

## **Analysis of Indonesian Supreme Court Decision About Collective Property Due to Divorce Case**

Prof. Asmuni<sup>1</sup>, Ayu Mirna Sari<sup>2</sup>

<sup>1</sup>Faculty of Religious Proselytizing and Communication, Islamic State University of North Sumatera, Muhammadiyah University of North Sumatera, Panca Budi University

<sup>2</sup>Faculty of Religious Proselytizing and Communication, Islamic State University of North Sumatera, Muhammadiyah University of North Sumatera

---

**Abstract:** Earn one's keep is a husband duty to his wife. The basic necessities of life can be in material, it is due to the basic necessities of life is equal to material. The earn one's keep is a husband duty to his wife is based on the principle of property separation between husband and wife. This principle follows a thinking that the husband is a person who looks for the basic necessities of life. It is better if the wife is not a person who looks for the basic necessities of life and in her position she is a person who obtains the basic necessities of life. There are some cases in marriage that it is real that the husband does not give the basic necessities of life to his wife and children. The Islamic law compilation in section 96 clause (1) states that if there is a death divorce, thus a half of collective property is to be his/her partner who has long life. Beside it is caused by the death, the separation of marriage causes the divorce can give influence to the collective property between the husband and wife. The section 96 of Islamic law compilation also arrange about this case, whereas the section decide that for the widower who has life divorce will obtain a half of the collective property if there is no agreement during the marriage. The supreme court No.266k/Ag/2010 relates to the division of collective property in a case of divorce. It is not same in the Islamic law compilation, but the wife obtains 2/3 and the husband obtains 1/3 of the collective property. This research is a descriptive analysis that it is forward to normative law research. The collection of data is collected from the secondary data that it is literature review or library research. The collected data is analyzed using qualitative analysis. Based on the research result can be concluded that the decision of supreme court No.266k/Ag/2010 relates to the division of collective property has fulfilled the justice opinion and it has given a true law also it gives a law protection for the wife who does not obtain the basic necessities of life from her husband during her life.

**Keywords:** effect of law, husband, divorce, basic necessities of life, collective property

---

Date of Submission: 24-11-2017

Date of acceptance: 05-12-2017

---

### **I. INTRODUCTION**

A marriage is one part of Islamic precept. A person who does not marriage in his life means he/she does not follow the Islamic precept. In the *hadith* (traditional collection of stories relating words or deeds of Muhammad) states that the marriage is one part of *sunna* of prophet and whomsoever who dislikes to the marriage, it means that he/she is not as member of prophet Muhammad (*hadith* narrative is Ibn Majah from Aisyah). The objective of marriage is to construct a peaceful Islamic family and full love, full affection (Qur'an ar-Rum:21). The marriage is one part of sunnatullah which it is for all creature (human, animal and plants) created by Allah. A marriage embryo is a basic of human culture.

As a logic consequence, the marriage will give effect on the interrelationship of right and duty of husband and wife and also the parent duty to his/her children (Sorang:2010:1). The meaning of right is something which is obtained by some body from other person, and the meaning of duty is something which should be done by some body to other person. The husband and wife have right in the relationship of household. Beside the right that the husband and wife also have some duties. The wife's right is equal to her husband (Syafuruddin, 2014:159).

Everybody who constructs a marriage has a same expectation, it is a harmonious family. But some time, the expectation can be really. There is a broken marriage in a half of his/her way, it is due to some reasons. Thereby, a peaceful family can be achieved. Based on the Islamic law, the separation of marriage is mentioned by *thalaq*. It means divorce terminology in Indonesia language (Daulay dan Naimi, 2012: 53). One of reasons causes the divorce is that there is no ability to give the basic necessities of life from husband to wife and his children.

The duty of basic necessities of life from husband to wife is based on the principle of property separation between husband and wife. This principle follows a thinking that the husband is a person who looks for the basic necessities of life. The livelihood share is full right by wife and the husband is in position of feeder of the basic necessities of life. Conversely, the wife is not looker for livelihood and for filling her life that she has a position as acceptor of the basic necessities of life. The basic necessities of life is necessity including the nine basic materials, clothes and housing or in the daily language is mentioned as food and clothing (Syarifuddin, 2014: 166).

## **II. METHODOLOGY**

This research is descriptive analysis and it forwards to normative juridical. The descriptive research is meant to give the accurate data about human, situation and other phenomenon (Soekanto, 2007: 10). This research uses reserch method of normative law, it is near to the law sistematic reserch. The form of normative law research is as mentioned by Ronny Hanitijo Soemitro includes: positive law inventory, research of basic law, research of law in concreto, research of synchrhonization law, research of law system and law comparative (Soemitro,1990:4). The research of law sistematic can be studied on the specific regulation of law or the written law (Sunggono, 2005: 93). The technique of data collection is conducted based on the secondary data which is done on the literature study or library reserch or searching the literature in the library for the material of relavent written law .

