



APPLICATION OF THE PRINCIPLE OF VOLUNTARINESS IN MARITAL PROPERTY DECISIONS

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ABSTRACT

Marital Property Assests or what is usually called '*gono-gini; harta bersama*' is property acquired or obtained by a husband and wife together while they are in a marriage bond. The concept of shared prices or what is usually called gono-gini property comes from customs that continue to develop and are supported by positive law or Islamic law in Indonesia. Mediation is a peace institution in the Court which brings benefits to the Judges and the parties, there is good faith of the principals (husband and wife) in the process of resolving divorce cases, it is not uncommon for ego attitudes to be more dominantly put forward by each party. Mediation has a voluntary principle, each conflicting party comes to mediation of their own free will and willingness and there is no coercion or pressure from other parties or outside parties. This principle of voluntarism is built on the basis that people will be willing to work together to find a way out of their disputes, if they come to the negotiation place of their own choice.

Keywords: Marital Property; Divorce; Mediation.

I. INTRODUCTION

Marriage is a physical and spiritual bond between a man and a woman which begins with a consent agreement carried out by the woman's parents or can be represented by a guardian who is attended by witnesses and is valid in the eyes of law and religion, apart from marriage, it is a bond of birth and the interior of marriage must also be based on love because one of the conditions of marriage is the consent of both parties. Marriage in Islam is one of them from the *sunnah* of the prophet and to continue the descendants.¹ In Islam, it is not determined how old the prospective husband and wife are to get married, but it is based on the consideration that a person can get married when they reach puberty.²

In a household between husband and wife, this often happens an argument that results in one of the parties filing a divorce lawsuit at the Religious Court, where in the end the divorce lawsuit will go through the process and be decided by a court judge. Every married couple definitely dreams of creating a household that is *sakinah, mawadah, warahmah*, but because of several aspects such as infidelity, Domestic Violence (namely *KDRT: Kekerasan dalam Rumah Tangga*), attitudes that do not want to give in to one another, this results in divorce. The decided marriage or normal called with Divorce is the termination of a marriage relationship between husband and wife with a judge's decision on the

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¹ Ani Yumarni and Endeh Suhartini, Yumarni, Ani. "Perkawinan Bawah Umur dan Potensi Perceraian (Studi Kewenangan KUA Wilayah Kota Bogor)." *Jurnal Hukum Ius Quia Iustum* 26.1 (2019)., <https://doi.org/10.20885/iustum.vol26.iss1.art10>. p. 195.

² Suhartini, endeh. "Analisis Kesadaran Hukum Masyarakat Terhadap Berlakunya Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dhubungkan Dengan Pernikahan dan Perceraian di Wilayah Kabupaten Bogor". *Jurnal Sosial Humaniora*, 2, no. 1, 2011

demands of one of the parties based on law. There are several rights that will be contested when a marriage occurs, including child custody and the division of joint assets or commonly known as mutual assets.

According to Soepomo treasure default no including into the treasure together in their research explained that in all jurisdictions in Indonesia, assets obtained by husband and wife in a family can be divided into four types, namely;

1. Assets acquired which is an inheritance or gift from relatives.
2. The wealth that is obtained from business husband or wife acquired before or during the marriage;
3. Assets obtained from gifts at the time of marriage;
4. Assets as a joint venture between husband and wife.³

Joint assets or what is usually called *gono-gini* assets are property acquired or obtained by a husband and wife together while they are married. The concept of shared prices or what is usually called *gono-gini* property comes from customs that continue to develop and are supported by positive law or Islamic law in Indonesia.

Gono-gini on Indonesian Dictionary has means the assets that have been accumulated during marriage so that they become the rights of both husband and wife. Legally, this means that assets that have been accumulated during marriage become the rights of both husband and wife.

According to Abdul Kadir, the concept of marital property which is wealth can be viewed from an economic and legal perspective, although these two aspects of review are different, they are related to one another.⁴

The types of assets that can be inferred from the Laws and the Compilation of Islamic Law are:

- a. Acquired assets; husband called treasure Inheritance is property that the husband has brought with him since before the marriage
- b. Acquired assets; wife called treasure Inheritance is property that has been carried since before the marriage
- c. Acquired assets-together by husband and wife namely property acquired during marriage which becomes marital property of husband and wife
- d. Assets resulting from gifts, grants, inheritance and shadaqah of the husband, namely assets obtained as a gift or inheritance

Sayuti Talib explained that joint assets are assets object acquired during marriage outside of gifts or inheritance. What this means is assets obtained through their efforts or individually during the period of the marriage bond.⁵ Sayuti Talib, believes that joint assets are divided into 3 (three) groups as follows:⁶

