

DISPUTE RESOLUTION OF JOINT PROPERTY AND INHERITED PROPERTY DUE TO DEATH DIVORCE BY MEDIATION

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ABSTRACT

The problem of disputes over mutual assets or shared assets and inherited assets as a result of divorce and death is a matter that greatly affects the survival of the family left behind. This often leads to long conflicts. These conflicts sometimes cannot be resolved by the parties themselves, as was the case with one of the families in Tempuran Village, Trimurjo District. They resolve the conflict through mediation outside the court which of course presents a mediator as a neutral party. The formulation of the problem in this study is how to resolve disputes over shared assets and inherited assets in Tempuran Village, Trimurjo District? What is the method of mediation used to resolve joint and inherited property disputes between the wife's and stepfather's children in cases of divorce and death? This type of research is field research (Field Research), while the approach is qualitative with empirical laws that are anthropological social juridical. Data collection procedures were carried out through observation, interviews, and documentation. Primary data comes from interviews, while observation and documentation are secondary data that complements the primary data. The results of this study are that the distribution of joint assets (gono-gini) and inherited assets as a result of divorce is resolved through the kinship line. This family meeting is held to maintain family relations between stepfathers and stepchildren in harmony. The amount of the distribution of assets is in accordance with the agreement that has been mutually decided, namely the amount of distribution of assets back and forth and inherited assets for stepchildren is greater with a total of 2/3% of the existing assets. This is because the child's mother carries more assets than her stepfather.

Keywords: Joint Assets, Inherited Assets, Divorced, Mediation Law.

A. INTRODUCTION

Joint property, which is familiarly known by the public as gono-gini property, is property collected from both parties when they get married. As a result, this property is acquired collectively. Nowadays, joint property has been written in Law No. 1 of 1974 concerning marriage, which is found in article 35 paragraph (1) which states that the property obtained during marriage becomes joint property. Similarly, paragraph (2) explains that unless the parties

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agree differently, each husband and wife has control over the property he inherited (before marriage) and the property he received as a gift or inheritance. This means that the property owned by each husband and wife is not included in the joint property or called innate property.

The problem that often occurs in social life is usually the existence of family disputes due to the division of joint or shared property and inherited property brought by the husband or wife from the results after marriage or before marriage. In practice, starting from (Marriage, 1974) a marriage between a widow and a widower who has reached the age of marriage for ten years, one of which occurred in Tempuran Village, Trimurjo District, Central Lampung Regency. In this marriage the wife brought a daughter from a previous marriage. During the marriage, both of them worked and had an income. During that time they have not been blessed with children from their marriage.

However, in the middle of the journey, due to chronic illness, the wife passed away. After a few weeks of the wife's death, a new problem arose, namely a dispute over joint and shared property between the stepfather and stepdaughter who was left dead by her mother. The stepson claimed his right to control his mother's property and joint property, which he believed was the result of his mother's land and house before she married his current father. From the results of his current marriage, there is also a legacy in the form of a vehicle which according to his son, this item is his mother's property which was purchased from the proceeds of his mother's income while working. Meanwhile, his stepfather also tried to control joint property and inherited property because of his legal marital status with his deceased wife.

There are several research results similar to this article, including research by Muhammad Kholil Hushori (Hushori, 2019, p. 6), the article explained, there was one of the family couples who died and in the division of joint property in Ara Condong village was divided in accordance with KHI Article 96 guidelines. The community often adheres to the prevailing practice, namely after someone dies or divorces, there is no more division of joint property, and instead all assets can be inherited. Ibnu Helmi As Pelu and Ahmad Dakhair, (Dakhoir, 2021) that the existence of joint property has actually been recognized in positive law in Indonesia even though some indigenous peoples do not see its existence. The results of this study reveal that the position of joint property in marriage has legal standing in the Marriage Law and KHI, so that the wealth cultivated during marriage becomes joint rights. Regardless of whether or not there is an agreement in the marriage agreement or one of the parties claims its rights either through court channels or not, so that the rights of both need to be protected. The difference between this

research and this research is that this research examines the division of joint property disputes and inherited property through out-of-court mediation.

