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### Analysis Of The Division Of Joint Property After Divorce In The Perspective Of The Compilation Of Islamic Law In The Religious Courts Of Pangkalan Balai (The Study No. 458/Pdt.G/2020/PA.Pkb)

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#### Abstract.

This study aims to analyze how the division of joint property after divorce is reviewed in the perspective of the compilation of Islamic law in the Religious Court of Pangkalan Balai. This research is empirical juridical research supported by primary data and secondary data. Through observation and interviews, primary data were obtained from informants, and secondary data were obtained from applicable laws and regulations related to the problem through literature studies, such as books and journals. The consequences of this study show that the dispersion of shared resources after separation has been completed with the resources owned by the injured party and the litigants are similarly isolated. This division of property does not violate Islamic law because it is carried out in accordance with existing laws. This division is also done with the evidence presented at the trial, so that the judge can use it to decide how the division of property will be after the divorce. The judge's consideration in judging cases regarding the division of joint property refers to Article 97 of the compilation of Islamic law which explains that widows or widowers divorced life will get one-half of the joint property.

**Keywords:** Division of joint property, divorce, compilation of Islamic law

#### Abstrak

Penelitian ini bertujuan untuk menganalisis bagaimana pembagian harta bersama setelah perceraian yang di tinjau dalam perspektif kompilasi hukum Islam di Pengadilan Agama Pangkalan Balai. Penelitian ini merupakan penelitian yuridis empiris yang di dukung oleh data primer dan data sekunder. Melalui observasi dan wawancara, diperoleh data primer dari informan, dan data sekunder diperoleh dari peraturan perundang-undangan yang berlaku terkait masalah tersebut melalui studi literatur, seperti buku dan jurnal. Konsekuensi dari penelitian ini menunjukkan bahwa dispersi sumber daya bersama setelah pemisahan telah selesai dengan sumber daya yang dimiliki oleh pihak yang dirugikan dan pihak yang berperkara diisolasi secara serupa. Pembagian harta ini tidak melanggar hukum Islam karena dilakukan sesuai dengan hukum yang ada. Pembagian ini juga dilakukan dengan alat bukti yang dihadirkan di persidangan, sehingga hakim dapat menggunakannya untuk memutuskan bagaimana pembagian harta kekayaan setelah perceraian. Pertimbangan hakim dalam mengadili perkara tentang pembagian harta bersama merujuk pada Pasal 97 Kompilasi Hukum Islam yang menjelaskan bahwa janda atau duda cerai hidup akan mendapatkan seperdua dari harta bersama.

**Kata kunci:** Pembagian harta bersama, perceraian, kompilasi hukum Islam

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## A. INTRODUCTION

Marriage is a natural bond between husband and wife to form a *sakinah, mawaddah, and warahmah* household. The purpose of marriage is to create a happy family and as a way for Allah's creatures to multiply and preserve their lives. Compilation of Islamic law (KHI) Article 2 states that marriage according to Islamic law is marriage, which is a very strong contract or *mitsagan ghalidzan* to obey Allah's commands and carry it out is worship (Basri, 2019).

Divorce can result in the dissolution of a marriage, either as a result of the divorce itself or as a result of a divorce lawsuit. Divorce can only be settled before a religious court hearing, after the religious court tried to reconcile the parties but failed. The consequences of breaking the marriage bond due to divorce are as follows:

1. Ex-husband and ex-wife relationship: the ex-husband is obliged to give a decent *mut'ah* to the ex-wife and pay her maintenance during the iddah. The ex-wife is required to take care of herself, refuse proposals, and undergo iddah. Living expenses for the ex-wife in question under reasonable circumstances. Therefore, it cannot be a consolation money should be the nature of liability money.
2. About children: their right to be cared for by their mother if they are under the age of 21. A father is obliged to provide for his child until the child marries and can live independently.
3. Regarding property: because property that cannot be divided or property (*shirkah* property) which is additional property due to the joint efforts of the spouses (*shirkah*) during marriage, becomes joint property of the husband and wife for long-term benefits. Therefore, assuming the marriage bond is broken either with the passing of one of the meetings or separately, this property is divided between the spouses. Common property is the common name for this.

