



OVERVIEW SOCIOLOGY OF LAW AND POSITIVE LAW TO DIVERSION INTERNAL JOINT PROPERTY MARRIAGE

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Abstract

Background of this study because of many cases take the form of a transfer of rights to joint property which does not involve either the husband or the wife. Above situation gives rise to new legal problems related to the sociological view of the applicable laws and regulations regarding the transfer of joint property in marriage so as to create justice in society. In the transfer of joint assets according to Article 35 paragraph (1) of Law Number 1 of 1974, a husband or wife can act based on the agreement of both parties. Therefore, if one party transfers joint assets, it must be done with prior approval or permission from the husband or wife. The aim of this study is that he hopes that the community will be able to carry out the process of transferring joint assets in accordance with applicable law. This research uses qualitative research methods through reference studies or literature studies. By using primary data in the form of applicable laws and regulations and similar cases that occur in the community.

Keywords : *Sociology of Law, Transfer of Joint Assets, Marriage.*

Abstrak

Penelitian ini dilatarbelakangi karena banyak kasus berupa peralihan hak atas harta bersama yang tidak melibatkan salah satu pihak, baik pihak suami

maupun pihak istri. Keadaan di atas melahirkan permasalahan hukum baru yang berkaitan dengan bagaimana pandangan sosiologi hukum dan peraturan perundang-undangan hukum yang berlaku terhadap pengalihan harta bersama dalam perkawinan sehingga terciptanya keadilan dalam masyarakat. Pengalihan harta bersama menurut Pasal 35 ayat (1) Undang-Undang Nomor 1 Tahun 1974, suami atau istri dapat bertindak berdasarkan kesepakatan kedua belah pihak. Oleh karena itu apabila salah satu pihak mengalihkan harta bersama-sama harus dengan persetujuan atau izin terlebih dahulu dari suami maupun istri. Tujuan dari penelitian ini adalah berharap agar masyarakat mampu melaksanakan proses peralihan harta bersama sesuai dengan hukum yang berlaku. Penelitian ini menggunakan metode penelitian kualitatif melalui studi referensi atau studi kepustakaan dengan menggunakan data primer berupa peraturan perundang-undangan yang berlaku dan kasus-kasus yang serupa dengan yang terjadi di lingkungan masyarakat.

Kata Kunci : *Sosiologi Hukum, Peralihan Harta Bersama, Pernikahan.*

INTRODUCTION

The one of principles espoused by the study Legal Sociology is views that say that law no solely as something an autonomous institution, but rather as working institution for and in society.³ The law grows and develops together growth society. Law always is at in other non-legal environment in Public as aspect politics, cultural aspects, aspects economic, social, cultural and others. She always is at in linkages *interdependence* with in other field society. View this at a time refuse view clan *normative-dogmatic* ones only look law as something autonomous, independent, and detached from environment social.

Indonesia is known as nation compound consisting on various type ethnic group nation or ethnic groups scattered in the country due to condition geographical country of Indonesia which consists from a number of island so that its inhabitants occupy different areas . The impacts that arise consequence plurality the Indonesian nation is applicable law for Indonesian society consists from a number of law among them Islamic law, law civil and legal custom. That is of course trigger appearance gap deep *multidimensional* all fields, for one field law in the process of completion problem, in particular problem distribution treasure together.

Meanwhile according to Law Number 1 In 1974, Article 1 stated " *that*

³ Satjipto Raharjo, *Utilization sciences social for development knowledge law* (Cet. I; Semarang: Alumni, 1977), p.27.

marriage is bond born inner between a person man by a person women as husband wife by purpose forming family (house stairs) which happy and remain based on Divinity Which Maha One." Husband wife in a marriage have position which same, good its position as humans as well as in position in function family.⁴

Purpose from article said that order no there is dominance in house stairs between husband wife, good in build house stairs as well as in forming descent. There is a bond valid marriage expected formed home stairs or family which happy, but the statement is no all marriage walk by good and arises problem which among them is about property together _

Constitution Number 1 Year 1974 arrange treasure marriage in Article 35 until with Chapter 37. Legislation marriage chapter 35 states:

"Property thing which obtained during marriage to be property together 2. Property congenital from each husband or wife as well as property thing which obtained from respectively as gift or heritage is below dominance respectively throughout Para parties no determine other."

