



## **LEGAL ANALYSIS OF THE DIVISION OF JOINT PROPERTY ON LAND OWNED BY ONE PARTY'S PARENTS ACCORDING TO MARRIAGE LAW (STUDY OF DECISION NUMBER 183/Pdt.G/2025/MS.Sgi)**

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### **Abstract**

This study was conducted to analyze the division of joint assets and the judge's legal considerations in determining the status of joint assets standing on land owned by one of the parties' parents and the suitability of the decision with the provisions of Law Number 1 of 1974 concerning Marriage. The method used in this study is normative law with a case approach, namely analyzing secondary data in the form of the decision of the Mahkamah Syar'iyah Sigli Number 183 / Pdt.G / 2025 / MS.Sgi as well as laws and legal materials related to joint assets. This study shows that in this case, the object of the dispute is a permanent house unit standing on land owned by the Plaintiff's parents which is recognized as joint assets, while the land where the house stands is the Plaintiff's inherited property, but in its consideration the Panel of Judges did not clearly outline the boundaries between joint assets in the form of a house and land as inherited property, but instead immediately decided that the Defendant should divide 2 houses in kind. So that the decision can give rise to double interpretations as if the land where the house stands is also part of the joint assets. This creates legal uncertainty in the implementation of the decision and could potentially harm one of the parties. Therefore, the division of joint assets should be carried out fairly by clearly separating the house as joint property from the land as acquired property, in order to comply with the provisions of the Marriage Law.

**Keywords:** *Legal Analysis, Division of Joint Assets, Land Owned by Parents*

## **INTRODUCTION**

### **A. Background**

The bond between a man and a woman is also called marriage, so it can be perceived as being the same as a contract (*verbindtenis*) (Indra, 2022:6794). A marriage will be considered valid if the formal and material requirements are met (Az-zahrotu, 2025:22). In law, marriage registration is necessary so that the marriage that takes place has definite and strong legal force, which results in the emergence of rights and obligations between husband and wife (Beby, 2019:2). The rights and obligations between husband and wife are a reciprocal relationship regulated by Indonesian law (Satya, 2024:1096). Not only that, marriage will always have legal consequences for the property owned by both husband and wife which will become part of the joint property for them and their descendants (Beby, 2022:8). Based on Article 35 paragraph (1) of the Marriage Law, property acquired during marriage becomes joint property, while property brought in the form of gifts and inheritance remains under the control of each party unless otherwise agreed (*UU Perkawinan*). Issues regarding joint property often arise when a marriage breaks down, particularly through divorce. The breakdown of a marriage can occur for various reasons regulated by law, and the reason for the divorce is often related to the unsustainable state of the household. This raises questions about the provisions for the division of joint property under the Marriage Law.

In practice, the division of joint assets is difficult because in some cases, the object of the joint assets stands on land owned by a third party, in this case, for example, land owned by the parents of one of the parties. This problem is complicated because the land on which the object of the dispute stands does not belong to the parties, while the building is the result of joint effort during the marriage, which means it is joint property, so that the court's decision has the potential to cause injustice to the parties. A case like this occurred in the Mahkamah Syar'iyah Sigli

with Decision Number 183/Pdt.G/2025/MS.Sgi, where the object of the dispute was a permanent house unit recognized as joint property belonging to the Plaintiff and Defendant, but stood on land owned by the Plaintiff's parents. During the examination of the case, the Defendant had admitted that the land was the Plaintiff's own property. However, in its consideration, the Panel of Judges did not elaborate on the boundaries between the house as joint property and the land as carried property, but instead immediately decided that the house be divided into two parts in kind between the Plaintiff and Defendant. The decision gave rise to a double interpretation, as if the land on which the house stands is also part of the joint property, even though the land is the Plaintiff's inherited property. This not only has the potential to eliminate the Plaintiff's rights to his inherited property, but also creates legal uncertainty in the implementation of the decision, because the physical division of the house on land owned by a third party, namely the Plaintiff's parents, will be difficult to implement without legal clarity regarding the status of the land. Based on the Marriage Law, the assets brought into the marriage should be controlled by each party, so the assets brought into the marriage should be separated from the joint assets. The division of joint assets should be carried out fairly and proportionally according to the contribution and origin of the assets. In this case, the judge should first distinguish between the object of joint assets, namely the house, and the object of the assets brought into the marriage, namely the land owned by the Plaintiff's parents, so that the decision does not conflict with the Marriage Law.

