

STATE CIVIL APPARATUS SALARIES AND PATENTS AS JOINT PROPERTY POST-DIVORCE PERSPECTIVE OF GOVERNMENT RULES AND ISLAMIC LAW

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Abstract: This study aims to analyze government regulations and Islamic law regarding the salary status of state civil servants and patents as joint property after divorce. The government regulation in question is Government Regulation Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants. This research uses a qualitative method based on normative juridical. In addition to government regulations which are the source of data, this study also uses the maqahid syar'iyah view. The two data sources are then compared and then formulated into one concept. The results of the study explain that divorce based on Article 3 of Government Regulation Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants, it is said that an state civil apparatus divorce must go through the permission of a superior. And according to article 37 and article 49 of Law Number 1 of 1974 it is said that joint assets in the event of a divorce are divided according to existing legal regulations, and article 49 says that the Religious Courts have the duty and authority to examine, decide and resolve cases at the national level. The first is between people who are Muslim in the field of settlement of joint assets.

Keywords: Joint property, Divorce, Islamic law, State civil apparatus

Abstract: Penelitian ini bertujuan untuk menganalisis aturan pemerintah dan hukum Islam tentang status gaji aparatur sipil negara dan hak paten sebagai harta bersama pasca perceraian. Aturan pemerintah yang dimaksud adalah Peraturan Pemerintah Nomor 45 Tahun 1990 Tentang Perubahan Atas Peraturan Pemerintah Nomor 10 Tahun 1983 Tentang Izin Perkawinan dan Perceraian Bagi Pegawai Negeri Sipil. Penelitian ini menggunakan metode kualitatif berbasis yuridis normatif. Selain aturan pemerintah yang menjadi sumber data, penelitian ini juga menggunakan pandangan maqahid syar'iyah. Kedua sumber data tersebut kemudian di perbandingkan lalu kemudian diformulasikan menjadi satu konsep. Hasil penelitian menjelaskan bahwa perceraian berdasarkan pasal 3 Peraturan Pemerintah Nomor 45 Tahun 1990 Tentang Perubahan Atas Peraturan Pemerintah Nomor 10 Tahun 1983 Tentang Izin Perkawinan dan Perceraian Bagi Pegawai Negeri Sipil, dikatakan bahwa perceraian seorang ASN harus melalui izin atasan. Dan menurut pasal 37 dan pasal 49 Undang-undang Nomor 1 Tahun 1974 dikatakan bahwa harta bersama apabila terjadinya perceraian maka dibagi atas peraturan hukum yang ada, dan pasal 49 mengatakan bahwa Peradilan Agama bertugas dan berwenang memeriksa, memutus, dan menyelesaikan perkara-perkara di tingkat pertama antara orang-orang yang beragama Islam di bidang penyelesaian harta bersama.

Kata Kunci: Harta bersama, Perceraian, Hukum Islam, Aparatur sipil negara

INTRODUCTION

Marriage is sacred and carried out according to each citizen's religion and beliefs (Musyafah, 2020). The purpose of marriage is to form a household that is eternal, everlasting, and happy, but sometimes in practice, many things happen that cause the marriage bond to stop in the middle of the road or divorce (Faradz, 2008). Divorce is the only way when problems in the household can no longer be resolved, even though sometimes many detrimental things will arise when a divorce occurs (Sahlan, 2012). This also applies to a Civil Servant; a civil servant's household also sometimes has problems that result in separation or divorce in their household even though an State Civil Apparatus should be able to uphold noble religious values and the rules that they apply as state civil apparatus (Hidayatullah, 2022).

According to Article 39 of Law Number 1 of 1974 concerning Marriage (Marriage Law) and Article 115 of Presidential Instruction No. 1 of 1991 concerning the Dissemination of the Compilation of Indonesian Islamic Law, it is said that "Divorce can only be carried out before a Court hearing after the Court concerned has tried and failed to reconcile the two parties." If a divorce is carried out, the obligations and rights of both husband and wife, who have the status of state civil servants, will apply. If a divorce occurs according to Marriage Law No. 1 of 1974, as well as the distribution of salaries of state civil servants and joint assets in the event of a divorce of a state civil servant is also

regulated in the compilation of Islamic law and Marriage Law No. 1 of 1974. In this case, laws and government regulations have provided specific rules so that no party will be harmed, for example, their children, if there is a divorce and the court grants the divorce request.

