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Analysis of Judges' Considerations Regarding Joint Debt After Divorce (Decision Study Number 728/Pdt.G/2023/PA.BM)

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ABSTRACT

Problems arising from the division of joint assets and debts after divorce often lead to conflict between the parties concerned, particularly regarding the determination of the status of joint assets and the responsibilities for debts incurred during the marriage. The lack of clarity in distinguishing between personal and joint debts is one of the triggers for differences in interpretation in legal practice. Therefore, this study raises the following issues: (1) What is the status of joint assets and debts in Indonesian marriage law? and (2) What are the judge's considerations in determining the status of joint assets and debts after divorce in court decisions? This study uses a normative juridical method with a statutory and case approach, namely by examining secondary legal materials in the form of laws and regulations, legal literature, and court decisions, especially Decision Number 728/Pdt.G/2023/PA.Bm. The conclusion of this study indicates that assets acquired during marriage are joint assets, while debts incurred during marriage can be a joint responsibility if used for household purposes. However, in its implementation, the judge's considerations in determining responsibility for debts still require more detailed elaboration to avoid double meanings when implemented.

Keywords: Joint Property, Joint Debt, Judge's Consideration, Divorce

INTRODUCTION

Marriage is a physical and spiritual bond between a man and a woman as husband and wife, with the aim of forming a happy and eternal family. In Indonesia, provisions regarding marriage are regulated in Law Number 1 of 1974 concerning Marriage, which emphasizes that marriage is not only seen as a personal relationship between two people, but also as a legal relationship that creates a number of rights and obligations for all parties involved. In a marriage, husband and wife have joint responsibilities in building a household life, including managing family finances and managing assets acquired during the marriage.[1].

[1]Subekti, Principles of Civil Law, Jakarta: Intermasa, 2019, p. 23.

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Divorce is a legally recognized form of termination of a marital relationship between a husband and wife. According to Law Number 1 of 1974 concerning Marriage, divorce is the termination of a marriage that can only be carried out in court after the court has attempted and failed to reconcile the two parties.[2]This shows that divorce is the last resort in resolving domestic conflict after peace has not been achieved between the parties.

In relation to the legal consequences of a marriage, the regulations have been explained in Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019. In the provisions of Article 35 paragraph (1), it is explained that all property acquired during the marriage is qualified as joint property. On the other hand, Article 35 paragraph (2) emphasizes that the property brought by each party as well as property obtained through gifts or inheritance remains a personal right unless otherwise agreed. This norm shows a clear separation between joint property and personal property, which is the basis for determining ownership rights in a husband and wife relationship.[3].

The provisions regarding control and legal action over such assets are contained in Article 36 paragraph (1) and paragraph (2) of Law Number 1 of 1974 concerning Marriage. This provision emphasizes that legal action regarding joint assets must be based on the agreement of both parties, while regarding assets brought in by each party, each party has full authority. This rule demonstrates the principle of balance and mutual agreement in the management of assets during marriage, and provides protection for the interests of each individual in married life.[4].

In addition to the property aspect, the legal consequences of marriage also encompass the rights and obligations between husband and wife, as stipulated in Articles 30 and 33 of Law Number 1 of 1974 concerning Marriage. These provisions emphasize that husband and wife have an obligation to build a harmonious household and mutually respect and support one another. This demonstrates that marriage not only creates a legal relationship in the narrow sense, but also contains social and ethical dimensions that form the basis of family life.[5].

The division of roles in the household is regulated in Article 34 paragraph (1) and paragraph (2) of Law Number 1 of 1974 concerning Marriage, which essentially places the husband as the party responsible for fulfilling the family's economic needs and the wife as the manager of the household. However, in practice, this provision has changed in line with social developments in society, where both husband and wife can contribute together to fulfilling the family's needs. In this way, the legal consequences of marriage also reflect the existence of collective responsibility in household life.[6].

[2]Article 39 paragraph (1), Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019.
[3]Article 35 paragraph (1) and (2), Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019.
[4]Article 36 paragraph (1) and (2), Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019.
[5]Article 30 and Article 33, Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019.
[6]Article 34 paragraph (1) and (2), Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019.