Therefore, it is important to conduct a study entitled "Legal Analysis of the Division of Joint Assets on Land Owned by the Parents of One Party According to the Marriage Law (Study of Decision Number 183/Pdt.G/2025/MS.Sgi), to determine the division of joint assets according to the Marriage Law and to examine the suitability of legal considerations and the judge's decision with the provisions of applicable laws and regulations and their relationship to legal certainty for the parties.

#### **B. Problem Formulation**

1. How is joint property divided according to the Marriage Law?
2. What were the considerations of the panel of judges in the Mahkamah Syar'iyah Sigli decision Number 183/Pdt.G/2025/MS.Sgi regarding the division of joint assets standing on land belonging to the parents of one of the parties?

#### **C. Research Purposes**

1. To find out the division of joint assets according to the Marriage Law.
2. To find out the considerations of the panel of judges in the decision of the Mahkamah Syar'iyah Sigli Number 183/Pdt.G/2025/MS.Sgi regarding the division of joint assets standing on land belonging to the parents of one of the parties.

#### **D. Research Methods**

The nature of this research is descriptive analytical, namely, it reveals the legal regulations related to the legal theories that are the object of the research. Likewise, the implementation of law in society related to the object of the research (Zainuddin, 2019:105). The type of research in this journal is normative legal research, namely a type of legal research methodology that bases its analysis on applicable legislation that is also relevant to the legal problem that is the focus of the research (Kornelius,2020:24). This means that normative legal research is a research process to examine and study law as norms, rules, legal principles, legal doctrines and other literature to answer the legal problems being researched (Muhaimin,2020:48). In this research, the author uses a case approach by understanding the ratio decidendi, namely the legal reasons used by the judge to reach his decision (Peter,2017:158). The data collection method for this research uses a normative (literature) research method obtained through research sources such as legislation, books, official documents, publications, and research results. The type of data used by the author in this research is secondary data, namely data that has been collected and documented by other parties, not data generated directly by the researcher in the research process (Sulastrri, 2025:515). Among the primary legal materials are: Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975, and the Compilation of Islamic Law (KHI). Secondary legal materials include: books, legal journals, and court decisions related to the title of this research. This research uses qualitative analysis techniques, namely by processing and analyzing the collected data into systematic, orderly, structured, and meaningful data.

## **RESULTS AND DISCUSSION**

### **A. Division of Joint Assets according to the Marriage Law**

Joint property in marriage is regulated in Law Number 1 of 1974 concerning Marriage. Article 35 paragraph (1) states that property acquired during the marriage becomes joint property. Meanwhile, according to paragraph (2), the property brought by each husband and wife and property obtained by each as a gift or inheritance, is under the control of each party as long as the parties do not determine otherwise (UU Perkawinan). From this article, it can be interpreted that all efforts that they obtain together or individually during the marriage are categorized as joint assets and become part of the marital assets (Efizal, 2023:26). Each wife has the right to joint property owned by her husband during the marriage, including property and assets acquired during the marriage (Hafidz, 2023:53). And each spouse's inherited property is under their own control. This means that legally, marital property is divided into two types: joint property and acquired property.