Joint property in KHI is property in a marriage or *shirkah* is property obtained either individually or together with husband and wife during the marriage bond that takes place, without question registered in the name of anyone. So whatever property is obtained from the time of the marriage contract until the marriage breaks up, all property according to the law by itself according to the law becomes joint property (Abdurrahman, 2007).

In practice, when there is a divorce between husband and wife, the common property is usually divided in two with an equal division, this can be seen where the Supreme Court in its decisions in Cassation hearings always determines that the division is 50:50 (Nasution and Warjiayati, 2011).

In the field of marriage, the Religious Court has the authority to judge and resolve the issue of family and marital property and the determination of the legal status of a person in the family and marital property status. Matters in the field of marriage apply the law of Special Civil Procedure and the rest apply the law of civil procedure in general.

In 2020 the authors found data that in Banyuasin Regency in 2020 the divorce rate was quite high. The Banyuasin Regency base religious court noted that from January to

December 2020 the divorce rate reached 875 cases and for cases of joint property lawsuits there were 6 cases that were entered in the base Religious Court. In the same year the Pangkalan Balai Religious Court has handled disputes over the division of property of divorced spouses and then one of the parties filed a lawsuit related to joint property which was later resolved in decision number 458/Pdt.G/2020/PA.Pkb.

The separation of common property must be possible with the understanding or endorsement in a notarial deed that it must be so stated. Article 97 of the compilation of Islamic law is the basis for the decision of the panel of judges on the division of joint property:

*"Widows or widowers divorced life each entitled to half of the joint property as long as the parties are not specified laim in the marriage agreement".*

Based on this phenomenon, the author is interested in writing a study entitled "analysis of the division of joint property after divorce in the perspective of compiling Islamic law in the Religious Court of Balai base (case decision study No.458/Pdt.G/2020/PA.Pkb)".

The purpose behind this paper is to know, investigate, and interpret the carrying of common property after separation as indicated by the accumulation of Islamic law and to know, dissect, and interpret the basis and reason for its contemplation. panel of judges on the issue of division of common property in Pangkalan Balai District Court.

## **B. RESEARCH METHODOLOGY**

The approach taken in this study to discuss these problems is empirical legal research, where the primary data obtained directly from field research and secondary data obtained from library records and all sources related to writing.

Empirical research is a method of research conducted to obtain primary data and find the truth by inductive thinking method and correspondent truth. The facts used to conduct the induction process and truth testing correspondingly are the latest facts (Soerono, 2004).

The technique of data collection is done by means of after all the research data is collected, the researcher begins to compile all the information records, by comparing one with the other and grouping and classifying the data according to the field limits of the scope of the problem, to facilitate the analysis of data that will be presented as a result of Field Research (Hadikusuma, 1985).

The management of legal materials obtained is carried out by systematizing written legal materials, supported by field studies through interviews with related parties and supported by field studies through interviews with related parties.

## **C. RESULTS AND DISCUSSION**

1. Division of Joint Property after Divorce Based on the Compilation of Islamic Law in the Religious Court of Base of the Hall

The thought of the appointed official is very likely to be the main view in deciding

the recognition of the value of the choice of the appointed official that contains Justice (*ex aequo et bono*) and contains legitimate certainty, but it also contains benefits for the assembly concerned so that the consideration of this judge must be addressed carefully, well and carefully (Fariska, 2021).

Based on an interview with Mr. Achmad Fikri Oslami, S.H.I.,M.H.I chairman of the religious court base Balai he stated in the examination of a case also requires the existence of evidence, where the results of the evidence will be used as a material consideration in deciding the case.

Based on its authority to examine and resolve a case filed with the Religious Court of Pangkalan Balai has successfully tried and handed down a verdict against the lawsuit registered in the Registrar of the Religious Court of Pangkalan Balai with the case Register number 458/Pdt.G/2020/PA.P.S. about the joint venture.

