaintiff and Defendant according to their respective portions;
5. Declare the validity and value of the collateral seizure carried out by the Soreang Religious Court on August 28, 2020 against land and a permanent house building located on a plot of land measuring 320 m², including a house building standing on it measuring 220 m², located at Jalan Iris Garden No. 3 Kavling No. 93 Spring Hills, Mekarsaluyu Village, Cimenyan District, Bandung Regency;
6. Rejecting the Plaintiff's lawsuit for other than and beyond.
In counterclaim: Declaring that the Plaintiff's counterclaim is unacceptable (niet ontvankelijk verklaard).
In the convention and counterclaim: Ordering the Plaintiff in the convention/Defendant in the counterclaim to pay court costs in the amount of Rp. 3,186,000.00 (three million one hundred and eighty six thousand rupiah).

C. Analysis of the Application of Law by the Panel of Judges in Decision Number 551/Pdt.G/2020/PA.Sor

Based on the legal considerations of the panel of judges in Decision Number 551/Pdt.G/2020/PA.Sor which states that a plot of land measuring 320 m², including a house building standing on it measuring 220 m² located at Jalan Iris Garden No. 3 Kavling No. 93 Spring Hills, Mekarsaluyu Village, Cimenyan District, Bandung Regency is an object of joint property. This is true and appropriate because the Panel of Judges has conducted a local inspection (descente) on the object of the dispute in order to ascertain the object of the dispute.

Regarding the determination that the Plaintiff and Defendant are entitled to the joint property with the details that the Plaintiff receives ½ of the share and the Defendant receives ½ of the share, the Panel of Judges has determined that this is in accordance with Article 97 of the Compilation of Islamic Law, which stipulates that the share of each widow and widower is half of the joint property.

The legal consideration of the grantor of power of attorney to the plaintiff to sell joint property is that the panel of judges has considered that the sentence to divide joint property, even if controlled by one party, is still a sentence for both parties, therefore the division of joint property needs to involve the Plaintiff and Defendant actively. Based on these legal considerations, according to the panel of judges, it is not based on law and must be declared rejected.

Regarding the sale proceeds of Casafina Apartment, the Plaintiff in the counterclaim demands that the remaining proceeds from the sale of 1 (one) Casafina apartment unit in Singapore sold by the Defendant in 2018 for \$342,816.86 (equivalent to Rp. 3,531,013,- (three billion five hundred thirty one million thirteen rupiah) be made into joint assets. According to the panel of judges, joint assets that had been sold before the divorce and no longer existed when they divorced, such as the Casafina Apartment at 211 Bedok South Avenue 1 Singapore, could not be divided, because they were no longer theirs because they had been sold.

The legal considerations related to the CPF (Central Provident Fund) fund are a mandatory social security savings scheme funded by employer and employee contributions, functioning to meet pension, housing, and health needs. CPF is paid routinely every month by the company and CPF funds can be disbursed in installments when the age of 55 is reached, or CPF funds can be disbursed in full if the Permanent Residence (PR) permit is revoked / stopped / canceled. So it can be understood that CPF is a social security savings paid by the Defendant in the counterclaim as a permanent resident who runs the Stitch Pte.Ltd company business. With another meaning that CPF

funds are funds paid by the company to the Singapore state as a form of social security. Matters related to everything paid by the company are included in the company's assets. Based on this, the panel of judges is of the opinion that the Plaintiff's lawsuit contains an error in persona because the lawsuit in question should have been sued by a legal entity (rechtspersoon), namely Stitch Pte.Ltd. not to the counterclaimant who is a (natural person), therefore because the Plaintiff's lawsuit is error in persona, it must be declared unacceptable (niet ontvankelijk verklaard).

CLOSING

Conclusion

1. The legal consequences of joint property in the form of land and buildings in a divorce in a mixed marriage are that Indonesian citizens and foreign citizens as the perpetrators of the mixed marriage are still entitled to half of the value of all joint property as long as it is not specified otherwise in the marriage agreement, therefore joint property in this mixed marriage can also be in the form of ownership of movable objects such as land and everything that due to nature, human actions, designation or purpose is attached to the land. This is because ownership of immovable objects such as land cannot be controlled or owned in full by (foreign nationals) as regulated in Law Number 5 of 1960 concerning UUPA.
2. The legality of foreign citizens who have divorced in mixed marriages in granting power of attorney to sell part of the joint property in the form of land in Indonesia, namely the foreign national is indeed not allowed to have land rights in the form of Ownership Rights, Cultivation Rights or Building Use Rights. This is in accordance with Article 35 of the Marriage Law which states that property obtained during marriage becomes joint property. So, there is a mixture of property obtained after marriage, and the foreign national will also become the owner of the joint property. Meanwhile, referring to the provisions of Law Number 5 of 1960 concerning Basic Agrarian Principles, foreign nationals may not have Ownership Rights, Cultivation Rights or Building Use Rights. Therefore, if an Indonesian citizen who is married to a foreign national, after marriage can no longer obtain Ownership Rights, or Building Use Rights, or Cultivation Rights, because it will become part of the joint property owned by him/her with his/her foreign national partner.
3. The application of the law by the Judge in the mixed marriage case between Sieska Sagita Nasution, an Indonesian Citizen (WNI) and Pepijin Joehem De Blecourt, a Foreign Citizen (WNA) in Decision Number: 550/Pdt.G/2020/PA.Sor is in accordance with the provisions of applicable laws and regulations, namely by determining the object of the case as joint property of the Plaintiff and the Defendant, namely land and a permanent house building located on a plot of land with an area of 320 m², including a house building standing on it with an area of 220 m², located at Jalan Iris Garden No. 3, Lot No. 93 Spring Hills, Mekarsaluyu Village, Cimenyan District, Bandung Regency, determined that the Plaintiff and Defendant were entitled to the joint property with details that the Plaintiff received ½ part and the Defendant received ½ part in accordance with Article 97 of the Compilation of Islamic Law and carried out collateral seizure of the land and permanent house building located on a plot of land measuring 320 m², including the house building standing on it measuring 220 m², located on Jalan Iris Garden No. 3, Lot No. 93 Spring Hills, Mekarsaluyu Village, Cimenyan District, Bandung Regency.

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