The division of joint assets occurs upon the dissolution of a marriage, as stipulated in Article 37 of the Marriage Law. If a marriage is dissolved due to divorce, joint assets are regulated according to the respective laws of each party. Article 38 of the Marriage Law explains that the dissolution of a marriage can occur due to death, divorce, or a court decision (UU Perkawinan). In the case of a marriage breaking up due to divorce, the provisions regarding the reasons for divorce are explained in Article 19 of Government Regulation Number 9 of 1975, namely one of them committing adultery, being a drunkard, a drug addict, a gambler, and so on which are difficult to cure, one party leaving the other party for 2 (two) consecutive years without permission and valid reasons, one party receiving a prison sentence of 5 (five) years or a heavier sentence, one party committing assault which endangers the other party, having a physical disability so that they cannot carry out their obligations as husband and wife or there are continuous quarrels and there is no hope of getting back together (PP Nomor 9, 1975:10). These provisions are further detailed in Article 116 of the Compilation of Islamic Law with additional grounds for divorce, namely the husband violating the talak agreement and changing religion or apostasy (KHI, 1991:58). Article 39 of the Marriage Law states that divorce can only be carried out in court after the court concerned has tried and failed to reconcile the two parties, with sufficient reason that the husband and wife will not be able to live in harmony again (UU Perkawinan).

The division of joint assets after a marriage ends due to divorce, there are different legal bases that apply to Muslim and non-Muslim couples. For Muslim couples, the provisions regarding the division of joint assets are regulated in Article 85 of the Compilation of Islamic Law which states that the existence of joint assets in a marriage does not preclude the possibility of separate assets between the husband and wife, while Article 97 of the Compilation of Islamic Law confirms that divorced widows or widowers are each entitled to half of the joint assets unless otherwise specified in the marriage agreement (KHI, 1991:58). The division of joint property essentially depends on the agreement between husband and wife. This agreement is also referred to in the Quran as *Ash Shulhu*, which is an agreement to reconcile the two parties after a dispute (Dwi, 2022:101). Meanwhile, for non-Muslim couples, the provisions on joint property are regulated in the Civil Code (KUHPerdata). Article 119 of the Civil Code states that according to law, from the moment of marriage, joint property is established between husband and wife, as long as no other provisions are made in the marriage agreement. Then, Article 128 of the Civil Code explains that after the dissolution of joint property, their joint wealth is divided between husband and wife, or between their heirs, regardless of the origin of the goods (KUHPerdata). Thus, it can be concluded that the division of joint assets in both the Compilation of Islamic Law and the Civil Code is carried out fairly with equal portions between husband and wife as long as it is not specified in the marriage agreement, namely that each receives half of the joint assets.

If a marriage ends due to death, the joint assets are divided in half, with half going to the surviving spouse and the other half going to the deceased spouse's inheritance. For Muslim couples, this provision is regulated in Article 96 of the Compilation of Islamic Law, which states that if a divorce occurs due to death, half of the joint assets go to the surviving spouse (KHI, 1991:51). Meanwhile, for those who are not Muslim, the provisions are regulated in Article 128 of the Civil Code which states that after the dissolution of joint property, their joint assets are divided in half between the husband and wife, or between their heirs, without questioning and the party of origin of the goods (KUHPerdata). This means that before the inheritance is divided, the joint assets are first divided, namely half for the surviving spouse and half for the heirs of the deceased in accordance with the provisions of applicable inheritance law.

**B. Considerations of the Panel of Judges in the Decision of the Mahkamah Syar'iyah Sigli Number 183/Pdt.G/2025/MS.Sgi in the Division of Joint Assets Standing on Land Owned by the Parents of One of the Parties**

**1. The Facts**

The plaintiff filed a joint property application with the Mahkamah Syar'iyah Sigli Clerk's Office with the following arguments: :

- 1) A marriage occurred between the Plaintiff and the Defendant in 2004, then the Plaintiff and Defendant divorced based on the decision of the Mahkamah Syar'iyah Sigli in 2025;
- 2) During the marriage, the Plaintiff and Defendant had joint assets, one of which was a permanent house, the land on which the disputed house was built was the Plaintiff's parents' land, which was also the Plaintiff's own property;
- 3) The house which is the object of the dispute is currently controlled by the Defendant (Decision of the Mahkamah Syar'iyah Sigli Number 183/Pdt.G/2025/MS.Sgi);

Based on the above arguments, the Applicant requests that the Plaintiff's lawsuit be granted and that the house standing on the Plaintiff's parents' land is joint property, and the land on which the disputed house stands is land owned by the Plaintiff. Determining that the joint property be divided in half for each party and ordering the Defendant to hand over the disputed object which is the Plaintiff's right.

