

# Children's Rights To Marital Property Of Parents Following Divorce Based On Settlement Decree

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## Abstract:

As a nation governed by law and upholding human rights, Indonesia recognizes and protects the basic rights of every citizen, including the right to form a family. In this context, the Indonesian constitution expressly guarantees this right, as outlined in the following provisions: Article 28B paragraph (1) of the 1945 Constitution, hereinafter referred to as the 1945 Constitution, "Everyone has the right to form a family and continue the lineage through a legal marriage." This article recognizes the right of every person to form a family through a legal marriage. This is a basic constitutional right that is the foundation of marriage law in Indonesia. The phrase "legal marriage" implies that the state has the right to regulate the validity of marriage through law. Divorce is the termination of a marriage between a husband and wife based on a legally binding court decision. In the context of Indonesian law, divorce cannot be done simply, but must go through a court process to ensure the validity and legal protection for both parties, including children born in the marriage. This is regulated in Law Number 1 of 1974 concerning Marriage, specifically in Article 38, which states that a marriage can be terminated due to: death, divorce, or a court decision (in certain circumstances, such as annulment of marriage). This peace decision has the same legal force as a court decision that has permanent legal force (inkracht), so it is binding on the parties and must be implemented. The presence of this peace decision is expected to provide legal certainty and end the dispute completely. The rights of children to parental property after the division of marital property according to the Marriage Law are entitled to receive living expenses and welfare until the child reaches adulthood. The peace decision between divorcing parents regarding the division of marital property agrees to give their assets to the child, which includes education costs and the child's welfare.

**Keywords:** Marriage, Divorce, Marital Property

## 1. Introduction:

Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia: "Every person has the right to form a family and continue their lineage through lawful marriage." This article recognizes the right of every person to form a family through lawful marriage. This is a

fundamental constitutional right that serves as the legal foundation for marriage law in Indonesia. The phrase "lawful marriage" indicates that the state has the authority to regulate the validity of marriage through legislation.

The 1945 Constitution upholds the values of just and civilized humanity. One manifestation of

these values is reflected in Article 27 paragraph (2) of the 1945 Constitution, which states that,

"Every citizen has the right to work and to a decent livelihood for humanity." The right to a decent livelihood encompasses protection of the economic, social, and civil aspects of citizens, including protection of children's rights within the family sphere.(Putu Ayu Sriasih Wesna, 2012)

Marriage constitutes a physical and spiritual bond between a man and a woman with the purpose of forming a happy and lasting family based on the Belief in the One and Only God as stipulated in Article 1 of Law Number 1 of 1974. In every marriage, joint property is often formed and accumulated, known as marital property or community property. This property is acquired during the marriage and becomes the joint right of husband and wife.

Property in marriage constitutes one of the important aspects of domestic life that often gives rise to problems if not managed wisely and fairly. Under the Indonesian legal system, marital property is governed by Law Number 1 of 1974 concerning Marriage, which regulates the commingling of property between husband and wife from the time the marriage bond is formed, unless a property separation agreement (prenuptial agreement) has been previously executed.(Adnyani, N. K. S. 2016).

Joint Property During the course of marriage, joint property is often formed and accumulated, known as marital property or community property. This property is acquired through the joint efforts of husband and wife, or acquired by one party but utilized for the benefit of the family. However, the reality of domestic life does not always run smoothly.

Dissolution of Marriage Law Number 1 of 1974 concerning Marriage, specifically in Article 38, which states that, "marriage may be dissolved by reason of: death, divorce, or by court decision (under certain circumstances, for instance annulment of marriage)".

Divorce: is strictly regulated in Law Number 1 of

1974 concerning Marriage, which emphasizes that Article 39 paragraph (1) states, "Divorce may only be conducted before a court session after the court concerned has attempted and failed to reconcile both parties."

Settlement decree: has the same legal force as a court judgment that is *res judicata* (final and binding), binding upon the parties and must be executed. The existence of this settlement decree is expected to provide legal certainty and conclusively resolve the dispute.

Based on the aforementioned background: the division of marital property following divorce based on settlement decree and children's rights to their parents' property after divorce with the existence of marital property division will be examined under the title "Children's Rights to Parental Marital Property Following Divorce Based on Settlement Decree".