- a) Firstly, looking from the terminology of origin of husband and wife's assets, they can be classified into 3 types as following:
 1. respective assets – each obtained before marriage called as inherited assets or can be owned individually;
 2. The assets obtained during the marriage, but not from their efforts but rather from gifts, wills or inheritances, are their respective assets;

³ Amelia Rahmaniah, Marital property in Marriage in Indonesia According to Islamic Law perspective, *Sharia: Journal of Law and Thought* Vol 15, p.72

⁴ Abdul Kadir, *Hukum Harta Kekayaan*, Bandung, PT. Citra Aditya Bakti, 1994., p. 9

⁵ Sayuti Talib, *Hukum Keluarga di Indonesia*, Jakarta, UI. Press. Cet. V, 1986, p. 89

⁶ Sugiswati, Besse, 2014, *Konsepsi Harta Bersama dari Perseptif Hukum Islam Kitab Undang-Undang Hukum Perdata dan Hukum Adat, PERSPEKTIF*, Vol. 19 No. 3, 2014.

3. Assets acquired during marriage, whether by husband or wife's own business or jointly, are search assets or joint assets.
- b) Secondly, if looking from user's point of view, then assets are used to:
 1. Cost House stairs, necessity school child as well as family needs;
 2. Other assets.
- c) Thirdly, if looking from in terms of property relations with individuals in society, the property will be in the form of:
 1. Marital property;
 2. Property belonging to a person but tied to the family;
 3. Property belongs to a person and is firmly owned by the person concerned.

The concept of marital property according to the Civil Code which originates from Western Law is the unification of assets which are absolutely acquired or brought by husband and wife before and during marriage, this occurs if it is not otherwise stipulated in the marriage agreement which is the only proof of the existence of marital assets whose management is carried out by the husband. This is because the husband has the marital right to manage and maintain all assets in the marriage which will last until the dissolution of the marriage unless otherwise stipulated in the marriage agreement ⁷.

On Islamic Jurisprudence (*Fiqih*) marital property assets are categorized as *syirkah* between husband and wife.⁸ *Syirkah* is a contract made by two or more parties for a particular business where each party contributes in the form of funds or a business. Joint assets are different from inherited assets, inherited assets are assets acquired or acquired by the husband or wife before the marriage, whether assets in the form of assets from one's own hard work, gifts, gifts or inheritance from parents.

Lack of public awareness regarding understanding of procedures in division of joint assets once resulting in a dispute between a couple husband and wife regarding the division of marital property, this is one of the legal issues that must be resolved through a judicial process, which is where religious court for those who are Muslim and in the District Court for someone who is a non - Muslim, it doesn't stop there, the legal consequences for assets in marriage are also a problem considering that before the marriage takes place the parties bring their own assets and then after the marriage takes place The parties also obtain marital property in marriage which is cultivated jointly or individually, which is likely to result in prolonged disputes if a dispute occurs.

In dividing the assets of husband and wife something This marriage requires consideration the panel of Judges in determining the share of rights between husband and wife, from the assets of husband and wife for which a marriage agreement has been made is in accordance with statutory regulations.

The legal consequences of divorce in the division of assets according to Law Number. 1 of 1974 in article 37 states that "If a marriage is broken up due to divorce, property is regulated according to respective laws, namely religious law, customary law or other applicable law, in the Marriage Law it is not clearly stipulated how many parts each from husband and wife regarding joint assets .

The Bogor Religious Court is one of the courts that resolves cases regarding the division of marital property in the Bogor City area. The definition of a religious court is an institution or body tasked with receiving, examining, adjudicating and resolving every case submitted to it.⁹ Settlement of disputes regarding marital property submitted to the Religious Court according to Law no. 7 of 1989 which has now been replaced by Law no. 50 of 2009 concerning Religious Courts only applies to

⁷ Ni Komang Theda Febrina Subagia, "Pengaruh Kepailitan terhadap Harta Bersama Suami Istri di Tinjauan dari Prespektif Hukum Kepailitan", *Jurnal Hukum Kepailitan*, p. 3.

⁸ Ahmad Rofiq, *Hukum Perdata Islam di Indonesia*, Rajawali Press, Depok, 2019, p. 161

⁹ Nur Moh. Kasim, *Hukum Islam Kontemporer*. Yogyakarta, 2012, p. 67

Muslim husbands and wives, while for non-Muslims, settlements regarding marital property must be submitted to the District Court (*Peradilan Negeri*).