**2. Considerations of the Panel of Judges in the Decision of the Mahkamah Syar'iyah Sigli Number 183/Pdt.G/2025/MS.Sgi**

The Judge's considerations in the Mahkamah Syar'iyah Sigli decision Number 183/Pdt.G/2025/MS.Sgi regarding joint assets in the form of a house on the land of one of the parties' parents, namely :

- 1) The main reason for the case is that the Plaintiff is requesting to divide the joint assets between the Plaintiff and Defendant which were obtained during the marriage, because the Plaintiff and Defendant have divorced, but the Defendant has no good intentions.
- 2) The Defendant acknowledged that the Plaintiff and Defendant's joint assets were in the form of 1 permanent house built on land owned by the Plaintiff.
- 3) Whereas based on Article 35 of Law Number 1 of 1974 concerning Marriage in conjunction with Articles 88, 89, 90, 91 and 96 where in the event of a divorce, joint assets can be divided partly for the Plaintiff and partly for the Defendant.
- 4) That the Plaintiff and Defendant apparently did not determine another law, then based on Law Number 1 of 1974 and Article 97 of the Compilation of Islamic Law, then each Party will receive half of the joint assets obtained during the marriage.
- 5) Based on the desente carried out by the Panel of Judges, it is proven that the house built on the Plaintiff's parents' land or on land brought by the Plaintiff is joint property. The Plaintiff stated that the estimated selling price of the house is Rp. 200,000,000 (two hundred million rupiah), and the Defendant stated that he agrees with the estimated price stated by the Plaintiff.

Then, based on the above considerations, the Panel of Judges determined:

- 1) The Plaintiff and Defendant's joint assets include 1 (one) permanent house on land belonging to the Plaintiff's parents, the house is currently under the control of the Defendant.
- 2) Determine the rights of the Plaintiff and Defendant to the joint property, one half each to the Plaintiff and one half to the Defendant.
- 3) Punish the Defendant to hand over the Plaintiff's share rights intact in kind (objects) or if they are not implemented in real terms/in kind then sell them through the State auction office.

**3. Analysis of the Decision of the Mahkamah Syar'iyah Sigli Number 183/Pdt.G/2025/MS.Sgi**

In the decision of case Number 183/Pdt.G/2025/MS.Sgi, the Panel of Judges did not explain the difference between the legal status of land and buildings as joint assets, in accordance with the legal principles of marital property. Then, they decided to divide the house between the Plaintiff and Defendant, each half in kind, without providing a clear definition of the objects to be divided. This raises legal issues, because it does not explain whether the intended division includes the land as well or only the building on it. The Marriage Law and the Compilation of Islamic Law have clearly differentiated between joint assets and assets brought in. Therefore, the Judge should have explained

clearly and explicitly that the land as brought in assets remains the property and under the control of the Plaintiff, and the division is only carried out for the house building without the land. Without such an affirmation, the Judge's considerations are incomplete and less in accordance with the Marriage Law and the Compilation of Islamic Law.

In case No. 183/Pdt.G/2025/MS.Sgi, there was no agreement regarding the borne assets, and the Defendant has acknowledged that the land on which the joint assets stand is the Plaintiff's borne land, namely the land belonging to the Plaintiff's parents. And according to these facts, the Plaintiff should have the right to control the land, in accordance with what has been regulated in the Marriage Law Article 35. If based on the Marriage Law, the judge should not immediately decide to divide each half in kind, because there is a mixture with the Plaintiff's borne assets. If reviewed from the ownership status, the ownership status can be proven with a Certificate of Ownership (SHM)(Aesia, 2023). In this case, the land belongs to the Plaintiff's parents. Therefore, the consideration is better if it is emphasized by stating "That the National Land Law adheres to the principle of horizontal separation (Horizontale Scheiding), namely the separation between land and the buildings standing on it, which means that ownership rights to land do not necessarily include rights to the buildings on the land (Decision of the Pengadilan Agama Stabat Number 453/Pdt.G/2024/PA.Stb).