Based on the above problems, this research is important to do in order to find out the settlement of disputes over joint property and inherited property between stepchildren (innate wife) and stepfather by consensus (mediation) by several parties who are wiser and are considered to know the process of solving problems through mediation in Tempuran Village, Trimurjo District, Central Lampung Regency. So that the formulation of the problem in this study is how to resolve disputes over joint property (gono-gini) and inherited property between children born to the wife and stepfather in a case of death divorce in one of the families in Tempuran Village, Trimurjo District, Central Lampung Regency? and how is the mediation method used to resolve disputes over joint property (gono-gini) and inherited property between children born to the wife and stepfather in a case of death divorce?

B. METHODS

This type of research is field (Field Research), (Mahmud, 2011, p. 31) To find out more about the dispute over joint property assets in Tempuran Village, Trimurjo District, Central Lampung Regency, the author conducted a direct search of the object under study. The approach is qualitative with empirical law that is juridical social anthropological in nature. This assessment will rest on the legal provisions of the division of joint property (gono-gini) as a guide to review the implementation and constraints in the field. So that it can be a solution to the problem of dividing joint property in society through mediation and the parties to the dispute can resolve their problems fairly and peacefully. Data collection methods, namely: 1) Observation, researchers observe the settlement of disputes over joint property (gono-gini) and inherited property between the wife's children and stepfather during a divorce by mediation in Tempuran Village. 2) Interviews, interviews conducted directly with mediators, stepfathers, and stepchildren. 3) Documentation, is a process of proof based on any type of source, whether it is written, oral, picture, (Gunawan, 2016, p. 82) Documentation used in this research is in the form of data collection in Tempuran Village, Trimurjo District, Central Lampung Regency, which then takes data from documentation in the form of history, vision and mission, organizational structure up to photos in the activities that the author does. After the data is collected, data analysis includes data reduction, data presentation, and verification or conclusion drawing. Data validity uses triangulation, (Moleong, 2017, p. 330) namely source triangulation, researchers collect data by comparing observations or observations, with data from interviews with disputing

parties regarding joint property (gono-gini) and inherited property in Tempuran Village. In the triangulation method to obtain the truth about information, it is done by using the interview method with several related parties.

C. FINDINGS AND DISCUSSION

I. Disputes over Joint and Intangible Property as a Result of Divorce in Tempuran Village, Trimurjo Sub-district

Disputes over joint property and inherited property often occur among the community. In Tempuran Village, Trimurjo Subdistrict, the inheritance and joint property as a result of a death divorce caused a dispute between the stepfather and stepdaughter. The stepdaughter demands her right to control the inheritance and joint property of her deceased mother. Meanwhile, the stepfather also tries to control the joint property and property due to his legal marital status with his late wife. According to Hilaman in John Kenedi, (Kened, 2018) that innate property is the property brought from each husband and wife into the marriage bond, it may be in the form of property earned by each husband and wife before or after marriage. Meanwhile, joint property according to Sayuti Talib in Arief Budiono, (Budiono, Surakarta) is property obtained during marriage either from the husband's efforts or the wife's efforts or the efforts of each party.

Settlement of disputes over joint property and inherited property as happened in Tempuran Village is done peacefully. Peace by means of mediation in Islam is highly recommended, because peace will avoid the breakup of silaturahmi, as well as hostility between the parties to the dispute will be terminated. In line with Takdir Rahmadi, (Rahmadi, 2017) that, mediation can be said to be a way of solving problems between the two parties and obtaining results that are equally not detrimental to both parties. Mediation is a process of resolving disputes between two or more parties through negotiation or consensus with the help of a neutral party who does not have the authority to decide.

The neutral party is tasked with reconciling the disputing parties by bringing together the disputing parties to seek an amicable settlement. The mediator must be able to create an atmosphere and conditions conducive to the creation of a compromise between the two parties to the dispute to obtain a *win-win* result.