The procedure of data collection is based on the library study by using the secondary data or library research. It is library reserch or document study. This reserch uses cualitative analysis to analyze the collection data which is searching in the library.

## **III. RESULT AND DISCUSSION**

### **III.1 Defenition of Collective Property**

The collective property can be mentioned also *gona-gine* property in Java language. According to when a wife has no accupation (in formal condition), thus a husband who has no accupation also will obtain the devition of collective property. It is based on the logic that if one of part has no income, thus theother part can not obtain an income without other helping. It means that if one part of them has no accupation in the forma situation, there is other accupation which can help in the house (Susanto, 2008: 43-44).

The gona-gini property is based on the traditional or tradition which has been in Indonesian. In the future, the tradition has been supported by clergy in Indonesia. The law No.1/1974 section 35 states that the gona-gini property is “a collective property which is collective during the time of marriage”. For this issue, all riches obtained before marriaging is not mentioned as the *gona-gini* property. In the KUHP court of justice section 119 is also mentioned that the property which is obtained during the marriage is as the collective property as far as the partner of husband-wife does not do other ceternty in the marriage aggrement. The collective property during the marriage can not be eliminated or changed with an aggrement between husband-wife. The Islamic law compilation section 85 states that if there is a collective property in the marriage, thus it is perhap as collective property for partner of husband-wife. In other word, the Islamic law compilation supports that there is a collective property in the merriage (*gona-gini* property). The Islamic law compilation section 86 clause 1 and 2 mentions back that in the principle, there is no property mixture between husband and wife caused by the marriage. Accorcing to Abdul Manan, the way of collective property division between husband and wife is a half for each. In the specific case, the application is flexible, if it is real in the family, for husband who does not participate in the development of economic in the family, for fulling the justice, fittingness and decent according to the Islamic law compilation section 229 (Susanto, 2008:129).

According to Achmad Ali, if somebody want to go out the law problems, thus the answer is to be free of handcuff positivly. If somebody always uses theoretical and law understanding based on the positive-logic and written law, thus he/she can not be able to capture true reality, following part of history or philosophy born. Thereby, It is not wrong if the devision of collective property which is not sutable to the Islamic law compilation, moreover it can give a positive actual to go out the law problem occure a long time (Ali, 2005: 26-27).

### **III.2 Judgment and Decision of judge**

The division of collective property following the above case, wherease the husband does not give the basic necessities of life to his wife and almost all collective property are obtained together. This case is not happen in the real life and judged by Indonesia Supreme Court following the judgment No. 266K/Ag/2010.

In the request of jurisdiction, the Indonesia Supreme Court gives some law decisions as stated below:

- a. Based on the evidence and facts in the court session, it shows that the husband does not give the basic necessities of life from his job and the all collective property is obtained by the wife from her job. For following the justice, it is real if the litigant (wife) obtains the collective property based on the decision.

- b. Following the above decisions, thus the jurisdiction request which proposed by husband should be rejected following the decision of Religious High Court, the complete command will be explained below.

Based on the law decisions then the Indonesia Supreme Court give decision No.266K/Ag/2010 which is collected from the decision of collective property as stated below:

1. It decides that the litigant and defendant during the marriage has obtained the property as...etc.
2. It decides that the litigant has right of  $\frac{3}{4}$  of the collective property as mentioned in the above command and the defendant has the right of  $\frac{1}{4}$  of the collective property as mentioned in the above command.

Based on the court decision which obtained during the court session time, thus the court decides that the litigant has right of  $\frac{3}{4}$  of the collective property as mentioned in the above command and the defendant has the right of  $\frac{1}{4}$  of the collective property. Then the Supreme Court verdicts the defendant to pay the basic necessities of life of Rp. 5.500.000 (five million and five hundred thousand in rupiah) for his/her children every month. The decision is started when it has permanent law until the children has age of 25 years or able to stay alone. Beside this, the judgment verdicts the defendant to pay the debt of Rp. 2.000.000,- (two million rupiah) during 11 years in every month is Rp. 264.000.000, (two hundred sixty four million rupiah) during 11 years. The Supreme Court also verdicts the party who getting the other party to give the part of property.

The decision is given based on the decision of court committee in the decision of collective property, based on the information from the litigant and defendant and also based on the verification result ( it is information from witness. Indonesia Supreme Court gives the law decision that it is due to “ it is proved that the husband does not give the basic necessities of life from his job and the all property is obtained by the wife from her job, following the justice , the litigant (wife) obtains the collective property according to the decision in the command decision.

It is very clear if it is viewed from the law decision which given by Indonesia Supreme Court. It says that the husband has a responsibility to obtain the job and looks for the basic necessities of life in a family, it is suitable in the section 34 clause (1) UUP that states:” The husband has a responsibility to protect his wife and give all life necessity in the family according to his ability”. But there is an proof that the husband does not do his responsibility, thus he obtains the lower collective property compared his wife.