When the parties have registered a case regarding the division of joint assets, the parties will go through a mediation process which will be guided by a mediator appointed by the Chairman of the Panel. Mediation is a process of resolving disputes through discussion or consensus between the parties assisted by a mediator who does not have the authority to impose a resolution. Mediation according to Takdir Rahmadi namely a process of resolving disputes between two parties or parties through negotiation or consensus with the help of a neutral party who does not have the authority to decide. The neutral party is called a mediator with the task of providing procedural and substantial assistance. Furthermore, Takdir Rahmadi stated several essential elements in mediation, namely:¹⁰

- 1) Mediation is one method in resolving disputes through negotiations based on a consensus approach between the parties;
- 2) The parties require assistance from another party who is impartial is called a mediator;
- 3) The mediator does not have the authority to decide, but only assists the disputing parties in finding a resolution that is acceptable to the parties.

Mediation in Supreme Court Regulation Number 1 of 2016 in article 1 number 1 mediation is a method of resolving disputes through a negotiation process to obtain agreement between the Parties with the assistance of a Mediator. Mediation is an institution of peace within the Court which brings benefits to the Judges and the parties, the good faith of the parties. party husband and wife in the process of resolving a divorce case, it is not uncommon the emergence of ego attitudes which is more dominant put forward by each party.¹¹ Mediation has a voluntary principle where *each* conflicting party comes to the room mediation based on their own wishes and wishes voluntarily and without coercion or pressure from other parties or outside parties. This principle of voluntarism is built on the basis that people will be willing to work together to find a way out of their disputes, if they come to the negotiation place of their own choice.¹² According to Tony Whatling, it is Voluntary participation, participation in mediation must always be voluntary. The Parties included in the mediation must be free from their wishes and after doing so, the parties including the mediator are free to withdraw from the mediation process.¹³

Court Having a peace institution is one of the institutions that to date in court practice has brought many benefits to both judges and the litigants. The advantage for the judge is that peace means that the parties to the dispute have contributed to the implementation of the principles of fast, simple and low-cost justice. The advantage for the disputing parties is that a settlement means saving litigation costs, speeding up settlement, and avoiding conflicting decisions.¹⁴ The parties to a dispute because they prioritize each other's egos so that it rarely ends in peace even though mediation has been carried out but there are still those that fail, especially regarding marital property issues, we as Muslims should understand that in Islam we only recognize inherited property, not marital property and The Compilation of Islamic Law has regulated how to distribute it, which is submitted to the Religious Courts. Therefore, the Religious Courts provide mediators to help the litigants in a way that does not

¹⁰ Ani Yumarni and Endeh Suhartini, *Mediasi dalam Perkara Perceraian di Pengadilan Agama*. Rajagrafindo Persada, Depok, 2019., p. 28.

¹¹ Ani Yumarni, "Kesadaran Hukum Masyarakat terhadap Mediasi dalam Perkara Perceraian berdasarkan PERMA Nomor 1 Tahun 2008", *Jurnal Hukum Sosial Humaniora*, Vo. 5, p. 51.

¹² Rika Lestari, Perbandingan Hukum Penyelesaian Sengketa secara Mediasi di Pengadilan dan di Luar Pengadilan di Indonesia, *Jurnal Ilmu Hukum*, Vol 3, p. 227.

¹³ Raden Basse Kartoningrat and Isetyowati Andayani, "Mediasi sebagai Alternatif dalam pengurusan dan Pemberesan Harta Pailit Oleh Kurator Kepailitan", *Halu Oleo Law Review*, Vol 2, p. 297.

¹⁴ *Ibid*, p. 51.

take sides with anyone and adheres to the principles of confidentiality, voluntary principles, empowerment principles, neutral principles, and unique solution principles. Number Verdict Study. 417/Pdt.G/PA.Bgr, the mediator succeeded in making the parties reconcile by making an agreement on the division of marital proverty assets.

II. RESEARCH METHODS

This research uses a type of normative legal research. In this research, library materials are basic research data which is classified as secondary data.¹⁵ The normative juridical approach method is by using a literature study or a statutory approach. This research aims to determine the application of the principle of voluntarism applied by mediators at the Bogor City Religious Court class 1A in conceiving or carrying out peace efforts in a dispute or marital property lawsuit. This research is an analysis of the principles applied by mediators so that they succeed in making peace between the parties involved in the case. The analysis is carried out on decisions that already have permanent legal force. In its application, this research describes how mediators apply mediation principles, especially the principle of voluntarism in accordance with applicable laws and regulations, namely Supreme Court Regulation Number. 1 of 2016 concerning Mediation Procedures in Court.