The parties to the dispute in the matter of joint property are as follows:

Emi Susanti binti Jufri Jaya, place and date of Birth Jud I, March 15, 1981 (age 39 years), Islam, education tuition, self-employed, place of residence in the village of Jud I, District Sanga Village, Banyuasin, South Sumatra province, in this case authorize Alam Seri, S.H., Advocate at the Office of Natural Law Series, S.H. & Colleagues, based on a special power of attorney dated July 17, 2020 has been registered with the Registrar of the Religious Court. Base Hall number 149/SK/ VII/2020/PA.Pkb, dated July 29, 2020, as plaintiff:

#### **a. FIGHT**

Saidi Efendi bin Abdul Halim, age 41 years, Islamic religion, high school education, self-employed job, residence on Jalan Pusri Indah RT.007 RW.002 Pulau Harapan Village, Sembawa District, Banyuasin Regency, South Sumatra Province, as defendant:

The religious court;

Have read and studied the dossier;

Have heard the testimony of the plaintiff and defendant in the trial;

Have examined the evidence of letters and witnesses at trial;

#### **b. SIT THINGS**

The plaintiff with his complaint letter dated July 29, 2020, which has been registered at the Registrar of Pangkalan Balai Agama Court number 458/Pdt.G/2020/PA.CLA, dated July 29, 2020 stated that married since 2006, has two children aged 13.1 and 9.6 years, the plaintiff has congenital property, during the marriage has joint property is used for household needs including home renovation.

#### **c. LEGAL CONSIDERATIONS**

Considering, that based on the plaintiff's lawsuit above, it can be concluded that the plaintiff's lawsuit in the case of a quo consists of several cases that are collected into one case, namely:

1. About Child Support;
2. About Joint Property;

### 3. About Innate Treasures;

Considering that the combination of several claims is not contrary to law, it is acceptable and the tribunal will consider one by one as below:

#### **d. ABOUT CHILD SUPPORT**

Considering that the plaintiff requested that the defendant be determined to provide maintenance and other needs to both the plaintiff and defendant's children, namely for M. Richen Ardiansyah and Aulia Khoirunnisa each monthly amount of Rp. 1,500,000.00 (one million five hundred thousand rupiah) so that the total for the living and expenses of 2 children of the plaintiff and defendant is Rp. 3.000.000,00 (three million rupiah) per month.

Considering that the plaintiff's claim, the defendant in the answer and its duplicate is essentially incapable because at this time the defendant does not have a job.

Considering that the evidence (P.14 and P.15) is M's birth certificate. Richen Ardiansyah who was born in Sekayu on June 13, 2007 and Aulia Khoirunnisa who was born in Sungai Lilin on January 11, 2011, respectively, but the evidence is not sealed and *berdinazegelen*, according to Article 11 of law no. Evidence regarding stamp duty in Article 13 of 1985 is inadmissible and should be ruled out.

Considering that the recognition of the plaintiff and defendant that they have been blessed with 2 (two) children can be used as perfect evidence even though the evidence is ruled out.

Considering, that based on the arguments of the plaintiff's lawsuit number (2) and it is justified by the defendant has been proven to state that during the course of the marriage between the plaintiff and the defendant has been blessed with 2 (two) children, the first named M. Richen Ardiansyah (male sex aged 13 years) and the second named Aulia Khoirunnisa (female sex aged 9 years).

Considering that based on the confession of the two children of the plaintiff and the defendant, which was corroborated by the witnesses of the plaintiff, it has been proven that the two children of M. Richen Ardiansyah and Aulia Khoirunnisa, are in the care of the plaintiff as his biological mother.

Considering, that under Article 41 letter (b) of Law No. 1 of 1974 Jo. Article 80 paragraph (4) letter (b) and letter (c), Article 149 (d), Article 156 letter (d) and Article 105 letter (c) compilation of Islamic law, and in accordance with the postulates of Syar'i in the Book of Al Muhadzdzab juz II page 177 which reads:

It means: *"a father is obliged to give (sufficiency) of his child's maintenance"*.

Remembering, that every child has the right to be able to live, grow and develop in accordance with human self-esteem. This is in line with the intent of Article 4 of Law No. 35 of 2014 which amended Law No. 23 of 2002 on child protection.

Considering, that to ensure the fulfillment of the rights of children in order to live, grow, develop in accordance with the dignity and human dignity as the purpose of child protection (vide Article 3 of Law No. 35 of 2014 on amendments to Law No. 23 of 2002 on Child Protection), the child should not be left abandoned without maintenance

costs and who bears the maintenance costs.

Considering that based on Article 105 paragraph 3 of the compilation of Islamic law, it is stated that the cost of maintaining children is borne by the father.

Considering that the imposition of child support to the defendant as a form of liability of the defendant as a biological father to his two children who are in the maintenance of the plaintiff. Every child is entitled to a sense of security from neglect as mentioned in Article 13 of Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002 concerning child protection and explanation of the article. Therefore, the defendant as the biological father has the obligation to provide for the two children until the two children are adults or independent.