The mechanism for divorcing a state civil servant has special rules, namely in Government Regulation Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants. And because there are some differences between the divorce of a state civil servant and ordinary people. One of them is the ownership status of the assets owned by both at the time of the divorce. Government rules stipulate that ownership of assets acquired after marriage has the status of joint property, including patent rights. But what about an Islamic perspective? Is that the case? Because this condition can indeed be beneficial for one party and benefit both parties, it does not even rule out the possibility of harming both parties.

This study aims to analyze the status of joint property ownership from two perspectives, namely according to government regulations both in Government Regulation Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants, as well as compilations of Islamic law, and from the perspective of *maqashid Syariah*. The results of this study contribute

to a single concept with a more complex view of the status of joint property ownership.

In connection with this research, there are several relevant studies, including research on the juridical analysis of joint assets (Rochaeti, 2015), the distribution of joint assets based on Law Number 1 of 1974 (Nagara, 2016), the conception of joint assets according to civil law and customary law (Sugiswati, 2014), the effectiveness of the distribution of joint assets after divorce (S. Rahman et al., 2020), the distribution of joint assets in terms of the amount of contribution of husband and wife (Kurniawan, 2018), joint assets in the perspective of marriage law and civil law (Djuniarti, 2017), the problem of sharing joint assets (Zubaidi, 2019). From the studies above, the authors conclude that the study focuses on understanding joint property in terms of several perspectives, namely government regulations, customary law, and civil law. It differs from this research, which focuses on comparing government regulations and Islamic law, specifically, joint assets owned by post-divorce state civil servants.

METHOD

This study uses a research method that includes a normative-juridical-based qualitative research type, namely a type of research that uses a statutory provisions approach that applies to a country or a doctrinal legal approach method, namely legal theories and opinions of legal scientists, especially those related to

current issues. Discussed. As for the issues that will be discussed, namely regarding the salaries of state civil servants and patents as objects of the property after the divorce (Soemitro, 1998). This research uses a statutory approach (statute approach) which will explore the rules in the law that are continuous with the problem formulation (Nurhayati et al., 2021).

The data sources in this study consist of two primary and secondary data sources. The primary data sources are Government Regulation Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants and compilations of Islamic law. while the secondary source is literature that has to do with shared assets owned by the state civil apparatus.

Data analysis uses content analysis, namely analyzing content or material from government regulations and compilations of Islamic law. Understanding of the material is then compared between these data sources. The analysis results are then interpreted and formulated into a systematized concept according to the sub-discussion. The analysis was carried out in a descriptive analysis with the support of relevant research studies.

RESULT AND DISCUSSION

Based on Article 41 of Law Number 1 of 1974 concerning marriage, several points are explained as a result of the breakup of a

marriage due to divorce, namely: (a) Both the mother and the father are still obliged to look after and educate their children, solely based on the interests of these children. If there is a dispute involving these children, the court will settle it at the parties' request; (b) the father is responsible for all maintenance and education costs the child needs. If the father is unable, the court may determine that the mother is responsible for carrying the burden; (c) The husband may obligate the court to provide maintenance to or determine an obligation of the ex-wife.

Furthermore, Article 18 of Government Regulation Number 9 of 1975 states that the divorce occurred or was calculated when the divorce was declared before the Religious Court hearing (Nasution, 2018). One of the procedures that must be carried out in a civil servant divorce is to seek permission from the head of the agency where they work. And the permission given must be in the form of written permission (Yulita, 2020). This refers to Article 3, paragraph (1) of Government Regulation Number 10 of 1983, which states, "Civil Servants who wish to carry out a divorce must first obtain permission from an official." In Article 5, Government Regulation Number 10 of 1983 Jo. Government Regulation Number 45 of 1990 stipulates that the permit must be submitted to the Official in writing. The Official in question is the head of the agency where the Civil Servant works.