2. Dispute Settlement of Joint Assets and Inherited Assets in Tempuran Village, Trimurjo Subdistrict

The community calls joint property as property acquired during the marriage built by the two without any dispute. According to the Compilation of Islamic Law in article 85, it is stated

"*the existence of joint property in a marriage does not rule out the possibility of property owned by each husband or wife*". Thus, the mention of joint property is the property obtained from the hard work between the two.

In contrast, inherited property is all property owned by either the husband or the wife prior to the marriage, including those received as inheritance and those brought into the marriage and anticipated to grow during the marriage (Poespasari, 2018, p. 22) As stated in Article 35 paragraph 2 of the Marriage Law, (1974) "As long as the parties do not agree otherwise, each husband and wife shall have control over the property he or she inherits and the property he or she receives as a gift or inheritance." This property is usually referred to as property under the management of the spouses.

Regarding the division of gono-gini property, there are many ways to implement it, namely through the court or through out-of-court mediation. This mediation is a process in resolving disputes between the parties concerned through careful deliberation and there is a third party as an intermediary in the process who does not have the authority to give a decision. (Rahmadi, Mediation Dispute Resolution Through a Consensus Approach, 2017, p. 12) As for the process, it is divided into four stages, namely premediation, where the mediator is chosen according to the agreement to identify the problems that occur. While in the implementation of mediation, the parties provide their respective statements for further deliberation, if there is an agreement, it is closed by signing a deed of compromise to be further legalized through the court.

If either the husband or the wife dies, it must be clarified in advance so that a decision can be made regarding the division of joint property. There must be a clause on the legal death of one of the two through a religious court if the other is no longer alive. The division of joint property to a husband or wife whose wife or husband is absent is postponed until there is certainty of the actual death or legal death, as determined by the religious court, this is in accordance with the explanation of the Compilation of Islamic Law article 96 paragraph 2.

3. Settlement of Disputes over Joint and Common Property between Wife's Children and Stepfather in a Case of Death Divorce in Tempuran Village through Mediation.

Settlement of property disputes and inherited property due to death divorce in Tempuran Village, Trimurjo Subdistrict is carried out by means of out-of-court mediation. In addition to saving time, energy and costs, settlement in this way is also considered effective to maintain family harmony, so that relations between families in dispute remain well established. In conducting the mediation, of course, a third party Mr. Ubay, (Ubay, 2022.) was present as a mediator, as well as Mr. Suwandi (stepfather) and Nur Azizah (stepdaughter) who were in

dispute. This mediation deliberation was carried out to find a middle way to the conflict over the gono-gini property dispute and inherited property.

The role of the mediator is very important in the implementation of mediation. So that a mediator in a case is not chosen carelessly, but someone who is considered to have knowledge in the law of the division of joint property and inherited property due to death divorce. This is done so that the problem solving process runs effectively and efficiently. In addition, it is also to minimize information inequality between the parties to the dispute.

In resolving this case of gono-gini property and inherited property due to divorce, several steps were taken. The step begins with a meeting between the mediator and both parties to the dispute (Mr. Suwandi and Nur Azizah). From that meeting, the disputing parties then submitted their statements regarding the gono-gini property and inherited property due to the death divorce in question. However, the statement did not reach an agreement. So the mediator needs to develop in-depth information. (Ubay, 2022)

The mediator as a neutral party then assesses and judges the information presented based on their respective interests. In this case, the mediator helps direct and guide the disputing parties through problem-solving bargaining. (Ubay, 2022) This is done to help the two disputing parties reach a mutually beneficial settlement. The form of the agreement is then contained in a sign of agreement, as well as evidence of family deliberation.

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Regarding the settlement of gono-gini property disputes and inherited property originating from a death divorce in Tempuran Village, Trimurjo Subdistrict, it lasted for one month. In its implementation, it is certainly not without obstacles. The lack of understanding of the parties to the dispute about the law on the division of joint and inherited property due to death divorce is the cause of the dispute. However, this can be overcome by the mediator by providing explanations related to the problem, (Suwandi, 2023) That way, the problem can be unraveled one by one.