## 2. Theoretical Perspectives:

According to Satjipto Rahardjo, legal protection is providing safeguard for human rights that are harmed by others, and such protection is given to society so that they may enjoy all rights granted by law.(Satjipto Raharjo, 2010). The theory of legal protection is employed in discussing the problem formulation regarding children's rights to their parents' property after divorce with the existence of marital property division, namely : fundamental principle in family law, particularly in divorce cases. Children are considered the most vulnerable party and often become indirect victims of household breakdown. The theory of legal protection emphasizes that the state and law must be present to ensure that the best interests of the child always remain the primary priority.

The theory of legal certainty according to Ronald Dworkin emerges through a fundamental value of legal certainty, namely "Sicherheit des Rechts selbst" which means legal certainty itself constitutes how the law itself exists, where the absence of clarity in the law itself causes the law to be unable to regulate individuals as it should.(Muslih, M, 2017). The theory of legal certainty is highly appropriate for use in discussing the issue

of marital property division following divorce based on settlement decree because this theory focuses on predictability, clarity, and finality in law. In this context, legal certainty ensures that all parties involved, particularly former spouses and also children (albeit indirectly), have clarity regarding their rights and obligations post-divorce.

The theory of justice is a branch of thought in political philosophy and law that seeks to answer the question: what makes something just? Generally, the theory of justice focuses on how rights, obligations, and resources should be fairly distributed, as well as how social and legal processes should be conducted impartially. This distribution of justice is often categorized into three main aspects: distributive (concerning the allocation of outcomes according to merit, need, or position), commutative (concerning exchanges between individuals to be equal and fair), and procedural (concerning decision-making processes that are open and fair). (Faiz, P. M. 2009). the theory of justice in general is a framework for thinking about who gets what, why, when, and how in society, whether in terms of resource distribution, rights, or legal procedures with the objective of establishing a just, balanced, and dignified order.

The theory of justice is highly relevant for discussing problem formulation 1, namely how marital property is divided following divorce based on settlement decree. Justice Theory ensures that the settlement decree reflects fair and proportional distribution based on each party's contribution during marriage, as well as considering post-divorce conditions, so that no party is disadvantaged and the agreement has strong and sustainable legitimacy. (Taufik, M, 2013).

### 3. Methodology:

Normative legal research. The types of approaches used in this thesis are the statute approach (legislative approach) and conceptual approach (conceptual approach method). (Rosady Ruslan, 2006). The data collection technique used in this research is documentary study (library research

technique). The legal material analysis technique used in this research is the qualitative descriptive method. The qualitative descriptive method is conducted by correlating legal materials with the problems to be investigated.

### 4. Findings:

#### 4.1. Division of Marital Property Following Divorce Based on Statutory Regulations Alternative legal terminology

The division of marital property in the event of divorce encompasses several regulations, namely : (Waha, F. M, 2013) :

1. The Civil Code (Burgerlijk Wetboek), which applies to non-Muslim Indonesian citizens and serves as the primary guideline in Western civil family law. Article 119 of the Civil Code states that from the time of marriage, joint property is legally formed, unless otherwise stipulated in *huwelijksvoorwaarden* (prenuptial agreement). Furthermore, Article 126 provides that in the event marriage is dissolved by divorce, such joint property must be divided equally, unless there are valid legal grounds to deviate from such provision.
2. Law Number 1 of 1974 concerning Marriage, which applies to all Indonesian citizens regardless of religious background, although the implementation of provisions in this law is often adapted to the religious law adhered to by the couple. Article 35 paragraph (1) regulates that property acquired during marriage becomes joint property, while Article 37 states that in the event of divorce, the division of such joint property must be conducted in accordance with the law applicable to each respective party.
3. For Muslim couples, the division of marital assets after divorce is regulated more specifically in the Compilation of Islamic Law (KHI). KHI is a codified jurisprudence that applies to Muslims through Presidential Instruction Number 1 of 1991. Article 97 of KHI expressly states that "a widow or widower who is living and divorced is each entitled to half of the joint assets, as long as it

is not stipulated otherwise in the marriage agreement."( Abdullah, A. G, 2018).

#### **4.2. Division of Marital Assets After Divorce Based on a Peace Decision in Court**

A settlement decision is a form of peaceful dispute resolution, formalized in a judge's decision. In the context of divorce, although the divorce itself must be firmly decided by a judge through a process of evidence and examination, an agreement between husband and wife regarding the division of joint assets can be reached through deliberation and then ratified by the court in the form of a settlement decision. This provides a faster, more efficient alternative resolution and minimizes conflict, particularly regarding the division of joint assets, which is often a source of further disputes after a divorce. (Anak Agung Istri Agung, 2016).