Considering, that based on the information of the plaintiff and the defendant as well as witness statements that the defendant does not currently have a permanent job which is to finance daily needs obtained from income helping to farm rice fields with the family and assistance from the defendant's own parents and in-laws, the defendant stated that he was unable to pay.

Considering, that regarding the nominal panel of judges pay attention to the income of defendants who do not have a permanent job and by observing the principle of propriety and a sense of justice, the panel of judges ex officio will determine the amount of income 2 (two) children to be paid by the defendant to the plaintiff each child of Rp. 500.000,00 (five hundred thousand rupiah) every month, in addition to the plaintiff who is the biological mother of the child also has responsibilities with other obligations in matters of maintenance of these children in order to still get the benefit and stay awake until adulthood or at least 21 years old.

The panel of judges shall sentence the defendant to provide maintenance to the two children until the two children are adults (21 years old) whose nominal value is in accordance with this decision, as the plaintiff's lawsuit regarding the cost of maintaining a child named M. Richen Ardiansyah and Aulia Khoirunnisa, were in the hands of the plaintiff. As a result of these considerations, the plaintiff's demands regarding the maintenance of children are not as demanded by the plaintiff but are adjusted to the ability of the defense.

#### **e. ABOUT COMMON PROPERTY AND INHERITED PROPERTY**

Considering, that the next panel of judges examined the plaintiff's lawsuit in a trial open to the public who basically begged the panel of judges to declare the property, in the form of a plot of land covering an area of 141 M2, following the building of a house on it, which is located in the complex Taman Beringin Patra Blok C.II No: 6 RT. 08, Dusun III, Sungai Pinang Village, Rambutan Subdistrict, Banyuasin Regency (formerly Kecamatan Banyuasin I/Musi Banyuasin Regency), South Sumatra province, with boundaries:

- The northern border with the picture situation No 2170/1988.
- The western border with the picture situation No: 2178/1988.
- The eastern border with the picture situation No: 2180/1988.
- South of the road.

In accordance with the Certificate of sale and purchase of houses in February 2015, based on certificate of ownership No: 1284/Sungai Pinang Village dated September 16, 1988, situation Picture No: 2179/1988 dated August 26, 1988, is a joint property after deducting the assets of the plaintiff, namely money amounting to Rp 281,000,000, - (two hundred and eighty one million rupiah).

Considering that against the plaintiff's claim, the defendant in his answer stated that he denied the arguments of the plaintiff's claim, and stated the time of purchase. defendant and plaintiff costs 30 versus (: ) 20 medium renovation time defendant and plaintiff costs 20 versus (: ) 30 calculated between purchase and renovation to 50:50.

Considering, that the plaintiff postulated during the fostering of households with the defendant, has obtained the property of the plaintiff as in Posita number 5 in the form of savings used to buy rubber plantation land with an area of approximately 5,000 m<sup>2</sup> located in the village of Sejagung Rantau Bayur District, Banyuasin Regency.

Considering, that after examining the plaintiff's claim in the letter of complaint there is a lack of clarity regarding the disputed object in Posita number 5.

Considering that one of the formal requirements for a lawsuit about property is that the object of the lawsuit must be clear, meaning that the lawsuit must mention in detail the boundaries of the disputed land and the identity of its ownership rights if the object of the case is land.

Considering that in this case the plaintiff in his lawsuit based on the arguments of the plaintiff in Posita number 5, the main object of the case is in the form of land/rubber plantation with an area of 5,000 m<sup>2</sup> located in Sejagung Village, Rantau Bayur District, Banyuasin Regency, South Sumatra Province.

Considering, that that in this case the plaintiff in his lawsuit based on the arguments of the plaintiff in Posita number 5 is not clear whether the object of the dispute in the form of land/rubber plantation with an area of 5,000 m<sup>2</sup> located in Sejagung Village, Rantau Bayur District, Banyuasin Regency, South Sumatra Province.

Considering that the plaintiff's claim regarding the object of dispute in the case of joint property is unclear, the panel of judges then concluded that the plaintiff's claim could not be maintained, so it must be declared *obscuur libel* and unacceptable. As in the jurisprudence of the Supreme Court No. 1149 K/Sip/1975 dated April 17, 1971 which states "because in the lawsuit is not mentioned clearly the location/ boundaries of the land dispute, the lawsuit cannot be accepted".