Based on the above section, it can be decided a law line that the wife does not have to look for the basic necessities of life for her family, because the wife’s duty is arrange the best family affair according to section 34 clause (2) UUP. If the wife gives contribution to do an economic activity and its objective is to help her husband to looking for the basic necessities of life, thus it is a good deed but it is not as a duty.

The decision of Supreme Court which give part of  $\frac{3}{4}$  of the collective property, it is reality to commit give a justice in the family. The justice is a distributive justice. In the field of distributive justice that it is important to have understanding concept of “same contribution for same attainment”. The justice is not same lot and big. The justice should be viewed from the distribution side of works. The justice is always became an ideal value in the making and implementation of law, however it is as abstract concept and the justice is almost understood without a clear limitation. The justice distribution can become a goodness distribution, it is a society value (Friedrich, 2004: 25).

The judge of Supreme Court also take the corrective justice side that it is focus on the correction of wrong something. An infraction or wrongness is done, thus the corrective justice will give a suitable compensation for the damaged parts. If an evil has been done, thus a punishment should be given to him/her. An injustice will affect to “equivalent” which it is established or formed. The corrective justice works to develop back the equivalent. Based on the explanation, it is clear that the corrective justice is judicature field whereas the justice distributive is as government field (Friedrich, 2004: 25).

The decision of Supreme Court No. 266K/Ag/2010 also gives a law protection for the wife who has husband but does not give the basic necessities of life to her family during their marriage. The decision of Supreme Court No. 266K/Ag/2010 shows that the judge as a law upholder has given a maximum protection to the litigant. In the case as in the research, the law and justice upholder should use true thinking line with proof material and proof things to realize the law justice and the content of law should be decided by the true etihcs and justice or no for in one case. The law problem becomes real if the apparatus of law can work well and fully, they can fulfil the prefect rule, thus the deviation of law will not occur and the law can be done systematically, It means that it uses the law codification and unification for creating the real law and justice law (Ishaq, 2009: 44).

The decision of Supreme Court can be real and gives real law for the wife, it is due to the litigant (wife) is given a law protection for the individual from the misgovernment based on the general rule. The rule of law is almost created without a prediction that will happen as effect of the life dynamic that develop continually.

#### IV. CONCLUSION

The decision of Supreme Court No. 266k/Ag/2010 relates to the division of collective property in the case of divorce which is fullfil the justice, it will give a real law and law protection for somebody who his/her reduced right causes a unbalance law to real facts. The decision of Supreme Court gives  $\frac{3}{4}$  of the collective property, it is realy to construct a justice in the family. The justice is a justice distributive.

#### REFERENCES

- [1]. Abdul Manan. 2008. *Aneka Masalah Hukum Perdata Islam di Indonesia*. Jakarta: Prenada Kencana Media Group.
- [2]. Achmad Ali. 2005. *Keterpurukan Hukum di Indonesia*. Bogor: Ghalia Indonesia.
- [3]. Amir Syarifuddin. 2014. *Hukum Perkawinan Islam di Indonesia*. Jakarta: Kencana.
- [4]. Bambang Sunggono. 2005. *Metode Penelitian Hukum*. Jakarta: PT. RajaGrafindo Persada.
- [5]. Daulay, Mahmud Yunus dan Nadlrah Naimi. 2012. *Studi Islam 2*. Medan. Penerbit Ratu Jaya.
- [6]. Hamid Sarong, A. 2010. *Hukum Perkawinan Islam di Indonesia*. Banda Aceh: Yayasan PeNA Banda Aceh.
- [7]. Huzaimah Tahido Yanggo. 2005. *Masail Fiqhiyah Kajian Hukum Islam Kontemporer*. Bandung: Penerbit Angkasa.
- [8]. Ishaq. 2009. *Dasar-dasar Ilmu Hukum*. Jakarta: Sinar Grafika.
- [9]. Joachim Friedrich, Carl.2004. *Filsafat Hukum Perspektif Historis*. Bandung: Nuansa dan Nusamedia.
- [10]. Muhammad Syaifuddin, dkk. . 2014. *Hukum Perceraian*. Jakarta: Sinar Grafika.
- [11]. Soerjono Soekanto. 2007. *Pengantar Penelitian Hukum*. Jakarta: UI-Press.
- [12]. Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan
- [13]. Instruksi Presiden Nomor 1 Tahun 1991 tentang Penyebarluasan Kompilasi Hukum Islam

Prof. Asmuni Analysis of Indonesian Supreme Court Decision About Collective Property Due to Divorce Case.” IOSR Journal Of Humanities And Social Science (IOSR-JHSS), vol. 22, no. 12, 2017, pp. 28-31.