The author uses a statutory approach, this approach is used to analyze mediation regulations in marriage, especially in the division of marital property, which is substantially related to the issue of applying the principle of voluntariness in the division of marital property.

III. DISCUSSION AND RESULTS

Application Principle Volunteer in Judge's Decision Number 417/ Pdt.G /2022/ PA.Bgr

Agreements are not only known in matters of buying and selling trade or in other business activities but are also known in marriages, which are called prenuptial *agreements*. In the Burgerlijk Weetboek (BW) and Law Number 1 of 1974 as well as in the Compilation of Islamic Law (KHI), the issue of marriage agreements has been regulated, but in practice in society agreements between husband and wife before marriage are still rarely found, especially in relation to promising each party's property.¹⁶

According to Sagidin, one of the judges at the Bogor City Religious Court, it is better to take a peaceful route to a dispute between marital property, an agreement between both parties to divide the property equally, here it is not just divided into ½, but the value and price must be taken into account so that it can be divided equally.¹⁷

Volunteer Principle: each person in a dispute comes to mediation of their own free will or will and there is no coercion or pressure from any party or outside party. This principle of voluntarism is built on the basis that people will want to work together to resolve or find a way out of disputes with the aim of getting the decision they want.

The application of voluntary principles in marital property cases is very important because mediation will be successful if the parties follow the principles in mediation, one of which is the *volunteer principle*, because parties must apply these principles so that mediation can run smoothly. Mediation is a good way of negotiating to resolve cases. By applying voluntary principles, the mediation process can run better and faster because with mediation and its principles, it will be easier for the

¹⁵ Martin Roestamy, Endeh Suhartini, and Ani Yumarni, *Metode Penelitian Laporan dan Penulisan Karya Ilmiah Hukum Pada Fakultas Hukum*, Bogor, 2020., p. 56.

¹⁶ Asrat Nita Wati, *Aspek Perjanjian dalam Perkawinan*, Vol. 9 no.1 March 2023, p. 19

¹⁷ An Interview result with Sangidin, as a judge of Religious Court of Bogor City, on May 30 2023

disputing parties to make decisions regarding the distribution of joint assets. Disputes over marital property are usually caused by the parties being selfish with the assets they obtained during the marriage, so with a mediator it will be easier for them because there is a party who helps resolve the case through discussion and negotiation without taking sides with either party.

The theory of peace according to Sayyid Quthb¹⁸ in the application of the principle of voluntarism in marital property decisions, study of decision number 417/Pdt.G/2022/PA. decided to negotiate without prioritizing their respective egos because they had made peace with themselves. Apart from individual peace, as for family peace, Quthb understands family as a sacred bond in which there are relationships of love, bonds of tenderness and affection, furthermore the family is a shelter in this world. Family life is the basis for harmonious interaction. In the family there are human relationships that are full of affection, respect for decisions. 417/Pdt.G/2022/Pa.Bgr refers to the theory of family peace, the parties must make peace in a family way, seeing that they will definitely make peace so that when conducting mediation it goes well and according to what they want, so they make a letter of agreement in which the parties sign in front of the mediator, the peace that occurs when resolving the case or mediation is certain because of the willingness of the parties to the lawsuit so that they reach a decision desired by the parties which is agreed voluntarily without coercion from any party. Peace complies Regulation Supreme Court of the Republic of Indonesia (PERMA) Number 1 of 2016 concerning Procedure Mediation in Court divided into two, namely:

Article 1 paragraph (8)

"Deal peace is agreement results mediation in form containing document_provision solution marked dispute_handled by the parties and the mediator"

Article 1 paragraph (9)

"Deal peace in part is agreement between party Plaintiff with as or all over party Defendant and agreement of the Parties to as from all over object case and/or problem disputed law_in the mediation process"

The agreement letter made by the parties witnessed by the mediator has reached an agreement made by the Plaintiff and Defendant and the panel has read it and decided on case number. 417/Pdt.G/2022/Pa.Bgr:

The legal considerations that with agreement agreements and agreements entered into by the Plaintiff and Defendant so for both of them applies as law for Plaintiff and Defendant and second party must submit and obey for operate agreement the agreement and not can withdrawn return besides with agreement second split party or Because reason Law stated Enough. This is appropriate with rule Article 1338 of the Civil Code.

The legal considerations that based on these considerations then Court state agreement agreement is legitimate as punish and punish Plaintiff and Defendant For submit and obey fill peace or agreement the agreement mentioned above.