Whereas Constitution marriage Chapter 36 states:

"About property together, husband or wife can act above consent the second split party. 2. about property each innate, husband and wife have rights completely for do act law about property the thing."

Article 37 Law no. 1 of 1974 states that if a marriage is separated due to divorce, joint assets are regulated according to respective laws. Regarding marital property, legal issues often arise in the form of cases in the judge's court, such as joint property cases in divorce cases. The principle of community property is primarily all property acquired during marriage. Community property in the general sense is property acquired jointly during marriage.

According to the provisions of civil law, from the time the marriage is entered into, according to law, unity applies between the assets of husband and wife, both movable and immovable assets, both now and in the future, including all debt burdens of each husband and wife must also be taken into account Being not enough to answer together.

In accordance with positive law in force in Indonesia, joint assets are divided equally between husband and wife. This is if the husband and wife do not carry out a marriage agreement regarding separate assets before the

⁴ Hillman Hadikusum , **Law Marriage Indonesian** , Mandarin madju , Bandung, 2002, h. 7

marriage contract takes place. Positive law provides legal protection in the form of providing guarantees for the confiscation of joint assets if the party in question's husband commits an affair, such as transferring most of the joint assets to a third party, which means that when a divorce occurs, the joint assets obtained by the party who commits fraud will be more than him. That's how it should be.

Confiscation of collateral for joint assets is known as Marital Confiscation, namely the accumulation of assets obtained by each husband and wife, both husband and wife, together. During the marriage, the bond is called joint property, without needing to be registered in anyone's name. So that when problems arise regarding joint assets, the party who feels disadvantaged, both husband and wife, can still look after the joint assets, rather than having a responsible response because all assets can be frozen by confiscating the marriage.

Sita marriage is used to provide legal protection to the second party for the integrity of joint property so that it does not change hands to a third party. This marital confiscation is clearly regulated in Law Number 1 of 1974 concerning Marriage in Article 95 paragraph (1) and paragraph (20). A confiscated marriage can be filed by the wife, even though the husband's own habit is to squander the joint assets for extravagance which endangers the marital assets. Couples who are facing a divorce process, both wife and husband can hand over marital confiscations until a fair division of joint assets is decided for both parties. The aim is so that one party does not mistakenly sell a number of assets in his name and transfer them to a third party, so that if a divorce occurs, the assets obtained will be even more than they should have been obtained. Regarding all forms of transfer of rights to joint property, approval must be obtained from the party dividing the two, namely the husband and wife, based on the provisions of Law Number 1 of 1974 concerning Marriage, Chapter 3 states "... regarding joint property, the husband or wife can act with the approval of the division of both parties...", so it is clear that the transfer of rights must have the consent of the husband and wife.

As a result of a unilateral sale and purchase of a husband or wife without the consent of the second party, the split is null and void due to an error or fraud. Null by law means that the sale and purchase agreement is deemed to no longer exist and has the consequence that the goods and everything that was before the agreement are returned to the condition they were in before the agreement was made.

RESULTS AND DISCUSSION

1. View Legal Sociology against Diversion Joint Property.

Existence sociology law as something discipline knowledge, actually no is a threat to existence sociology and law that alone. This urgent for realized, because existence sociology law as something branch knowledge that is analytical and empirical learn mutual relationship among laws and symptoms social other. Or could it is said, that sociology law learn Public specifically symptom law from the community concerned. While that is meant with symptom social, space scope covers whole braid between elements main and main social, among others:

- a. Group social. Group social that is set or units living human together, because exists connection among they concerns reciprocal relationship influences and presence awareness for each other please help. There are conditions that must be fulfilled for exists something group social , between other :
 - 1) Every member group must aware that he is part from that group concerned.
 - 2) There is a reciprocal relationship among member which one with member other.
 - 3) There is something owned factor together, so connection among they increase tightly.
 - 4) Structured, principled and owned pattern behavior.
 - 5) System and process.⁵
- b. Culture (Culture). Many experts have given definition scientific about culture. However, Soerjono Soekarno give definition culture as all results from works, feelings and ideals society.⁶
- c. Institutions social (*Social institutions*). Institutions social aim for fulfil needs tree humans who have functions certain namely: *First*, give guidelines for member society, how they must act up practice, or behave in face the problems that are inside society, especially concerns needs tree human. *Second*, take care wholeness the community concerned from possibility happening split, because fulfillment needs tree human. *Third*, give handle to Public for stage system control social (*social control*), that is system supervision from Public that alone to Act in demand members the community concerned.