Peace decisions are regulated in the Indonesian civil procedural law system through Article 130 of the Indonesian Civil Code (HIR) and Article 1851 of the Civil Code (KUHPerdata). Article 130 of the HIR states that if the parties declare that they have reached a settlement on the day of the hearing, the judge will record the settlement in the minutes and declare it in the form of a decision that cannot be appealed or cassated.

If a husband and wife have reached an agreement regarding the division of joint assets, they can submit this agreement to the judge to be recorded in the court minutes and ratified in the form of a settlement decision. This agreement can be put in writing, signed by both parties, and then used as the basis for the judge to issue a settlement decision. (Paren, M. A., Yumarni, A., & Rumatiga, H, 2023).

A settlement decision in a civil case, including divorce, has certain elements that must be met to be declared valid and legally binding. These elements include :

- a. the existence of an agreement or peace treaty between the parties to the dispute;
- b. the agreement must be made voluntarily and not under pressure or coercion;

- c. the contents of the agreement must not be contrary to law, morality and public order; and
- d. The peace agreement is officially declared in court and recorded in the minutes, which are then formalized in the form of a peace decision by the judge. These elements guarantee that the peace decision is not merely a form of administrative ratification, but also a legal product born of the free will of the parties with judicial oversight.

The application of a peace settlement as the basis for dividing joint assets after a divorce can be seen in case No. 42/Pdt.G/2020/PN Srp at the Semarang District Court. The case states :

- a. A husband and wife undergoing divorce proceedings reach a mutual agreement regarding the division of assets they have acquired during their marriage. These assets include land and buildings. This agreement is then submitted to a panel of judges and validated through a settlement decision. The judge, in his decision, considers the agreement to have met formal requirements and is not in conflict with the law, thus being legally valid as the basis for the division of assets.
- b. Based on the contents of the Peace Decision Number 42/Pdt.G/2020/PN Srp, the division of marital assets was carried out peacefully through an agreement between the plaintiff (Ni Nyoman Sumerti) and the defendant (Drs. I Nyoman Lana, M.M.) in the mediation process at the Semarang District Court. In the agreement, the parties divided three plots of land and buildings that were the objects of joint property. One plot of land and buildings was given to the defendant, while the other two plots were given to the plaintiff. The results of the division were then transferred to their children: one property was given to a son named A.A. Made Agung Sukma Pandang, and the other two properties were given to another son, A.A. Ketut Agung Handilla Purba. The agreement also emphasized that the parties would not sue each other again and would not take other legal action. The entire contents of the agreement were confirmed

through a judge's decision in the form of a peace deed, which stated that the parties were obliged to comply with and implement the contents of the agreement.

Based on this, when linked to the theory of legal certainty, the division of trust assets based on a peace agreement is an ideal instrument for achieving true legal certainty. This is because agreements reached voluntarily tend to reflect the parties' sense of justice. This perceived justice will result in deeper certainty and acceptance. Thus, a peace agreement not only provides legal certainty in a formal sense (final and binding), but also in a substantive sense, namely certainty rooted in agreement, accommodating contextual justice, and ultimately contributing to the creation of peace and benefit for the parties, in line with Satjipto Rahardjo's thinking.

The theory of justice is also related to the division of marital assets after divorce, particularly those based on a settlement decision in court. The following is a link between the division of marital assets based on a settlement decision and the theory of justice. Distributive justice focuses on how resources and rights are allocated fairly among members of society. In the context of divorce, this means how joint assets (*gono-gini*) are fairly divided between the former husband and wife. A settlement decision, which arises from an agreement between the parties under court mediation, ideally reflects distributive justice.

#### **4.3. Children's Rights To The Property Of Their Divorce Parents With The Division Of Marriage Property**

Children's rights to the property of their divorced parents are an implementation of the principle of child protection as stipulated in Law Number 35 of 2014 concerning Child Protection. This law emphasizes that every child has the right to survive, grow and develop, and receive protection from violence and discrimination. In this case, fulfilling children's economic rights through the distribution of marital assets is part of guaranteeing the child's survival and development. (Rika Saraswati, 2015).