The legal considerations that because cost case is not included on agreement so according to opinion Panel of Judges costs case charged to Plaintiff based on article 89 paragraph (1) of the Law Number 7 of 1989 and as stated previously changed with Law Number 3 of 2006 and amendments second Law Number 50 of 2009 concerning Religious Court then cost case charged to plaintiff.

Indonesia is a rule of law country d nature something draft country The law has recognition as well protection of human rights man for every individual, including the rights and providers of legal aid for society in order to fulfill it as well as implement a legal state that protects, recognizes and guarantees

¹⁸ Sayyid Quthb, *Keadilan dalam Islam*, Pustaka Firdaus, Bandung, 1987., p. 27

the human rights of citizens country will something need access to justice as well equality before the law.¹⁹ Human rights are defined as basic rights inherent in humans which are natural rights, which are determined by law makers in positive law and some of which grow in society. These human rights are usually regulated in the Constitution or the 1945 Constitution. Human rights in the distribution of marital assets should ideally be distributed in accordance with the rights of the marital partner. The division of marital assets is divided fairly and proportionally.

Justice according to John Rawls,²⁰ position each individual there is no difference from facet whatever which relies on the understanding of *reflective equilibrium* based on the characteristics of rationality, freedom and equality in order to regulate the basic structure of society. Plaintiff and Defendant own equal rights and opportunities in the eyes law for defend their rights have with *equality before the law*.

Contents of the agreement made moment mediation with volunteer Already fair and agreed upon by the parties, there are two things justice conceptualized by Hans Kelsen, firstly about justice and peace, justice that originates from irrational ideals, secondly the concept of justice and legality to uphold on a solid foundation of a certain social order, from the theory outlined by Hans Kelsen²¹ so application as well as distribution from treasure together must fair and shared in a way peace Because from peace so appearance comfort. A just peace that is implemented voluntarily of course distribution treasure no equally because. There is treasure default Where is the defendant? Already owned from before Marry eat the parties agreed For share treasure together plot land with an area of 88 M2 above building permanent located in Semplak Village Rt.004 Rw . 03 Subdistrict Bubulak West Bogor District, Bogor City, which was agreed will for sale together Plaintiff and Defendant Then will shared results seller to 1/3 for Plaintiff and 1/3 for Defendant and another 1/3 becomes owned by from Defendant Because treasure default before married.

Legal Certainty cannot be separated from positif law. The law without the value of certainty will lose the meaning of the law itself. Certainty itself is one of the meanings of law. Legal certainty is the implementation of the law itself according to its sound so that the parties or society can ensure that the law is implemented. Law according to Gustav Radbruch has three aspects as follows:

- a. The law provides benefits;
- b. The law provides justice;
- c. Advancing legal certainty.

Furthermore, legal certainty as stated by Gustav Radbruch,²² legal certainty provided by positive law can justify laws that are unfair or useless, but the debate over demands for legal certainty does not have absolute priority over demands for justice and expediency. From certainty theory law this is implementation principle volunteerism Already implemented by the mediator so stated in existing agreement made by the parties who have read by the Panel of Judges until the judge decides that agreement or agreement between the Plaintiff and the Defendant for Already in accordance with Applicable laws and parties make on base agreed from those who make the pledge himself.

Application principle volunteer in decision Number 417/Pdt.G /2022/ Pa.Bgr implemented by the mediator was successful so that make Plaintiff and Defendant Finally choose For reconcile and share

¹⁹Dadang Suprijatna, *Human Rights in the Perspective of Law Number 16 of 2011 concerning Legal Aid*, De'rechtsstaat Law Journal, Vol 2 No. 1, March 2016, P. 45

²⁰Marwan Effendy, *Legal Theories of Perspective Policy, Comparison and Harmonization of Criminal Law*, Echo Persada Pres Group, Ciputat, 2014, p. 35

²¹*Ibid.*

²²A'an Efendi and Dyah Octorina Susanti, *Ilmu Hukum*, Kencana, Jakarta, 2021, p. 68

treasure together in accordance with agreement without one coercion from party third or party outside. Principle volunteerism stated in existing agreements and agreements legitimate in a way legal and can not withdrawn return except law. So that make party Plaintiff and Defendant bound in a way law and must subject to applicable law, with exists statements and decisions from Court so this agreement if violated by one litigants so the injured party can demand return so from That party Plaintiff or Defendant must obey everything that has been agreed and done in a way volunteer. After the mediation process is successful then there is later peace agreement will be signed by both parties and a peace deed can be requested from the judge based on the wishes of the disputing parties, which means that not every dispute through mediation has a peace deed depending on the wishes of the disputing parties.