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The legal consequences of marriage become crucial in the event of a divorce. Every legal aspect that arises during the marriage, such as joint property, debts, and the rights and obligations of each party, must be resolved fairly in accordance with applicable law. Therefore, understanding the legal consequences of marriage is crucial as a basis for resolving disputes, whether through the courts or alternative out-of-court channels. This demonstrates the importance of the norms contained in Law Number 1 of 1974 concerning Marriage in providing legal certainty and justice for all parties.[7].

In the context of domestic life, economic factors are an element that plays a very important role in the continuity of the relationship between husband and wife.[8]During marriage, husband and wife generally acquire assets that are used to meet the family's needs. Assets acquired during the marriage are known as joint assets, or often referred to as marital assets. Joint assets are assets acquired during the marriage, regardless of whose name they are registered in, as they are essentially the result of joint efforts in the household.[9].

In the Indonesian legal system, the concept of joint property is recognized in both civil law and Islamic law. The Compilation of Islamic Law explains that joint property is property acquired during a marriage, whether by the husband or the wife. This provision demonstrates the principle of joint ownership of assets acquired during the marriage. Therefore, in the event of a divorce between a husband and wife, assets categorized as joint property must be distributed fairly between the two parties.[10].

However, in practice, the division of joint assets after divorce often raises various legal issues. Conflicts can arise due to differing perspectives between the parties regarding whether an asset falls under the category of joint or acquired property. Furthermore, another issue that frequently arises is debt incurred during the marriage. It's not uncommon for there to be disagreements about which party should be responsible for these debts after a divorce.[11]. From an Islamic legal perspective, responsibility for debts incurred during a marriage cannot be separated from the purpose for which the debt was used. If the debt is used for family or household needs, then it can be considered a shared responsibility between husband and wife. However, if the debt is used for the personal benefit of one party without the consent of the other, then responsibility for the debt can be placed on the party incurring the debt. Therefore, proper legal considerations are needed to determine the status and responsibility for the debt.[12].

Issues regarding the division of joint assets and responsibility for debts are often brought to the Religious Courts in divorce cases. Religious Courts have the authority to examine,

[7]Article 30, Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019.
[8]Muhammad Gary Gagarin Akbar, Divorce Rate and the Influence of Economic Factors in Karawang Regency, De'Jure Scientific Journal of Law, Vol. 3 No. 1, 2018, pp. 79-93.
[9]Ahmad Rofiq, Islamic Civil Law in Indonesia, Depok: Rajawali Pers, 2021, p. 161.
[10]Abdurrahman, Compilation of Islamic Law in Indonesia, Jakarta: Akademika Pressindo, 2018, p. 132.
[11]Happy Susanto, Division of Marital Assets After Divorce, Jakarta: Visimedia, 2021, p. 45.
[12]Amir Syarifuddin, Islamic Marriage Law in Indonesia, Jakarta: Kencana, 2020, p. 189.

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try, and decide cases related to family law for Muslims. In deciding cases concerning joint assets, judges must consider various aspects, both in terms of applicable legal provisions and the facts revealed during the trial. The judge's legal considerations are the primary basis for determining the rights and obligations of the parties after a divorce.[13].

One of the cases related to post-divorce joint property disputes is Decision Number 728/Pdt.G/2023/PA.Bm, which was examined and decided by the Bima Religious Court. In this decision, the panel of judges was faced with the issue of determining the status of assets acquired during the marriage and responsibility for debts incurred in the household after the divorce. Therefore, this study is important to analyze in depth how judges consider the status of joint property and debts after the divorce.

Research on the division of joint assets after divorce has been examined from various legal perspectives. One related study is the research conducted by Shafa Salsabila in the 2023 Zaaken Journal entitled "Division of Joint Assets in Divorce Reviewed from the Perspective of Justice Theory." This study examines the division of joint assets using a justice theory approach, which emphasizes that the division of assets is not only based on legal provisions but must also consider aspects of fairness for the parties. The results of the study indicate that in practice, the division of joint assets is heavily influenced by the facts revealed in court and the parties' ability to prove ownership of the assets, making substantive justice an important consideration in the judge's decision.[14].

Research conducted by Safira Maharani Putri Utami and Siti Nurul Intan Sari Dalimunthe in the USM Law Review Journal in 2023, entitled "Application of Justice Theory to the Division of Joint Assets After Divorce," also emphasizes the importance of the judge's role in achieving justice in the division of joint assets. This research reveals that judges not only adhere to normative regulations but also consider substantive justice in every decision, thus balancing legal certainty and a sense of justice for all parties involved.[15].