In cases of divorce and death, the division of joint property is 50/50. "In the event of a death divorce, half of the joint property is the priority of the surviving husband and wife," reads the Compilation of Islamic Law article 96 paragraph I.

Meanwhile, in Article 36 paragraph 2 of the Marriage Law, which states that "Regarding their respective inheritances, the husband or wife has the full right to carry out legal actions regarding their property",

According to article 87 paragraph 2 of the Compilation of Islamic Law, "Husband and wife have full authority to carry out legal actions or their respective assets in the form of grants, gifts, alms, or other goods." This means that if a husband or wife who before marriage already has inherited property, then the property cannot be contested by one of the spouses.

In the mediation process of one of the families in Tempuran Village, Trimurjo Subdistrict, Central Lampung Regency, the amount of division of gono-gini property and inherited property was in accordance with mutual agreement, namely the share for Nur Azizah (stepdaughter) was greater in amount. This is because the deceased Mrs. Sunarsih as the biological mother of Nur Azizah already had inherited property before marrying Mr. Suwandi. (Suwandi, 2022) In line with Abd. Rasyid As'ad's opinion, (As'ad, p. 7) that there is no element of coercion and that in the settlement of the division of joint property through discourse, the proportion of property division is obtained on the basis of deliberation for consensus.

The assets left behind are in the form of 15000 M2 of land which is certified No. 01161 An. Sunarsih. On the land there is a 540m² house which is also in the name of the late Mrs. Sunarsih. This land borders Mr. Dahlan to the north. To the south it borders Mr. Supeno, to the east it borders Mr. Palno, and to the west it borders Mr. Mukani. In addition to leaving land and a house, the deceased Mrs. Sunarsih also left two motor vehicles, namely a Beat motorcycle in 2018 and a Vario motorcycle in 2016. Both vehicles were purchased under the name of the deceased Mrs. Sunarsih. Other items included in the inheritance are 1 unit of sofa chair and 1 unit of cupboard.

According to the explanation of Nur Azizah, (Azizah) in the division of assets through deliberations that have been carried out, she gets 2/3% of the existing assets including congenital and joint assets. The 2/3% of the property includes 10,000 m² of land, 540 m² of house, and 1 unit of Beat 2018 motorcycle. Meanwhile, Mr. Suwandi's stepfather's share is 5000 m² of land, 1 unit of 2016 Vario motorcycle, 1 unit of sofa chair, and 1 unit of cupboard. From the results of the agreement, both of them sincerely accepted the division of property.

Based on the explanation above, the discussion of this gono-gini property is a case that has a major influence on the survival of the family left behind, especially in cases of divorce. This often causes a long conflict. Sometimes the parties to the dispute cannot resolve it amicably, so they are forced to appear in court. However, the fact is that resolving the issue of gono-gini

property and inherited property through the court requires time that tends to be short and requires a lot of money. As experienced by the stepfather and stepdaughter above, the lack of understanding regarding the division of gono-gini property and inherited property due to death divorce is also a trigger for dispute conflict.

D. CONCLUSION

The way to resolve the dispute over joint property and inherited property in one of the families in Tempuran Village, Trimurjo Subdistrict is through out-of-court mediation. In this case, mediation is carried out so that family relationships are well maintained, so that after this mediation is completed there will be no more conflicts related to the division of joint and inherited property due to death divorce in the family. So that a mediator in a case is not chosen carelessly, but someone who is considered to have knowledge in the law of the division of joint and shared property due to death divorce. This is done so that the problem solving process runs effectively and efficiently. In addition, it is also to minimize information inequality between the parties to the dispute.

Mediation is carried out through several steps, namely the parties to the dispute meet together with the mediator to submit a statement about the case. The mediator as a neutral party then identifies and assists the parties by way of deliberation to find a solution. From the results of the deliberation, the amount of division of gono-gini property and inherited property for stepchildren is greater at 2/3% of the existing property, this is because the inherited property brought by the deceased mother of the child is more than her stepfather. The decision was mutually agreed upon and signed by both parties.

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