Considering, that referring also to SEMA number 3 of 2018 states that "claims regarding land and/or buildings that have not been certified that do not describe the location, size and boundaries must be declared unacceptable".

Considering, that because the plaintiff's claim in number 5 in the Posita lawsuit regarding joint property and property is vague so that it must be declared *obscuur libel*, the panel of judges concluded that the A quo case could be partially granted and could not be accepted for the rest.

Considering, that in this case the plaintiff in his lawsuit based on the arguments of the plaintiff in Posita number 6, the main object of the case is in the form of:

- A plot of land covering an area of 141 m<sup>2</sup>, following the building of houses on it, which is located in the complex Taman Beringin Patra Blok C.II No: 6 RT. 08, Dusun III, Sungai Pinang Village, Rambutan subdistrict, Banyuasin Regency (formerly Banyuasin I subdistrict/Rambutan Representative, Musi Banyuasin Regency), South Sumatra Province, with boundaries as mentioned above.

Considering that the consideration related to the material requirements of the plaintiff and defendant evidence instruments is connected with the results of the local examination hearing that has been carried out under the provisions of Article 180 R.Bg jo SEMA No. 7 of 2001 and will be detailed and considered in accordance with the object of dispute in the case of a quo as stated in the plaintiff's lawsuit Petition numbers (1) and (2) as follows:

Considering, that the object of the dispute, the plaintiff has filed evidence letter P-4 is a certificate of sale and purchase of houses in February 2015, between Suhardjono as the seller with the plaintiff as the buyer, and evidence letter P-5 is a Certificate of property rights number 1284/Sungai Pinang Village dated September 16, 1988, figure situation number 2179/1988 dated August 26, 1988, on behalf, Plaintiff and Defendant have acquired a common property (*gono gini*) in the form of a plot of land covering an area of 141 m<sup>2</sup> (one hundred forty-one square meters) and building a house on it, which is located in the complex of Taman Beringin Patra, Blok. C.II, Number 6, RT.8, Dusun III, Sungai Pinang Village, Rambutan Sub-District, Banyuasin Regency (formerly Banyuasin Sub-District I/Rambutan Representative, Musi Banyuasin Regency, South Sumatra Province, with boundaries as mentioned above.

The defendant has filed evidence T-1, namely property rights certificate number 1284/Sungai Pinang Village dated September 16, 1988, situation picture number 2179/1988 dated August 26, 1988, on behalf of Suharjono, which explains that during the marriage, the plaintiff and defendant have obtained joint property (*gono gini*) in the form of a plot of land measuring 141 m<sup>2</sup> (one hundred forty-one square meters) and the house building on it, which is located in the Taman Beringin Patra complex, Blok. C.II, Number 6, RT.8, Dusun III, Sungai Pinang Village, Rambutan Sub-District, Banyuasin Regency (formerly Banyuasin Sub-District I/Rambutan Representative, Musi Banyuasin Regency, South Sumatra Province, with boundaries as mentioned above.

Considering that the object of the dispute has been carried out a local examination on Friday, July 9, 2021, the following examination results were found:

A plot of land covering an area of 141m<sup>2</sup> with a size of 10,85m<sup>2</sup> x 13m<sup>2</sup>, following the building of houses on it with a size of 9,50 m<sup>2</sup> x 9 m<sup>2</sup>, located in the complex of Taman Beringin Patra, Blok. C.II, Number 6, RT.8, Dusun III, Sungai Pinang Village, Rambutan Sub-District, Banyuasin Regency (formerly Banyuasin Sub-District I/Rambutan Representative, Musi Banyuasin Regency, South Sumatra Province, with boundaries as mentioned above.

Considering, that based on the above considerations, the panel of judges is of the opinion that the object of the dispute has been legally proven to be joint property acquired during the marriage of the plaintiff and defendant.



Considering that based on the above considerations, the panel of judges has concluded that the object of the dispute is the joint property acquired in the marriage of the plaintiff and defendant whose source of purchase and renovation of the object of the dispute is not known whether it is from the property of the plaintiff or defendant. So based on Article 35 paragraph (1) and Article 37 of Law No. 1 of 1974 which has been amended by Law No. 16 of 2019 concerning joint marriage Article 97 of the compilation of Islamic law, the joint property mentioned above must be divided in kind and each get  $\frac{1}{2}$  (half) part and if it cannot be divided naturally, the joint property must be sold/auctioned.