Article 5, paragraph (2) states that every superior who receives a request for

permission from a Civil Servant in his environment, whether to carry out a divorce or to have more than one wife, is obliged to give consideration and forward it to the Official through hierarchical channels within a period of no later than three months from the date he received the said permit request. An Official can grant permission to divorce based on reasons stipulated by laws and regulations. And having these requirements is also a way to make divorce difficult, especially for civil servants, because if there is no permission from their superiors, the civil servant cannot divorce (F. S. Rahman, 2019). However, things like this do not aim solely to make it difficult for civil servants to get divorced or revoke the rights of these civil servants. Still, there are other factors, such as if civil servants divorce, there is a transfer of the civil servant's salary to the wife as a living obligation after the divorce. And this transfer requires a long process (Azis et al., 2021).

Government Regulation Number 10 of 1983 Jo. Government Regulation Number 45 of 1990 explains several important points in matters of divorce and marriage for civil servants, as Article 2 it is explained:

- a. Civil Servants who enter into a first marriage are obliged to notify the Official in writing through the hierarchical channel 1 (one) year after the marriage.
- b. The provisions referred to in paragraph (1) also apply to Civil Servants who have become

widowers/widows who remarry. For Civil Servants, Women are not permitted to become second, third, or fourth wives of Civil Servants; this is as explained in Article 4 paragraph (2) PP No. 10 of 1983, then reaffirmed in paragraph (3), which states that female Civil Servants who will become the second, third or fourth wife of non-Civil Servants must first obtain permission from the authorized Official.

The procedure is explained in Article 3 of Government Regulation Number 10 of 1983 Jo. Government Regulation Number 45 of 1990, namely:

- a. Civil Servants who are going to carry out a divorce must first obtain permission or a statement from the Official
- b. For Civil Servants who are domiciled as Plaintiffs or for Civil Servants who are domiciled as Defendants to obtain permits or certificates as referred to in paragraph (1), must submit a written request
- c. In a letter requesting permission or notification of a divorce lawsuit to obtain a statement, the complete reasons behind it must be stated.
- d. And regarding the consequences of divorce for Civil Servants listed in Article 8, namely:
- e. If the divorce occurs at the will of a male Civil Servant, he must give up part of his salary to support his ex-wife and children.
- f. The salary distribution, as referred to in paragraph (1), is one-third for the male Civil Servant concerned, one-third for

his ex-wife, and one-third for his children or children.

- g. If there are no children from the marriage, the salary that the male Civil Servant must hand over to his ex-wife is half of his salary.
- h. Salary distribution to the ex-wife is not given if the reason for the divorce is because the wife committed adultery. The wife committed cruelty or severe physical and mental abuse against the husband. The wife became a drunkard, contortionist, and gambler, which is difficult to cure, and/or the wife has left her husband for two consecutive years without the husband's permission and valid reasons or for other reasons beyond his control.
- i. If the divorce is based on the wife's will, then the wife will not get a share of the income from her husband.

The provisions referred to in paragraph (5) do not apply if the Wife asks for a divorce because she is in honey, and/or the husband commits adultery, and/or the husband commits cruelty or severe abuse both physically and mentally towards the Wife, and/or the husband becomes a drunkard, a connoisseur, and a hard gambler. Healed, or the husband, has left his Wife for two consecutive years without the Wife's permission, without a valid reason, or for other reasons beyond his control. If the ex-wife of the Civil Servant concerned remarries, her right to a share of the salary of her ex-husband will be null and void as of the day she remarries.

The law also regulates the distribution of civil servant salaries after a divorce, namely in Article 8 paragraph (1) of Government Regulation Number 10 of 1983 as amended by Government Regulation Number 45 of 1990, which states that: "If a divorce occurs at the will of a male Civil Servant then he is obliged to give up part of his salary for the livelihood of his ex-wife and children." And based on these regulations, it is concluded that if the divorce is the husband's will, the husband is obliged to give part of his salary to his Wife. And conversely, if the divorce originates from the Wife's will, then the ex-wife is not entitled to a share of the income from her ex-husband.