⁵ Soerjono Soekanto , *Sociology Something Introduction* (Jakarta: Rajawali Press, 1986), p. 147.

⁶ Soerjono Soekanto , *Sociology Something Introduction* h. 175.

- d. Stratification social. It is an instrument that can differentiate population or Public into the classes in a manner store. There is difference stratification social inside society, perhaps exists no balance in distribution. Rights and obligations that are not balance, yes with easy causing parties certain do resistance that results in gaps social.
- e. Power and authority. Kindly scientific power and authority are two different things, because power interpreted as something ability for impose will to others. So, feature main from power that is exists domination somebody to others. Because that is power often called as source moving force dynamics society.⁷

Term sociology law for first time used by one originating philosopher from Italy named Anzilotti (1882). However reviewed from corner history birth sociology law as something knowledge independent knowledge no could release from influence philosophy law, science law and experts sociology. With exists effort positive blend third discipline science, so sociology law as knowledge independent knowledge could develop as development sciences another social. Development sociology law meant to cause exists sorting Among *Sociology of Law* pioneered by Anzilotti and *Sociology Jurisprudence* pioneered by Roscoe Pound. Regardless from sorting Among *Sociology of Law* with *Sociology Jurisprudence*, emerged a number of definition sociology law from experts sociology law among others:

According to George Gurvitch, sociology law are:

“One investigative science patterns and symbols law, which is meanings applicable law for experience something group special in a certain time and work for build something which system order from symbols it”.⁸

According to Lawrence M. Friedman, say that:

“It Looks at Law from the outside. It tries to deal with the legal system from the viewpoint of social science. Basically it argues that law is only one of many social systems and that other social systems in society give it meaning and effect”.⁹

So sociology law looked law from outside law. Sociology law try for treat system law from corner view knowledge social. With use view sociological to law, then we will remove trend for always identify law as Constitution mere, as embraced by circles positivist or legalistic.

⁷ satjipto Rahardjo , *Law Studies* (Bandung: Alumni, 1986), h. 159.

⁸ Shamsuddin Passamai , *Sociology and Sociology of Law*. p. 122.

⁹ Achmad Ali, Wiwie Heryani , *Sociology of Law Empirical Studies To Court* (Cet. II; Jakarta: Kencana , 2014), p. 10.

Soerjono Soekanto, define a number of definition sociology law namely:

1. Sociology law is knowledge about reality law, highlights mutual relationship among law with social processes other in society.¹⁰
2. Sociology law is something branch knowledge that includes research why man comply with the law and why he fail for obey law, as well factors other social affect it.
3. Sociology law is something branch knowledge that includes research why man comply with the law and why he fail for obey law, as well factors other social affect it.
4. sociology law which in essence also constitutes branch knowledge law , in particular knowledge law reality

2. Function of Legal Sociology

According to MP Baumgartner that function sociology law as one from type study empirical law, function sociology law in question, visible with clear from exists the differences inside applicable law for whole people in this world, neither from facet period history nor to individual cases. However, this proper realized that all is possible subject explained in a manner sociological, between other:

- a. Something action possible prohibited for period time certain and for something the place certain, however no for time and place other.
- b. Somebody possible call police or submit lawsuit to court if own case law, while other people also have similar case however no do it.
- c. Same illegal behavior could resulted something punishment certain in something events, however no for incident kind next.

“Treasure” in dictionary General Indonesian, interpreted as owned goods someone who is riches tangible property or no form and value according to law owned by the company or organization.¹¹ “Together” is two people or more combined in one bond based on one agreement together or bound by one strength protective ¹²law?

Definition treasure together above not yet describe meaning from treasure together with clear. Because of that, Hazairin quoted by M. Thahir Maloko in book *Internal Law Dynamics Marriage* explain that “every something earned husband or wife in a manner individual efforts or in a manner effort together becomes treasure together in marriage”.¹³

¹⁰ Soerjono Soekanto , *Usefulness Legal Sociology for Legal circles* (Jakarta: Citra Aditya Bakri, 1989), h. 4

¹¹WJS Poerwardanaminta , *Indonesian General Dictionary* , h. 346

¹²WJS Poerwardanaminta , *Indonesian General Dictionary* , h. 349.

¹³ Hazairin in M. Thahir Maloko . *Internal Law Dynamics Marriage* (Cet.