Considering that the plaintiff's lawsuit is included in the category of marriage, Article 89 paragraph (1) of Law No. 7 of 1989, which was amended into law No. 3 of 2006 and the Second Amendment to Law No. 50 of 2009, the costs incurred are charged to the plaintiff.

Pay attention to all applicable laws and regulations, as well as the arguments of Syar'i this case.

#### **f. JUDGE**

1. Grant the plaintiff's claim for part;
2. Punish the defendant to pay to the plaintiff the cost of living for two children, each in the amount of Rp. 500.000,00 (five hundred thousand rupiah) every month since this decision has permanent legal force until the two children are adults and independent;
3. Declared the object of the dispute a plot of land covering an area of 141m<sup>2</sup> with a size of 10,85 m<sup>2</sup> x 13 m<sup>2</sup>, following the building of houses on it with a size of 9,50 m<sup>2</sup> x 9 m<sup>2</sup>, located in the complex Taman Beringin Patra, block. C.II, Number 6, RT.8, Dusun III, Sungai Pinang Village, Rambutan Sub-District, Banyuasin Regency (formerly Banyuasin Sub-District I/Rambutan Representative, Musi Banyuasin Regency, South Sumatra Province, with boundaries:

- The North is adjacent to the picture of the situation number 2170/1988.
- The West is adjacent to the situation figure number 2178/1988.
- The East is adjacent to the picture of the situation number 2180/1988.
- The South Side is adjacent to the road.

Is the joint property of the plaintiff and defendant:

4. Stating the joint property in dictum number (3) above,  $\frac{1}{2}$  part is the right of the plaintiff and  $\frac{1}{2}$  part is the right of the defendant;
5. Punish the defendant to hand over to the plaintiff  $\frac{1}{2}$  part of the common property in dictum number 3 (three) above and if it is not possible to divide it in kind, it will be handed over to the State auction Office for sale/auction and the proceeds of the sale/auction will be divided  $\frac{1}{2}$  between the plaintiff and the defendant;
6. Punish the parties or anyone who controls the object of joint property in dictum number 3 (three) above to vacate the object;
7. State legitimate and valuable seizure of Property Security in dictum number 3 (three) above;
8. Refuse and declare inadmissibility of the plaintiff's claim for the rest;
9. Charge the plaintiff to pay the cost of this case in the amount of Rp. 316.000,00 (three

hundred sixteen thousand rupiah);

Based on the considerations mentioned above, the panel of judges stated that it granted the plaintiff's claim in part and refused or did not accept some of the plaintiff's claims other than and the rest.

This case is a case in the field of marriage, based on the provisions of Article 89 Paragraph (1) of Law No. 7 of 1989 concerning religious courts as amended by Law No. 3 of 2006 and Law No. 50 of 2009, the costs resulting from this case are charged to the plaintiff.

The panel of judges in deciding cases depends on legitimate beliefs and Legal Equality. Legal certainty refers to what has been established by legislation. In this case, the legal certainty states that the wife will receive 1/2 and the husband will also receive 1/2.

This legal justice is obtained from the facts of the trial, from both parties to the litigant ranging from lawsuit, answer, replik, duplik, witness certificate which all of them must be tested at the trial of evidence, and in the trial of evidence the panel of judges get a conclusion (opinion and conclusion).

Based on the results of an interview with Mr. Fikri Oslami Chairman of the Religious Court of Pangkalan Balai:

*"The concept of justice in Islam is to put something in its place, charge something according to one's carrying capacity, give something that is rightfully theirs with a balanced level."*

Basically, the verdict is required to create a justice, and for that the judge makes an assessment and examination of the events and facts. This can be done by proving, clarifying between important and unimportant, and asking the opponent again about the facts. So, in the decision of the judge, it is necessary to consider the legal considerations, so that it can be assessed whether the decision made sufficiently meets the objective reasons or not (Soerono, 2004).