Meanwhile, regarding the distribution of the ex-husband's salary, it can be seen in Article 8 of Government Regulation Number 10 of 1983 as amended by Government Regulation of the Republic of Indonesia Number 45 of 1990 concerning Amendments to Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants reads, as follows :

1. If the divorce occurs at the will of a male Civil Servant, he is obliged to give up part of his salary for the support of his ex-wife and children
2. The distribution of salary, as referred to in paragraph (1), is one-third for the male Civil Servant concerned, one-third for his ex-wife, and one-third for his children
3. If there are no children from the marriage, the portion of the salary that

the male Civil Servant must hand over to his ex-wife is half of his salary.

However, the distribution of salaries to ex-wives is not given if the divorce is caused by: The Wife committing adultery, and/or the Wife committing cruelty or severe abuse both physically and mentally against the husband, and/or the Wife becoming a drunkard, connoisseur, and gambler who is difficult to cure, and/or the Wife has to leave husband for 2 (two) consecutive years without husband's permission and a valid reason.

Male state civil servants are still obliged to hand over their wealth/salary to their ex-wife, even if the divorce comes or at the wife's request. This is carried out if the wife asks for a divorce because she is married, and/or the husband commits adultery, and/or the husband commits cruelty or severe abuse both physically and mentally towards the wife, and/or the husband becomes a drunkard, confounder, and gambler which is difficult to cure, and/or the husband has left his wife. For 2 (two) consecutive years without the wife's permission and a valid reason. The transfer of the Civil Servant's salary share to his ex-wife is carried out until the ex-wife of the Civil Servant concerned remarries.

As for what is meant by salary, according to the Circular of the Head of the State Personnel Administration Agency Number 08/SE/1983 number I number 4 letter g, it consists of Basic salary, Family allowance, Position allowance (if any), Income improvement

allowance, Other benefits entitled received based on the applicable laws and regulations, after deducting the obligatory contribution.

Article 16 and Article 17 of Government Regulation of the Republic of Indonesia Number 45 of 1990 state that Civil Servants who refuse to implement the salary distribution provisions mentioned above are subject to one of the severe disciplinary punishments based on Government Regulation of the Republic of Indonesia Number 30 of 1980 concerning Disciplinary Regulations for Civil Servants. The sanctions are contained in Article 6 paragraph (4) of Republic of Indonesia Government Regulation Number 30 of 1980 concerning Disciplinary Regulations for Civil Servants, consisting of Demotion to a lower level for a maximum of 1 (one) year, Exemption from office, Termination Respectfully not at his request as a Civil Servant, Dismissal with respect as a Civil Servant.

Based on some of the descriptions above, it can be seen that the salaries of state civil apparatus who have been divorced have been regulated in the laws and regulations along with their distribution.

Status of Joint Assets and Congenital Assets in Government Regulations

Joint assets are assets acquired as long as the marriage lasts from the time the marriage takes place until the marriage ends or the marriage is broken due to divorce, death, or a court decision. And the

definition of intrinsic property, according to Article 36 paragraph (2) of Law Number 1 of 1974, is a property controlled by each owner, namely husband or wife. Each wife has the full right to take legal action regarding his property. In the case of a civil servant divorce, he must go through the permission of his superiors as stipulated in Government Regulation Number 10 of 1983 Article 3. And if the divorce occurs, the civil servant must surrender part of his salary as a living right to his wife if the husband suing for divorce is a civil servant.

Of course, the provisions of joint and inherited assets are also regulated by law, in this case, contained in Law Number 1 of 1974 and the Compilation of Islamic Law. Based on Article 35 of Law Number 1 of 1974, paragraph (2) states regarding the right to control over inherited property: "The inherited property of each husband and wife and the assets obtained by each as a gift or Inheritance is under the control of each recipient of the parties does not specify otherwise. And according to Article 87 of the Compilation of Islamic Law, it is said that:

- a. Inheritance of each husband and wife and assets obtained by each as a gift or Inheritance is under the control of each, as long as the parties do not specify otherwise in the marriage agreement.
- b. Husband and wife have the full right to carry out legal actions on their respective assets through grants, gifts, sadaqah, or others.