Based on these two studies, it can be seen that previous research has focused more on the division of joint assets from the perspective of justice theory and general judicial practice. However, these two studies have not comprehensively examined the judge's considerations in determining the status of joint assets and debts in a single decision, particularly with regard to evidentiary analysis and the legal basis of considerations used by the judge. Therefore, the novelty of this study lies in the focus of the study which not only discusses the division of joint assets, but also analyzes in depth the judge's considerations in determining the status of joint assets and debts after a divorce based on court decisions,

[13]M Yahya Harahap, Position of Authority and Procedure of Religious Courts, Jakarta: Sinar Grafika, 2019, p. 112.
[14]Shafa Salsabila, Division of Joint Assets in Divorce Reviewed from the Perspective of Justice Theory, Zaaken Journal, Vol. 4, No. 2, 2023, pp. 199-208.
[15]Safira Maharani Putri Utami, Application of Justice Theory to the Division of Joint Assets After Divorce, USM Law Review Journal, Vol. 6, No. 2, 2023, pp. 559-572.

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namely Decision Number 728/Pdt.G/2023/PA.Bm. This study not only examines normative and theoretical aspects, but also examines how judges assess facts, evidence, and apply legal provisions in determining the status of joint assets and debt responsibilities in concrete cases, thus providing a new contribution to the development of family law, particularly in the aspects of legal considerations and evidence in court.

METHOD

This research uses a juridical-normative research method. The juridical-normative research method is a library legal research conducted by examining library materials or secondary data alone. In relation to the juridical-normative research method, the approach taken in this paper is a statute approach, legal literature, and court decisions, specifically Decision Number 728/Pdt.G/2023/PA.Bm.

RESULTS AND DISCUSSION

The Position of Joint Property and Debt in Marital Law in Indonesia

Marriage in the Indonesian legal system has been legally defined in Law Number 1 of 1974 concerning Marriage. Article 1 of this law defines marriage as a physical and spiritual bond between a man and a woman as husband and wife, with the aim of forming a happy and eternal family based on the One Almighty God. This definition shows that marriage is not merely a civil legal relationship, but also contains philosophical, sociological, and religious dimensions that form the basis for regulating the relationship between husband and wife.[16].

As a legal phenomenon, marriage has legal consequences, one of which relates to the status of the parties' assets. Regulations regarding assets in marriage are normatively regulated in Article 35 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which states that assets acquired during the marriage become joint assets. On the other hand, Article 35 paragraph (2) stipulates that assets brought by each husband or wife, as well as assets obtained as gifts or inheritance, remain under the control of each party unless otherwise specified in the marriage agreement. This provision reflects the existence of a legal construction that differentiates between joint assets and personal assets in a marriage.[17].

The aspect of control and management of joint assets is regulated in Article 36 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which states that any legal action regarding joint assets must be based on the agreement of both parties. This provision reflects the principle of equality before the law between husband and wife in the

[16]Article 1, Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019.
[17]Article 35, Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019.

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management of joint assets. In addition, each party is given the freedom to carry out legal actions as regulated in Article 36 paragraph (2) regarding the assets brought into the marriage. Thus, marriage law in Indonesia strives to balance the joint interests of the household and the individual rights of each party.[18].

In addition to the provisions contained in the Marriage Law, the status of joint property is also emphasized in the Compilation of Islamic Law, specifically in Articles 85 to 97. Article 97 states that in the event of divorce, both the widow and the widower are each entitled to half of the joint property unless otherwise specified in the marriage agreement. This rule provides a legal basis for the principle of division that prioritizes distributive justice, although in practice the division still depends on the evidence and the judge's consideration in examining the case.[19].

Regarding joint debt, although the provisions are not explicitly formulated in the Marriage Law, in legal practice and doctrine, debts incurred during marriage for household purposes are classified as joint responsibilities. This is in line with the provisions in the Compilation of Islamic Law, Article 93 paragraph (2), which states that responsibility for debts used for family purposes is borne by joint assets.