## **2. Consideration of the Panel of Judges in Deciding the Case of the Division of Joint Property Due to Divorce in Case Number 458/Pdt.G/2020/PA.Pkb**

The provisions of Islamic marriage law as outlined in this case in the compilation of Islamic law become a reference in the discussion of joint property dispute resolution in religious courts. Settlement of joint property disputes in KHI combines two perspectives, namely settlement and preventive activities. Article 458/Pdt. G/2020/PA.CLA resolved in the examination of the judge at the trial, among others:

### **1. Investigation answer**

The defendant has written an answer to the lawsuit filed by the plaintiff. It essentially rejects all arguments for a lawsuit, with the exception of those that the defendant explicitly admits. The plaintiff provides a copy of the defendant's response to the trial, the essence of which remains in his lawsuit. From the responses of the defendant and the respondent, regarding the object of debate whose status is still safe, the panel of judges has given valid consideration stating that according to some objects of question whose status is still guaranteed.

### **2. Proof**

The evidence submitted by the plaintiff and defendant is being examined by the panel of

judges at this time.

3. There are two types of decisions made by judges in the process of resolving a case:

a. Before making a decision on the case, the judge makes an interim decision, which is also called a temporary award. The plaintiff or defendant may request this type of decision. An interrupted choice is made to allow or work with the continuation of the assessment of the case (Harahap, 2005).

b. In any civil case that has been decided in court, it is the final decision that ends the case. According to the Book of M. John Harding, S.H., the final decision of the judge is the act or action taken by him as the ruler or executor of the judicial power (judicative power) to resolve disputes between the litigants and end them.

In case number 458/Pdt.G/2020/PA.PKb the panel of judges concludes the joint property dispute with a final decision stating in the main case to grant part of the plaintiff's claim and reject or not grant part of the plaintiff's claim other than and the rest.

Based on the results of an interview with Mr. Achmad Fikri Oslami, S.H.I.,M.H.I, as the Chief Justice of the Supreme Court, have declared :

*"Basically, according to the law, it is stated that the property acquired in marriage is joint property between husband and wife unless there is an agreement before marriage. So if there is a divorce, and the joint property at issue then the Religious Court will find out whether it is true that the property is joint property or not joint property."*

Related to the actions of the judge in the examination of civil cases, based on the interview of Mrs. Nita Risnawati, S.Sy, are as follows:

*"The judge in examining civil cases is passive in the sense that the scope or extent of the subject matter of the dispute submitted to the judge to be examined is basically determined by the parties and not by the judge."*

The findings of this interview are in line with Mertokusumo's opinion that judges only help justice seekers and try to overcome all obstacles to achieving justice in accordance with Article 4 paragraph 2 of Law No. 48 of 2009 (Mertokusumo, 2013). The author affirms that the verdict of the judge has been in accordance with Islamic law which mandates that everything that appears to be *dhohirny* should be tried, according to the Hadith of the Prophet Muhammad. Therefore, the judge adheres to the *fiqhiyyah* guidelines in this regard. *"In essence, man is free from dependents"*.

The results of the author's interview with the judge in this decision which the author summarizes and analyzes, the judge said that before entering the case to the religious court or if you want to resolve the case of common property in court, the litigant must first complete all the documents and evidence presented in court later so that when the trial begins it will make it easier for the litigant to provide clear and detailed evidence and the lawsuit filed by the plaintiff can also be accepted and not rejected.

## D. CONCLUSIONS

The study can be concluded that in case number 458/Pdt, joint property is divided as a result of divorce. G/2020/PA.PKb, adjudicator separates the common property into half as the rights of the injured party and then the other half as the rights of the litigants. In the main case, the panel of judges stated that it granted the plaintiff's claim in part and refused or did not accept the plaintiff's claim in addition to others. This put an end to cases of joint property disputes. Consideration of the Panel of Judges of Pangkalan Balai District Court in Resolving Joint Property Issues For Situation 458/Pdt.G/2020/PA.CLA does not violate Islamic law based on the verses of the Qur'an, the Hadith of the prophet, or the principles of *fiqhiyyah* for various reasons and solid legal grounds.

With regard to the idea of the creators in this review, more precisely the socialization of joint resources should be completed through thinking by thinking about the standards of justice between spouses. Consideration of the panel of judges of the Pangkalan Balai District Court in resolving joint property disputes in case 458/Pdt.G/2020/PA.CLA to be more careful and cautious in managing a common property issue, so that the settlement of a case is really based on justice for both parties.

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