And then, if there is a dispute between husband and wife, the settlement of joint

property disputes refers to Article 37 and Article 49 of Law Number 1 of 1974; Article 37 says, "If the marriage is broken up due to divorce, the joint assets are regulated according to their respective laws (which what is meant by "law" respectively is religious law, customary law, and other laws). And based on Article 49, paragraph (1), "The Religious Courts have the duty and authority to examine, decide, and resolve cases at the first level between Muslim people in the field of... settlement of joint assets".

According to the Compilation of Islamic Law regarding the responsibilities of husband and wife for joint property and inherited property, namely according to article 36, it is stated that: (1) Regarding joint property, husband and wife can act with the agreement of both parties; (2) About each other's assets, husband and wife have the full right to carry out legal actions regarding their assets.

Article 89 of the Compilation of Islamic Law states, "The husband is responsible for guarding the joint property, the wife's property, and his property." And Article 90 also says, "The wife is also responsible for guarding the joint assets, as well as the husband's assets that are in her possession." Furthermore, article 92 "Husband or wife without the consent of the other party is not allowed to sell or transfer joint property." Regarding the various forms of joint property, it is also regulated in the Compilation of Islamic Law Article 91:

1. Joint assets, as referred to in Article 85 above, can be in the form of tangible or intangible objects
2. Tangible shared assets may include immovable objects, movable objects, and securities.
3. Intangible joint assets can be in the form of rights or obligations
4. Joint assets can be used as collateral by one of the parties with the other party's approval.

Other matters, such as the request for collateral confiscation of joint assets without any lawsuit for divorce, are also regulated in Article 95 paragraphs (1) and (2) of the Compilation of Islamic Law, namely as follows:

- a. Without prejudice to the provisions of Article 24 paragraph (2) letter c of Government Regulation No. 9 of 1975 and in Article 136 paragraph (2), a husband or wife can ask the Religious Court to place collateral for joint assets without any application for divorce, if one of them commits an act that is detrimental and endangers shared assets such as gambling, drunkenness, wasteful, etc
- b. During the confiscation period, the sale of joint assets for the benefit of the family can be carried out with the permission of the Religious Court.

Based on the provisions in the KHI above, it is said that with the permission of the Religious Court, joint assets can be confiscated without any application for divorce. As for the principles of how to divide joint assets in the event of a divorce,

they are regulated in the Compilation of Islamic Law Article 96, namely:

1. In the event of a divorce and death, half of the joint property belongs to the spouse who has lived longer
2. The distribution of joint assets to a husband or wife whose wife or husband is missing must be suspended until there is a certainty of real death or legal death based on a decision of the Religious Court.

Article 97 states, "The divorced widow or widower each has the right to half of the joint property as long as it is not specified in the marriage agreement."

Based on the rules previously described, it can be concluded that the provisions for assets are as follows:

1. According to Article 1 letter (f) of the Compilation of Islamic Law and Article 35 of Law Number 1 of 1974, inherited assets are assets acquired before the marriage contract, after the marriage contract, then become joint property without questioning whose name the property is in, as for the assets used for a house renovation, then the house is shared property. The renovation value can be counted as an inheritance because it is taken from an inheritance.
2. According to Article 35 paragraph (2) of Law Number 1 of 1974, "Money resulting from an inheritance is an inherited property, then it is used to renovate a house, so the house is a joint property. The renovation value can be counted as an inheritance because it is taken from an inheritance. If the

husband and wife have used their respective assets to renovate the house, in this case, "peace" can be made because they both contributed to the house's renovation.

3. Home installment payments are borne on behalf of the debtor; if on behalf of the husband, then the husband is responsible for paying until it is paid off, while what is counted as joint property is the monthly installment value of the house until the date of divorce by the Religious Court, as for installments after the occurrence of divorce based on the decision of the Religious Court becomes the property of whoever (both husband or wife) pays it off until it is paid off.