Thus, debt has an inherent position with joint assets, so that its settlement cannot be separated in the context of divorce.[20]. From this, it can be concluded that the status of joint assets and debts in Indonesian marital law is a legal construct that is interrelated and inseparable. Joint assets function as objects to be divided after the dissolution of the marriage, while joint debts are obligations that must be settled proportionally by the parties. However, in judicial practice, disparities are often found between legal norms (das sollen) and their implementation (das sein), which are influenced by aspects of evidence, the socioeconomic conditions of the parties, and the judge's interpretation in deciding the case.[21].

Judge's Considerations in Determining the Status of Joint Assets and Debts Post-Divorce in Decision Number 728/Pdt.G/2023/PA.Bm

In judicial practice, a judge's consideration is a crucial aspect in resolving disputes over joint property and debt after a divorce. The judge's role is not limited to applying legal norms, but also as a legal interpreter who must consider the trial facts, evidence, and principles of justice in deciding a case. This view aligns with that expressed by Sudikno

[18]Article 36, Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019.
[19]Articles 85–97, Compilation of Islamic Law.
[20]Moh. Nurarrouf, Division of Debt Responsibility between Husband and Wife: A Gender Theory Perspective, Al-Qadlaya: Journal of Islamic Family Law, Vol. 2, No. 1, 2021, pp. 48–49.
[21]Zaiyad Zubaidi, Problems of Sharing Joint Assets, Jurnal Al-Ijtimaiyyah, Vol. 5, No. 1, 2019, p. 57.

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Mertokusumo, who argued that judges, in determining the law, must be able to explore the legal values and sense of justice that exist within society.[22].

Decision Number 728/Pdt.G/2023/PA.Bm is a case that examines a dispute regarding the status of assets and debt liability that arose during the marriage. Based on the facts of the case, this dispute arose from the parties' marital relationship, which initially ran smoothly, but later experienced disputes that ultimately led to divorce. During the marriage, the parties acquired a number of assets and incurred debts that were used to meet daily household needs. Following the divorce, a dispute arose between the parties regarding the status of assets acquired during the marriage and liability for debts incurred during the marriage, leading to the case being brought to court for legal certainty.[23].

This chronology indicates that the dispute that occurred was not only related to the status of the assets, but also concerned the complexity of proving the origin of the assets and the purpose of using the debt during the marriage, which then became the main basis for the judge in formulating his legal considerations.

In the a quo case, the disputed objects have been explained in detail in the decision. The panel of judges determined that several assets proven to be joint assets consist of movable goods acquired during the marriage, including 3 (three) sets of spring beds, 1 (one) Samsung double-door refrigerator, 2 (two) air conditioners, 3 (three) sets of Olympic cupboards, 1 (one) teak cupboard, 2 (two) dressing tables, and 1 (one) decorative cupboard. In addition, there are also other assets disputed by both parties, such as land on which a shophouse was built and a number of business proceeds and insurance claims that are argued to be part of the joint assets during the marriage.[24].

On the other hand, in this case there is also a claim regarding the existence of a debt of Rp. 750,000,000 (seven hundred and fifty million rupiah). However, the panel of judges considered that this debt was not proven to be a joint debt, so it cannot be charged to both parties together. This shows that the existence of a debt is not automatically qualified as a joint responsibility without clear proof of the purpose of its use.[25].

During the trial, the panel of judges considers several important aspects, namely the legal aspects, evidence, and the formal and material aspects of the lawsuit. From a legal aspect, the judge is guided by the provisions of Law Number 1 of 1974 concerning Marriage, specifically Article 35 paragraph (1) which states that assets acquired during marriage are joint assets, as well as Article 35 paragraph (2) regarding assets brought in. In addition, Article 36 paragraph (1) also serves as the basis that legal action against joint assets must

[22]Sudikno Mertokusumo, The Discovery of Law, Yogyakarta: Cahaya Atma Pustaka, 2021, p. 47.
[23]Decision Number 728/Pdt.G/2023/PA.Bm, pp. 2-10.
[24]Decision Number 728/Pdt.G/2023/PA.Bm, p. 14.
[25]Decision Number 728/Pdt.G/2023/PA.Bm, p. 12.

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be with the consent of both parties. This provision is used by the judge to determine whether the object of the dispute falls into the category of joint assets or not.[26].

In addition, the judge also considered the provisions of the Compilation of Islamic Law, particularly Article 93 paragraph (2), which states that debts used for family purposes are charged to joint assets. Thus, in determining responsibility for debt, the judge not only looks at the existence of the debt, but also assesses the purpose of its use, whether for household or personal interests.[27].