Different with definition treasure together proposed by J. Satrio with use term treasure union, give definition as following:

“ Treasure unity is treasure owned by husband wife together , which is formed as consequence marriage them , which includes treasure move and property not move , brought by husband and wife into the marriage and results from income they throughout marriage , simply about Thing that no determined others , reduced with debts incurred by them throughout marriage .”¹⁴

Referring to J. Satrio 's opinion , Jono concluded that treasure together in marriage is something treasure jointly bound (rights owned by bound together) , which a husband or wife no could do free on treasure together same independent , however on agreement second party .¹⁵

From definition treasure unity that, can pulled conclusion that treasure together just consequence from exists something bond marriage. So, if happen bond marriage among men and women, then instantly treasures owned by personal among husband nor wife before marriage enter Becomes treasure together.

Understanding as that, besides enforced by common law is also adhered to by the system marriage in the Indonesian Civil Code (BW) through principle concordance. Definition treasure jointly put forward by J. Satrio that, no separate among treasure each husband's inheritance wife with acquired property during in marriage. Only course, still there is exception if husband wife foretell else, however permanent reduced with debt each before marriage.

In Law No. 1 of 1974 concerning marriage nor in Compilation of Islamic Law (KHI) Article 1 letter f has been give the name “ treasure together ” against treasure livelihood Among husband wife in bond marriage . Law No. 1 of 1974 concerning Marriage arrange treasure riches in marriage in Chapter VII Article 35 in title treasure thing in marriage. Article 35 reads:

1. Treasure object obtained during marriage Becomes treasure together.
2. Treasure default of each husband and wife and property objects obtained respectively as present or inheritance , is under

I; Makassar: Alauddin University Press, 2012), p. 142.

¹⁴J. Satrio , *Property Law Marriage* (Bandung: Pt. Gitra Aditya Bakti , 1991), p. 54-55.

¹⁵Muhammad Syaifuddin , Sri Turatmiyah , Annalisa Yahannan , *Law Divorce* (Cet II; Jakarta: Sinar Graphics , 2014), p. 411.

mastery of each of the parties no determine other .¹⁶

In article 1 of the Compilation of Islamic Law (KHI) it is stated that: Treasure riches in marriage or *syirkah* is acquired property _ good on their own or together husband wife During in bond marriage going on and further called treasure together , without question registered on name anyone .¹⁷

Based on notions that, can concluded that is meant with treasure together is acquired property during in bond outside marriage treasure inheritance, grants and gifts is treasure together. Therefore, the treasures obtained husband or wife based on their respective efforts is owned by together husband wife. Another case assets acquired by each husband and wife before marriage contract, that is treasure origin or treasure default. Treasure origin that will inherited by each family when couple husband wife that dead and not have child.

Other common terms used to treasure together among others is treasure marriage , property association , property thing in marriage , property thing husband wife , property livelihood , treasure like this , treasure riches in marriage (*Shirkah*) used in article 1 letter f Compilation of Islamic Law. Besides it, deep environment law custom use term treasure together different on each the area concerned. In Aceh treasure together called Hareunta Sihareukat , known in Bali with term Druwe Cabro , in Kalimantan it is called Goods Board Hand , in Minangkabau called heirloom Low , in the area of Bugis and Makassar is called with term Makruf or Goods Cakara , in the area Java known with Barang Guna or a penny, while in East Seram it is called Treasure Buli - Bulik , everything this is treasure which obtained husband wife after they there is in connection marriage on effort they together or one from them. ³⁶

From the repertoire of terminology regarding joint property, it seems that the terms most familiar to the ears of the Indonesian people are the terms joint property and a penny property. The use of the term a penny comes from the term customary law used in the Central Java area. This shows the community's desire to resolve joint property settlements based on customary law. Indonesian society in general, if there is a setback

¹⁶Drafting Team , *Act Marriage in Indonesia* (Surabaya: Arikanto , t.th), h. 16.

¹⁷ Moh . Idris Ramulyo , *Law Marriage Islam* (Et. IV; Jakarta: PT. Earth Script , 2002),

regarding joint assets, is more likely to choose a family settlement. Because with discussion, the parties maintain their commitment to each other better. The transfer or preservation of rights is the legal purpose of a deed transferring rights from one party to another party. In contrast to transferring something that is true, transferring something that is true indicates that there is a legal act that is deliberately carried out by a party with the aim of transferring its rights to another person. In this way, the transfer of joint property belonging to husband and wife is known or desired by the party preserving the rights to joint property.