Some of the important points above summarize the status of shared assets and assets of civil servants, which are the same as those of shared assets with spouses in general, divided based on existing legal provisions, both Islamic law and customary law.

Status of Joint Assets and Congenital Assets in the Compilation of Islamic Law

Joint property in a marriage is a term for assets that appear between a man and a woman. With marriage, there will automatically be joint assets that are obtained due to the efforts of the husband or husband and wife together.

And in the Compilation of Islamic Law, Article 97 states, "Widows or widowers who are divorced, then each is entitled to half of the joint property as long as it is not specified otherwise in the

marriage agreement." Concerning these provisions, textually, each is entitled to half of the joint property.

Maqashid Syariah is a representation of Maslahat and legal justice, which is the main goal in every court decision; of course, to get legal justice, reasoning (*ratio decidendi*) must be built based on the five elements which are the main standard, namely maintaining religion, soul, mind, heredity, and treasure. A priority scale must also accompany the adoption of law (Steinbach) based on these five elements by taking into account *dharuriyat* (primary), *hajiyat* (secondary), and *tahini* at (tertiary) factors.

Scholars' studies on shared assets (*gono-gini*) have given rise to the opinion that shared assets can be considered *syirkah*. KH. Ma'ruf Amin said that treasure joint could be equated and classified into *syirkah* assets as assets accumulated during the marriage and must be divided proportionally in the event of a divorce. In this analogy, it can be understood that the wife can also be considered as a working partner or partner, even though she does not work in the real sense, such as taking care of the household, cooking, washing clothes, raising children, cleaning the household, and other domestic work that is considered as an activity. Work whose role cannot be underestimated.

Talking about Islamic law, especially regarding joint property, legally and formally, it cannot be separated from the Compilation of Islamic Law, which is the result of *ijtihad* following the conditions of

the needs and legal awareness of Muslims in Indonesia. The compilation of Islamic law is not a new school of Islamic *fiqh* but rather a manifestation of the implementation of various existing schools of *fiqh*. It is complemented by other institutions such as the fatwa of the clergy as a response to problems that arise, court decisions through trials by judges, and laws made by legal bodies. Legislative.

Based on the Compilation of Islamic Law, marital assets are regulated in articles 85 to 97 in Book I (one). The formulation of articles 85 to 97 of the Compilation of Islamic Law has been approved by Islamic jurists in Indonesia to make *syirkah abdan* the basis for formulating the rules of joint property.

The drafters of the Compilation of Islamic Law took an approach from the *syirkah abdan* path to customary law. This approach does not conflict with the permissibility of making '*urf* (*adat/tradition*) a source of law and is in line with the rule that says "*al-adah muhakkamah*." 19 Some Islamic jurists believe this is Islamic law's will and aspiration. According to them, *gono-gini* is a consequence of a marriage relationship between a man and a woman, which generates wealth from the efforts both of them made during the marriage bond. They base it on God's word in Surah An-Nisa: 21, which mentions marriage as a sacred, strong, and firm agreement (*mistaken ghlmizhan*). That is, a marriage carried out through consent-*qabul* and has fulfilled the conditions and pillars is a *syirkah* between

husband and wife. Therefore, the legal consequences that arise later, including property (gono-gini) become joint property

CONCLUSION

Article 3 of the Government Regulation of the Republic of Indonesia, Number 45 of 1990 says that an state civil apparatus who is divorced must go through the permission of his superiors. This is not meant to make it difficult so that justice is not upheld and revoke the rights of an state civil apparatus, but this is done because, in the process, an state civil apparatus has to go through many procedures if they want a divorce. And the result of the divorce is the distribution of the state civil apparatus salary to his wife and children, which of course, has to go through a process that takes a lot of time. And there are also several reasons why an state civil apparatus wife does not receive a salary from her ex-husband, namely if the wife is an adulteress and leaves her husband within two years. And regarding shared assets, an state civil apparatus refers to the regulations of the Compilation of Islamic Law and Marriage Law, where joint assets are divided based on existing legal provisions.

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