From an evidentiary perspective, the judge adhered to the principle of civil procedural law outlined by M. Yahya Harahap, namely actori incumbit probatio, which means that the party making the claim must prove its case. In this case, the judge considered that not all of the arguments put forward by the parties could be convincingly proven in court. This condition then became an important basis for the judge in determining whether the parties' demands could be granted or not.[28].

In this case, the judge ultimately denied all of the parties' demands due to the failure to fully fulfill the evidentiary elements. Therefore, the resulting decision placed greater emphasis on legal certainty based on valid evidence. This demonstrates the dominant role of evidentiary strength in determining the direction of a judge's decision in civil cases.

Judges also consider the formal and material aspects of the lawsuit. Formally, judges assess whether the lawsuit meets the requirements of procedural law, while materially, judges assess the substance of the truth of the arguments presented. Weaknesses in the evidence and possible inaccuracies in the drafting of the lawsuit can lead to some claims being denied. This demonstrates that the success of a lawsuit depends not only on substance but also on the formal accuracy of its drafting.

The judge's considerations in this case also reflect the application of the principles of justice and legal certainty. The judge attempted to balance normative provisions with the concrete circumstances faced by the parties. This aligns with Bagir Manan's opinion that a judge's decision must reflect justice, certainty, and legal benefits proportionally.[29].

Based on the judge's considerations, the author believes that, in general, the panel of judges was correct in qualifying assets acquired during the marriage as joint property, as this was in accordance with the provisions of Article 35 of Law Number 1 of 1974 concerning Marriage and the principles of justice in family law. Furthermore, the concrete

[26]Article 35 and Article 36, Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019.
[27]Article 93 paragraph (2), Compilation of Islamic Law.
[28]M. Yahya Harahap, Civil Procedure Law, Jakarta: Sinar Grafika, 2017, pp. 556-560.

[29]Bagir Manan, Judicial Power in Indonesia, Jakarta: Kencana, 2020, pp. 45-47.

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determination of the assets in the decision also demonstrates that the judge made an assessment based on the facts revealed at trial.

However, the author also believes that the judge's considerations in determining liability for debts still do not provide comprehensive clarity, particularly regarding the boundaries between personal and joint debts. This is evident in the rejection of a debt claim of Rp750,000,000 because it was not proven to be a joint debt, without a more detailed explanation of the criteria used. This situation has the potential to lead to multiple interpretations in the implementation of the decision, so more argumentative considerations are needed to provide stronger legal certainty.

This view is in line with Sudikno Mertokusumo's theory which emphasizes that a judge's decision must not only reflect legal certainty, but must also provide clarity and be able to be implemented effectively in society.[30].

Thus, the judge's considerations in this case demonstrate that the resolution of joint property and debt disputes depends not only on written legal norms but is also greatly influenced by the strength of the evidence, the formal accuracy of the lawsuit, and the judge's analysis in assessing the facts revealed at trial. This demonstrates that the judge's considerations in determining the status of joint property and debt are not only normative but also require contextual interpretation in judicial practice.

CONCLUSION

Based on the results of the discussion regarding the position of joint assets and debts in marriage law in Indonesia and the judge's considerations in Decision Number 728/Pdt.G/2023/PA.Bm, the following conclusions can be drawn:

1. The status of joint assets and debts under Indonesian marital law is regulated in Article 35 of Law Number 1 of 1974 concerning Marriage, which distinguishes between joint assets and assets brought into the marriage. Assets acquired during the marriage are, in principle, joint assets, while debts incurred during the marriage can be categorized as joint responsibilities if they are used for household purposes. However, in practice, determining the status of assets and debts is not only based on normative provisions but also requires an assessment of the facts and the intended use.
2. The judge's considerations in Decision Number 728/Pdt.G/2023/PA.Bm indicate that the determination of asset and debt status is based on applicable legal provisions, evidence, and the principle of justice. The judge considered assets acquired during the marriage to be joint property and determined debt responsibility based on their

[30]Sudikno Mertokusumo, Op.Cit., p. 160.

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intended use. However, the judge's considerations in determining debt responsibility still require more detailed elaboration to provide clearer legal certainty for the parties.

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