3. Legal Provisions against Diversion Treasure Together In Marriage According to Act.

Position treasure thing in UU Number 1 Year 1974 arranged in Chapter 35 Article 36 Chapter 37 UU Number 1 1974 . Chapter 35 paragraph 1 UU Number 1 Year 1974 state treasure thing which obtained during marriage Becomes treasure together. Article 35 paragraph (2) of Law Number 1 of 1974 state treasure default from each husband and wife and property that thing obtained respectively as treasure thing obtained respectively as presentor legacy is under mastery each throughout para party no determine other .

Based on provision in on that there is 2 (two) classification treasure thing in marriage namely:

Treasure together (Art 35 paragraph 1):

Treasure default which distinguished on treasure default each husband and wife and treasure default which obtained from present or legacy (Art 35 verses (2)).¹⁸

Definition about treasure together is treasure which obtained after husband wife is at in the connection marriage on effort they together or one party from them. Treasure together it is also called as treasure search. Treasure default is treasure each husband wife which has before marriage good he got because get legacy or efforts other.

Treasure which originate from grant or legacy is treasure each husband wife which obtained no because effort together nor individually but obtained because grant, legacy or will.

Based on classification type treasure the so as the consequences there are two kinds classification right owned by to treasure namely : Existence right owned by in a manner collective or together special

¹⁸ M. Yahya hope , Op. *Cit* , p. 74.

about treasure which classified as treasure results from eye livelihood , the settings is right ownership to treasure the owned in a manner together by couple husband wife . With exists right ownership in a manner collective this naturally authority and responsibility answer to treasure together is at in hand husband and wife. If husband want use treasure together so husband must get agreement from wife, thus vice versa.

There is right owned by personal in a manner separated that is treasure default and type treasure third that is treasure which obtained in marriage but no originate from eye livelihood, against both of them Settings to right owned by done basically conducted in a manner apart, that is each respectively husband wife have right owned by in a manner separated to treasure which has before happening marriage. In other words, the assets owned by couple husband wife before marriage happen no Becomes mixed ownership or ownership to treasure default the no Becomes ownership in a manner collective. However right ownership about type treasure this could determine becomes right ownership together or collective for husband and wife. Legal basis in Thing this is chapter 35 paragraph 2 ones states: "...is under control of each party throughout para party no determine other". Thing this contain meaning that is if husband and wife will happening mixing wrong one or second type treasure the , so mixing treasure this could possible with agreement before .¹⁹Article 36 Paragraph (1) Law Number 1 Year 1974 is provision about authority husband and wife to treasure together, confirm that: "regarding treasure together husband wife could Act on agreement second split party."

Thing this means authority or power or right husband and wife same size. Because that husband or wife could use or do deed law to treasure they, but condition must there is agreement from party other (husband / wife). "The principle treasure together that arranged together and used and must agreement together Husband and wife together entitled on treasure together because position husband and wife which balance inside house ladder nor in in society".²⁰ As emphasized in in Chapter 31 Verses (1) Law No 1 Year 1974 about right and obligation husband wife, namely:

¹⁹Happy Susanto, *Distribution Treasure Gono-Gini Moment Happen divorce* , Visimedia References, Jakarta, 2008, p.78

²⁰M. Yahya hope , *Op. Cit* , h. 123.

“Rights and obligations wife is balanced by rights and positions husband in home stairs and association life together in society “. Consequences position husband wife which balanced that, authority above thing together too balanced further on arranged in

Article 31 Paragraph (2) UU Number 1 Year 1974: “each party entitled for do deed law”. linked with authority husband wife to treasure thing , so good husband nor wife can do deed law on treasure together , like for example ensure treasure together as collateral credit , although must with agreement husband wife .

Items included treasure default from husband and wife according to Article 35 Paragraph (2) UU Number 1 Year 1974, permanent is at under mastery each throughout para his parties no determine other. Next in in article 36 Paragraph (2) UU Number 1 Year 1974, said that to treasure default that the parties have right fully for do deed law.