There are fundamental differences from HIR (Herzien Inlandsch Reglement) with Regulations of The Supreme Court where a deed of peace is made when an agreement has been reached between the two parties to the dispute whereas in the Regulations the Supreme Court can request a deed of peace from the Court if there is a desire from both parties to the dispute. If we look at its legal force. The peace agreement does not have executorial force, which is usually called *a acta van dading deed of compromise* which is nothing more than an ordinary agreement²³.

Certainty law form decisions and letters agreement peace that has been made powerful law still must carried out, inside letter agreement there is a time period for the running process sale home no later than May 31 of 2022, no later than five months forward namely on October 31 of 2022. After made agreement in front of a signed mediator handled by the mediator and the parties so when decision read by the Chairman Assembly so will exists deed peace. Litigating parties with mandatory mediator assistance formulate agreement in a way written in the agreement peace marked handled by the parties and the mediator, the mediator is mandatory ensure agreement peace No load provision as following:

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- 1) Contrary with applicable law, order _ general and/or decency;
- 2) Can be detrimental party third or;
- 3) Can't implemented an it agreement.

In accordance with article 1858 paragraphs (1) and (2) of the Civil Code and article 130 HIR (*Herzien Inlandsch Reglement*) 154 Rbg (*Rechtreglement voor de Buitengewesten*) paragraphs (2) and (3) are governing about peace and agreement peace, strength deed peace as following:²⁵

- (1) Decision peace have the same strength with judge's decision in level end;
- (2) The Deed Peace own strength proof perfect It means if deed peace was made tool proof, then no need tool other evidence as supporter for prove has happen incident and legal relations others who have give rise to rights and obligations.
- (3) Deed peace (*Acta Van Dading*) results mediation own strength executorial. Because in decision peace is chief decision "For the sake of justice Based on Almighty Godhead", so every deed or deep verdict _ head the verdict load '*Irah-Irah*' that including in deed authentic who has strength executorial.

Mediation always applies principles like principle *confidentiality* (confidentiality), principle *volunteer* (voluntary), principle *empowerment*, principles *neutrality*, principle *a unique solution*, with operate principles _mediation on so produce solution dispute with fast and balanced for the parties so that no one feels disadvantaged.

²³ Ni Komang Wijiatmawati and Ayu Putu Laksmi Danyathi, *Legal Strength of Mediation Results in Court*, p. 4.

²⁴ How Actually Legal Strength of Mediation Results? - Class Certification Profession | ICJR Learning Hub (pkpajakarta.com), accessible 30 April 2023, at 13.00 WIB.

²⁵ *Ibid.*

Application principle volunteerism in decision number. 417/ Pdt.G /2022/ Pa.Bgr according to Sagidin in This verdict is over walk with Good because one factor main that party Plaintiff and Defendant Already agreed distribution treasure together or acquired assets during marriage shared in accordance agreement made in a way volunteer when mediation, this is supported Because since decision or agreement peace made No litigants submit execution to Court.²⁶

Implementation Decision Joint Assets Number 417/ Pdt.G /2022/ PA.Bgr

The division of marital property is a problem between individuals and individuals or can be called a civil domain, where this problem will arise during a divorce or after a divorce, which makes the problem or case of marital property more complicated and convoluted by the emotions and selfishness of the Plaintiff and Defendant. In fact, marital property matters can be discussed or communicated well without having to go to court. The recovery of joint assets in a divorce case is divided into two factors, namely:²⁷

- a. Subjective factors is something feeling or atmosphere the soul of a moderate person the litigant.
- b. Objective factors are the condition or fact that joint assets obtained come from joint contributions or due to the contribution of only one party. However, the legal provisions do not make the contribution the source of assets, because the law only recognizes joint assets acquired during the marriage, not who contributes.

Implementation distribution treasure together refers with justice theory according to John Rawls emphasized his view of justice that a justice enforcement program with a popular dimension must pay attention to two principles of justice, namely:²⁸

1. Justice that provides equal rights and opportunities for the broadest basic freedoms as broad as equal freedoms for everyone.
2. Justice that is able to regulate the socio-economic disparities that occur so that it can provide reciprocal benefits.