To emphasize that even though the joint property is built on inherited land, it does not immediately make the status of the land and the building attached. There is still a separation between the land and the building. Then, because the house building is joint property while the land is inherited property of the Plaintiff controlled by the Defendant, it is not appropriate to divide it in kind, because it can cause potential violations of the rights to the Plaintiff's inherited property and complicate the execution process. Based on the jurisprudence of the Supreme Court of the Republic of Indonesia No. 53K / AG / 2015 dated January 27, 2025, a lawsuit for a permanent house on in-laws' land must be disqualified as an obscure lawsuit. As a solution, the interested parties must file a separate lawsuit by detailing how much the costs incurred for the building, and only the value of the house building can be divided. If necessary, use an expert witness to estimate the price of the building (Syarkowi,2025). Then, the estimated value in the verdict's dictum is divided into two, with each party entitled to half. This means that in cases like Case No. 183/Pdt.G/2025/MS.Sgi, where joint property is not owned by the land underneath, there cannot be a division in kind (objects) or in real terms. What can be done is an economic assessment (compensation).

In this case, the Judge can order the Defendant to hand over the house building and its land to the Plaintiff, with the condition that the Plaintiff must pay compensation in the form of money amounting to half of the price of the house building (joint property), without calculating the price of the land, with calculations carried out by the Authorities or in accordance with the agreement between the Plaintiff and Defendant. With a decision like this, it can provide justice for the Plaintiff and Defendant. The Plaintiff gets the right to his joint property and gets back his belongings, while the Defendant also gets the right to his joint property with the same value as the Plaintiff. Such a decision is in accordance with the Marriage Law, Compilation of Islamic Law and the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 53K/AG/2015.

## **CONCLUSION AND SUGGESTIONS**

### **A. Conclusion**

1. Property acquired during marriage is joint property as regulated in Article 35 of the Marriage Law. The distribution of joint property in the event of a marriage breaking up due to divorce for reasons regulated in Government Regulation Number 9 of 1975 in Article 19 and the additional Compilation of Islamic Law Article 116. For Muslim couples, the distribution follows the provisions of Article 97 of the Compilation of Islamic Law, while for couples of religions other than Islam it is regulated in Article 119 of the Civil Code, namely the distribution is divided into half of the joint property for each. Meanwhile, if the marriage breaks up due to death, the joint property is divided in two, namely half becomes the right of the surviving spouse and the other half becomes the inheritance of the deceased spouse. For Muslim couples this is regulated in Article 96 of the Compilation of Islamic Law, while for couples of religions other than Islam, it is regulated in Article 128 of the Civil Code, both of which state the distribution of joint property equally.

2. The consideration of the panel of judges in the decision of the Mahkamah Syar'iyah Sigli Number 183/Pdt.G/2025/MS.Sgi in the division of joint assets standing on land owned by the parents of one of the parties is not fully in accordance with the provisions of the Marriage Law and the Compilation of Islamic Law, because it does not expressly separate between the assets brought with it and the joint assets and immediately decides to divide in kind (objects) is also not in accordance with the jurisprudence of the Supreme Court of the Republic of Indonesia Number 53K/AG/2015, because the building was built on land without ownership rights. From this case, the decision that can be given is only an economic assessment (compensation) of the price of the house/building in dispute. From the estimated price of the building, the Judge can decide that one Party must pay half of the estimated price of the building. So that each Party gets its rights equally and provides justice for both.

## **B. Suggestions**

1. Married couples should understand the legal consequences of joint property before building assets on land they own or land owned by a third party, in order to avoid disputes in the future.
2. The government, through the Supreme Court and the Ministry of Law and Human Rights together with the Indonesian House of Representatives, should add regulations that clarify the status of joint property standing on third party land so as not to give rise to multiple interpretations in religious court practices.

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