Based on Chapter 36 Paragraph (2) Law No 1 Year 1974 could concluded that husband and wife have power on treasure each other's personal which in bring in marriage them. Husband and wife have right completely. Means each have right owned by on treasure personal and because they entitled for do what just to treasure personal. Provision in Civil Code which arrange about treasure marriage arranged in titles VI, VII, and VIII. Article 119 paragraph (1) of the Civil Code confirmed that since moment marriage enforced, by law happen unity round among treasure riches husband wife. With thus in principle in in one family, there is one riches owned by together.²¹

If husband wife no want exists unity treasure, so could made agreement Marry before marry happened and had to made shape Certificate Notary. From the agreement above, can is known that Civil Code in a manner assertive has determine.

Happening unity on mixing treasure riches during marriage going on. Happening separation treasure riches during marriage in a manner assertive must poured in agreement marriage before marriage took place. ²²About treasure marriage , KUH Civil adhere different basis with Constitution Number 1 of 1974 concerning marriage , that is : Based on Article 119 of the Civil Code , in principle all treasure husband and wife

²¹R. Soetojo Prawirohamidjojo and Martalena Pohan , *Law People and family* , Airlangga University press, Surabaya. 2000 , p.38 .

²²R. Subekti , *Fundamentals of Law civil* , PT. Intermas , Jakarta , 2005, p.32.

, good which brought enter to in marriage nor which obtained throughout marriage , enter to in treasure union .Whereas Chapter 31 paragraph (2) Constitution No. 1 Year 1974 about Marriage say that a wife, throughout marriage permanent competent for act. According to Chapter 124 KUH Civil Management on treasure unity conducted by husband alone, whereas. Chapter 35 paragraph (2) Law No. 1 of 1974 concerning marriage say that treasure default wife and husband , who brought enter to in marriage , with itself Becomes treasure personal each husband / wife which brought him to in marriage . Mix it up treasure the through agreement marry precisely is exception.

According to Chapter 105 paragraph (3) KUH civil , management on treasure personal wife , if there is , including if there is grant or legacy which fall on of wife throughout marriage and determined no can enter in treasure union , carried out by the husband . Whereas according to Chapter 36 paragraph (1) Legislation Number 1 of 1974 concerning Marriage say that on treasure private , each husband / wife entitled for take action law alone .Whereas action on treasure together, husband must get agreement from wife and vice versa.²³

The thing meant with ownership together is exists more from an owner on a (group of) things that are same. ²⁴In something ownership with which not yet shared us say in there is state of "possession ". With those who do not divided" in among para owner- along on something (group) thing commons certain. In co-ownership, each owner we call as co-owner. Each co-owner have right part which indivisible (*onverdeeld aandeel*) in co-ownership. Manager or *beheer* husband on unity treasure riches is power lukewarm completely. Although beginning treasure riches that is owned by or goods default his wife, will but if then Becomes part or including into the unity treasure wealth, so husband have right full on management and husband no required for give responsible the answer.

With power full husband this, so position wife weak. Thing this related with incompetence wife for make agreement, which arranged in Chapter 1330 Civil Code.²⁵ Affirmed by Chapter 140 Paragraph (3) Civil Code, that if seen power husband on treasure unity wide once, then

²³ *ibid* , h. 71

²⁴ Wahjono Darmabharata and surini Ahlan Sjarif , *Law Marriage and Family in Indonesian* , Body Publisher

²⁵ Law University Indonesia, Jakarta, 2004, p . 96

held restrictions to power husband and side that wife could request promised restrictions in agreement marry.

Chapter 124 Paragraph (3) Civil Code give restrictions to authority husband , in Thing grant Among which still alive , husband no allowed use goods union , fine goods not move , or goods - goods move , for whole , for a certain portion , or a number from that , but for organize position for children from marriage.

Article 124 Paragraph (4) of the Civil Code too give restrictions in Thing grant not okay husband use goods move which privileged although Thing the promised, only right use results on goods just now stay on husband.

Treasure personal in the something marriage new there is if before marriage made agreement marry about thing. This is deviation from principle unity round treasure riches husband wife which arranged in Chapter 119 Civil Code. Treasure personal also can happen if heir or grantor determine that treasure legacy or treasure grant that is special given for husband or wife. Giving legacy or gift this determined with firm.

Treasure personal husband , treasure which got from legacy or grant , where heir or giver grant in a manner assertive state that treasure the no including treasure association , management is on the husband myself , meanwhile according to Article 105 Paragraph (3) of the Civil Code , treasure personal wife , management there is on husband , except in Thing wife foretell other .