From the theory above implementation distribution treasure must finished with the same rights and agreements so should distribution treasure together completed mediation. However sometimes There is just parties who do not Can accept mediation with kind and airy. So there is that process must done with distribution treasure together after divorce as following:²⁹

- a. The disputing parties wish to share marital property assets with exists desire or initiative.
- b. Own plan for share marital property assets, the plan in question is desire For share treasure together with method litigation, place, time, amount distribution between second split party.
- c. Implementation distribution marital property assets, activities share treasure there That become respective parts, inside Islam confirmed that distribution treasure together must fair, fair in share treasure together between husband and wife balanced based on contribution of each party during marriage.

The judge's decision regarding treasure together number 417/Pdt.G/2022/Pa.Bgr so can stated Already fair because distribution done with voluntary and reinforced returned by agreement peace as well as the judge's decision reads as following :

Judge or grant decision from the parties who wish for reconcile in a way volunteer and stated into the decision namely:

²⁶ Interview with Sangidin, judge at the Bogor City Religious Court on May 30 2023.

²⁷ Layyin Mahfiana, *Penyelesaian Harta Bersama dalam Perspektif Keadilan bagi Perempuan*, p. 45-46.

²⁸ A'an Efendi and Dyah Octorina Susanti, *Loc.Cit*, p. 18.

²⁹ *Ibid*, p. 46.

- (1) State that fill from letter agreements and agreements made on April 14 2022 made by the Plaintiff and Defendant in the case number 417/Pdt.G/2022/Pa.Bgr, marked handled by the Plaintiff and Defendant in a way aware without coercion from party anywhere dated April 14 of 2022 in the presence of an authorized mediator as law and have strength law still the current carried out by the Plaintiff and Defendant as well as own One unity with decision and/ or deed agreement this deal.
- (2) Punish to second split party that is The Plaintiff and Defendant are for obey fill deed agreements and agreements that have been made made in form letter agreements and agreements by both split the parties mentioned above, there are other points that must be obeyed or carried out by the Plaintiff and the Defendant as following:

Plaintiff and Defendant agreed for treasure together plot land area of 88 m² above building permanent located in Kampung Semplak Subdistrict Bubulak West Bogor District, Bogor City, agreed for sale together Plaintiff and Defendant with distribution results seller the plaintiff 's assets get 1/3, Defendant get 1/3 and another 1/3 becomes right Defendant as treasure default before married.

Plaintiff and Defendant agreed treasure together for sold and the sales process will be no later than May 31 of 2022, no later than five months forward namely on October 31 of 2022.

Party Plaintiff obtain *sofa chair* type 211 colors black, meanwhile party Defendant obtain refrigerator Aqua brand and wardrobe brand *Olymplast* whereas '*barang hantaran*' when wedding become owned by Plaintiff.

Plaintiff and Defendant agreed if No Can resolved with Good so will submitted to Bogor Religious Court for do execution on this agreement.

- (3) Then Chairman Assembly decide Plaintiff For pay case amounting to Rp. 820,000 (eight hundred and twenty thousand rupiah).

Distribution marital property assest can done with various type method including Islamic Law and Customary law as well as mediation or kinship. When it breaks something marriage because divorce Eat treasure together arranged according to respective laws, in question with respective laws, namely law custom law Islam or law positive in the District Court for religious non-Muslim.

In implementation distribution marital property assets mediation is urgently needed or very important in order to make things faster finished and light costs. Besides mediation is also very important in order to get it agreement second split party with wise and fair without feeling disadvantaged. If the mediation is successful and achieved peace so will made deed strong peace the law The same with the breakup that has been own strength law still so that If there is one party default so Can done effort execution by the Court. Mediation succeed then the mediator will state in a way written that mediation successful in part will stated in news the event and if mediation fail then the mediator will deaf in news the event that mediation failed and will deliver return case to the judge.

Judge's decision number 417/Pdt.G/2022/Pa.Bgr implementation distribution treasure together through mediation succeed so that reach the agreement that both of them wanted split parties and parties in formulate the agreement in a way volunteer. Where already stated in the valid agreements and decisions has a legal force (*berkekuatan hukum tetap*).