The rights of children to the property of their divorced parents with the division of marital property, based on the theory of preventive legal protection is the Marriage Law Article 45 which expressly states that "Both parents are obliged to care for and educate their children as best as possible." This is a preventive principle that has existed since the marriage took place, emphasizing that the property owned by parents also has implications for the fulfillment of children's rights, while in repressive legal protection when a divorce occurs, the judge is obliged to determine the amount of child support that must be fulfilled by one or both parents from the property they own. If the appointed parent denies, the child or his representative can sue for enforcement of the decision. This is a form of repressive protection that ensures that children's rights are still fulfilled. (Saraswati, R, 2015).

The rights of children to the property of their divorced parents with the Peace Decision Number 42/Pdt.G/2020/PN Srp, is a Peace Decision agreed by both parents before the court only binds them as parties in the case, but cannot reduce or eliminate the rights of children protected by law. In this case, although joint property is divided between both parents based on the agreement, part of the property has taken into account the best interests of the child, especially in the form of ongoing financial responsibility. Thus, based on Peace Decision Number 42/Pdt.G/2020/PN Srp in divorce cases, the rights of children to their parents' property are not lost or ignored, but must still be guaranteed and respected for the best interests of the child as a main principle in family law.

In the case of children's rights to the property of their divorced parents, the theory of legal protection and legal certainty work symbiotically, namely legal protection creates a framework and objectives to guarantee children's rights, especially the most basic ones such as maintenance and care, while legal certainty provides clear and predictable mechanisms and procedures to achieve these protection objectives, ensuring that children's rights can truly be realized

and enforced..

## 5. Conclusion:

1. The marital assets are distributed by the parties who reconcile in this case the divorced husband and wife, which should be part of each of them equally, agreed to be returned to the sons born in their marriage, for the welfare of the children in the future with the hope that the children will be able to continue the obligations as expected. By making the division of marital assets as mentioned, which deviates from the provisions for the division of marital assets as stated in the marriage law, but based on the principle of freedom of contract as stipulated in Article 1338 of the Civil Code, the peace decision is valid and binding as is the law for the parties and must be obeyed.
2. Children's rights to their parents' assets after the division of marital assets according to the Marriage Law are entitled to receive living expenses and welfare until the child reaches adulthood. The peace decision between divorcing parents regarding the division of marital assets agrees to give their assets to the child, which includes education costs and the child's welfare.

## 6. Limitations:

The focus and objectives of this research focus more on children's rights to their parents' marital property after divorce based on a peace settlement. This research offers a unique and significant contribution by filling a knowledge gap in this specific area of notarial practice.

## Disclaimer (Artificial Intelligence)

The author(s) hereby declare that the relevant references were used during the writing or editing of this manuscript. In accordance with responsible research and publication practices, full transparency is provided below regarding the use of these references. This includes the name, version,

and model of the reference used.

## Competing Interests

Authors have declared that no competing interests exist.

## References:

1. Abdullah, A. G, 2018, Pengantar Kompilasi hukum Islam dalam tata hukum Indonesia. Gema Insani
2. Adnyani, N. K. S. 2016, Bentuk perkawinan matriarki pada masyarakat Hindu Bali ditinjau dari perspektif hukum adat dan kesetaraan gender, Jurnal Ilmu Sosial Dan Humaniora, Vol. 5(1)
3. Anak Agung Istri Agung, 2016, Makna Purusa dan Pradana Dalam Putusan Hakim
4. Muslih, M, 2017, Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum), Legalitas Jurnal Hukum, Vol. 4(1), 130-152.
5. Putu Ayu Sriasih Wesna, 2012, Pelaksanaan Pewarisan Dalam Perkawinan Negen Dadua Berdasarkan Hukum Adat Bali Di Kota Denpasar, Tesis pada program pascasarjana Universitas Gadjah Mada, Yogyakarta.
6. Rika Saraswati, 2015, Hukum Perlindungan Anak di Indonesia, Bandung: Citra Aditya Bakti
7. Rosady Ruslan, 2006, Metode Penelitian: Public Relations & Komunikasi, PT Raja Grafindo Persada, Jakarta
8. Satijipto Raharjo, 2010, Ilmu Hukum, PT. Citra Aditya Bakti, Bandung
9. Saraswati, R, 2015, Hukum perlindungan anak di Indonesia (No. 2), PT. Citra Aditya Bakti
10. Taufik, M, 2013, Filsafat John Rawls tentang teori keadilan, Mukaddimah Jurnal Studi Islam, Vol. 19(1), 41-63