4. Transfer On the joint assets Including In Category Deed Fighting Law

Something deed oppose law begins with action culprit. Deeds in here meant , good do something (by active) or no do something (in meaning passive), for example no do something it should obliged for help him , obligation the arise from law which apply (because there is also obligation which arise from contract). Because that to deed oppose law no there is element agreement or agreement and no there is also element "cause allowed" as where which there is in contract. Elements which must fulfilled so that somebody could said has do deed oppose law is:

1. Deeds that must oppose law Element first this, actually there is two understanding, that is "deed " and " against law ". However both of them each other related among one with which other. Linkages this could prove with two way, that is with method interpretation language, oppose law explained its nature from deed that with say other "against

law " is say trait , whereas " deed " is a verb . So that with exists something "deed" which its nature "against law ", then created sentence which state "deed oppose law " .

2. Then with method interpretation law. Way of interpretation law this to second definition such, "deed. Definition deed oppose law in a narrow sense, only covers people's rights other, and obligation maker which contrary or only violate law / law just. Opinion this put forward before exists *arrest Hoge Raad* 1919. Whereas in meaning broad , has covers decency and propriety which apply in then cross Public to self and goods people other. Opinion this put forward after on time *arrest Hoge Raad* 1919 used.
3. Deeds that must raises loss. Loss which meant in inelement second this, Constitution no only explain it about size and that includes loss it. Invite act only mention characteristic from loss such, material and immaterial. " Loss this could characteristic loss material and loss immaterial , What size , what which including loss that , no there is determined more carry on in Constitution in connection with deed oppose law " .²⁶

Method for determine loss which arise consequence exists deed oppose law. Because act alone no there is determine aboutsize and what just which including loss. Constitution only determine nature that is material and immaterial. Including loss which characteristic material and immaterial this are:

- a. Material, it means characteristic material (*zakelijk*). For example: Loss because damage collision car, the damage house, lossprofit, exit fare goodsand so on.
- b. Immaterial, it means characteristic no material. For example : disadvantagedname good someone , price self ,loss trust people other, throw away rubbish (dirt) insomeone else 's yard until air no fresh on people that or pollution , pollution environment , loss subscriber intrade .²⁷

Based on statement in top, for examples has fulfil size from loss which caused by action oppose law. Thing this could just happen, because Constitution that alone no there is arrange it. However thus no means people which harmed could demand losspeople the other at will his heart. Because there is opinion which says:

²⁶Abdulkadir Muhammad, Op. **Cit** ,

²⁷ Marheinst Abdulhay ., *Law civil* , Construction UPn, Jakarta, 2006, p.83

Hoge Raad over and over again has decided, that loss which arises because deed opposes law, terms same with provision which arises because default in agreement (Art 1246-1248 Civil Code), although provision the no could live applied. However if application that conducted in a manner analogical, still could allowed.²⁸

Practice legally, the statement above could prove truth, that in a manner general party which harmed always get change loss from make deed oppose law, not only real loss only, but profit which should obtained also received.

Losses referred to the elements second this, deep the practice could applied provision loss which arises because default in agreement. Although application this only characteristic analogy. However no close possibility implementation application provision to deed oppose law. the reason because no exists Settings more carry on from Constitution about Thing the, so that problem this could is wrong one problem development law civil, which worthy for researched.

Deeds that only conducted with error. Error is deed which intentional or negligent do deed or deed that oppose law (*onrechtmatigedaad*). According to law civil, somebody that said guilty if against him could regrettable that he has do / do not do something what should be done avoided deeds which should done / not conducted that no regardless from could or nope things that approx. Could roughly that must be measured in a manner objective, that is normal humans can guess in circumstances certain deed should done / not in do.²⁹

Based on opinion in top, means deed oppose law that is that deed on purpose or negligent do something deed. Error in element this is something deed which could roughly or calculated by thought man which normal as which action conducted or no he did deed it.

Deeds do or nodo could categorized as to in shape error. Opinion in on could understandable, because characteristic from law is set, which means there is ban and there messenger. If somebody do something deed, deed where prohibited by law, so people grabstated has guilty. Then if somebody no do deed, temporary deed that is order which must done, so people could said has guilty. There is another opinion stated that

²⁸R. Wirjono Prodjodikoro, *Deeds Violate law*, Well, Bandung, 1993, p.85.

²⁹Abdulkadir Muhammad., *Op. Cit*,

" error that could happened because: intentional and no intentional ".³⁰
Naturally meant with intentional and no intentional in above statement is deed that intentional or deed that no intentional.