Mediation is one method solution dispute Where assisted by parties the usual third called as an acting mediator neutral no take sides whoever, on duty helpless parties to the dispute for obtain solution in a way peace.³⁰ Application principle volunteerism and peace very related strong with mediation,

³⁰ *Ibid*, p. 69.

mediation own objective peace so from That peace and mediation will succeed If from second split party you 're welcome want to cooperate For finish this dispute with voluntary and emotionless accept all type input as well as suggestions when mediation taking place. In practice in the Religious Courts there are disputes treasure together submitted in front of the judge then that's what the judge will do treasure their wealth get during wedding divided by two. The judge's considerations in set decision distribution treasure together as following:³¹

1. Referred considerations to tool evidence. Plaintiff submit tool written proof so daoat give information and beliefs for the judge to drop decision in his favour. Whereas Defendant no can denied it.
2. Referred considerations to article 35 paragraph (1) of the Law Marriage Number 1 of 1974 which reads "*Property acquired during marriage becomes marital property*". So that when a divorce occurs, the joint assets are divided equally between husband and wife.
3. The judge's consideration refers to article 88 of the Compilation of Islamic Law which reads "*If there is a dispute between husband and wife regarding marital property, then the resolution of the dispute is submitted to the Religious Court.*" From this article, if there is a dispute over marital property, it will be handed over to the Religious Court which has more authority.
4. The judge's considerations referred to article 97 of the Compilation of Islamic Law which states "*Divorced widows or widowers each have the right to half of the marital property as long as it is not otherwise stipulated in the marriage agreement.*" This article explains the percentage of distribution of assets in accordance with the Court's decision determining the distribution of joint assets, namely $\frac{1}{2}$ (half) for the Plaintiff and $\frac{1}{2}$ (half) for the Defendant.

Legal certainty cannot be separated from written law, law without the value of certainty will lose the meaning of the law itself. Certainty itself is one of the meanings of law, legal certainty is the implementation of the law itself according to its sound so that the parties or society can ensure that the law is implemented. Law according to Gustav Radbruch has three aspects as follows:³²

- 1) The law provides benefits;
- 2) The law provides justice;
- 3) Advancing legal certainty.

Furthermore, legal certainty as stated by Gustav Radbruch, legal certainty provided by positive law can justify laws that are unfair or useless, but the debate over demands for legal certainty does not have absolute priority over demands for justice and expediency.

Legal certainty in the joint property decision number.417/Pdt.G/2022/Pa.Bgr has the same legal force as the judge's decision. as is the view of Gustav Radbruch that joint property in case number 417/Pdt.G/2022/Pa.Bgr covers three aspects, namely the law providing benefits, the law providing justice, and the law providing certainty. The judge's decision has provided benefits by helping the parties to reach a voluntary peace.

The implementation of decisions put forward by Sudikno Mertokusumo, namely the implementation of the judge's decision or execution, is essentially nothing other than the realization of the obligation of the party concerned to fulfill the achievements stated in the decision. In implementing the judge's decision, the parties must obey or carry out the decision voluntarily.

Point property decisions made by judges sometimes do not comply with applicable legal regulations. The judge gave a decision in accordance with Article 97 KHI which states that in divorce,

³¹ *Ibid*, p. 72

³² A'an Efendi and Dyah Octorina Susanti, *Loc. Cit*, p. 18.

marital assets are divided into half for each husband and wife. However, judges in their decisions can use other legal considerations by upholding the value of justice.

Every judge's decision has legal force which must be obeyed by all parties because apart from the decision fulfilling the formal aspect called procedural justice, it is also based on the main principle, namely existing rules or norms and truly follows the legal principles known as legal. justice (the judge's decision must be a decision that meets formality requirements and has legitimacy requirements).

In implementing the joint property decision in case number. 417/Pdt.G/Pa.Bgr has been fulfilled and implemented by the parties voluntarily.³³

IV. CONCLUSION

The application of the voluntary principle really helps the mediator in carrying out or carrying out mediation, the application of this voluntary principle also makes the disputing parties more comfortable and does not feel forced to carry out this mediation, and the application of the voluntary principle makes it easier for the mediator and the parties to finding a middle way in a matter, namely a 'win-win solution'. The application of the principle of voluntariness in the joint property decision number 417/Pdt.G/2022/Pa.Bgr has been implemented so that applying this principle makes the parties and the mediator more flexible in expressing their opinions. Furthermore, by implementing this voluntary principle, the principle of easy, fast and low-cost justice can be realized. In accordance with Sayyid Qutb's peace theory that peace comes from each party.

Implementation of the judge's decision is an obligation of the party concerned to fulfill the achievements stated in the judge's decision. The implementation of the judge's decision is implied in the agreement where the Defendant with the initials AM must give 1/3 of the proceeds from the sale of land and permanent buildings to the Plaintiff with the initials NN as part of the division of assets obtained during the marriage. The implementation of the joint property decision is in line with the view of legal certainty according to Gustav Radburch. That the law provides benefits and justice for the litigants and is binding on both.

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³³ Interview with Sagidin, judge at the Bogor City Religious Court on May 30 2023

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