On purpose and no intentional means error that could happen and conducted consequence from something negligence. If negligence could considered something element from error , then according to view law , nature man as creatures that don't once escape from errors and omissions , is one guidelines base in in determine that deed that including to something deed which oppose law and no could denied again . But inside in fact, why still manypeople which has do deedoppose law, could avoid himselffrom accusations and lawsuits the in meaning deny deed oppose law which showed to him.

Deed that indeed intentional, means already there is intention from the perpetrator or maker. But if act that no intentional for done , in elemental meaning mistake , example in thing payment price item in sell buy land done buyer , what buyer can is said already do act fight law , according to opinion at above . Or a person cashier on a bank, which wrong do calculation against account customer. What act cashier the said can is said as a fault and to him can sued Article 1365 BookLaw Civil said.

As known that cashier the man which no escape from error. Naturally problem this need study more continue, is element on purpose or no intentional could made benchmark for say error or action intended and no intentional, which how could made as element error the.

5. Between act and losses there is relationship causal.

Chapter 1365 Book Constitution Law civil, connection causal this could see from sentence deed which because his fault raises loss. So that loss that arise caused exists deed, or loss that is consequence from deed. If between loss and deed there is connection causality (cause result), then already Certain could said that every loss is consequence from something deed is opinion the no contrary with law nature , which state that happening natural this , experience a number of process which caused by a number of factor mutual related .

“ According Soerjono Soekarno that : arising law in Publiconly caused exists factor competition life in Public that alone , still influenced bycaused exists factorlife others , like factorbiological , factor, psychological , factorsecurity and factors materialother .

³⁰ Marheiniist Abdulhay , Op. *Cit* , p.84.

The goal for arrange and protect as well as protect life and his life, well in a manner individual nor sec group nsociety.³¹

According to provision Article 1365 Book Civil Law Act goods who do deed oppose law and raises loss he must replace loss the . Naturally which meant by shaper Constitution that replacement the paid with money. "Purpose from provision this is forrestore the injured person in circumstances again, condition before happening deed oppose law".³²From formula on could concluded that which party harmed enough prove that loss which suffered is consequence deed oppose law defendant. Not required that deed is deed oppose law to people who are harmed.

Look that change make a loss that restricted , only covers loss which could suspected and is consequence live fromdeed oppose law . So could is known that in lawsuit change make a loss because deed oppose law which demanded by a must notice big costs, losses and interest that have been real. So that change the claimed loss that magnitude no can exceed losses incurred by which deed oppose law. Not there is exception law on the defendant because circumstances compel because that the defendant must responsible on all deed which did , deed that is deed oppose law which conducted based on trick power on case whichin Chapter 1365 Book Constitution Law civil .

Transition or transfer right is something deed purpose law move right from something party to party other. Different with diverted it something right, so with diverted it something right show exists something deed law which intentional conducted by one party with meaning move right hersto people other. With thustransfer right owned by is known or wanted by party which do transition right on treasure together.

Sell buy, exchange or grant this in conception law custom is something deed law which characteristic light and cash. With light intended that deed law the must made in ahead official which authorized which watched held or he made deed law the . Whereas with cash interpreted that with he finished deed law before the PPAT it means it's over action law which conducted with all consequence the law. This means deed law the no could canceled return, except there is disabled reproachin a manner substance about right on land (rights property) that

³¹ Soerjono Soekanto , **Sociology law** , Rineka Copyright , Jakarta , 2005, p.25

³² *ibid* , p.40

is transferred such, or disabled about prowess and authority Act on field land.

Submission as deed diversion right owned by on something thing from somebody owner beginning to others in system law civil could found base the law in Chapter 584 Book Constitution Law Civil : " Rights owned by on something material not could obtained with method other, but with ownership , because attachment , because expired , because inheritance good according to Constitution nor according to letter will and because appointment or submission on something incident civil for move right property , carried out by a person who has the right do free to material it " .

That what which submitted that is thing in meaning ownership above a thing shift from someone to other people who receive it. As for which meant by rights belong according to Book Legal Law Civil is rights for enjoy use something materiality by freely, and for do free against materiality that by sovereignty completely, original no guilt by law or rules general which is set by the power that entitled set it, and no disturbing rights other people.

CONCLUSION

That diversion treasure together according to Chapter 35 paragraph (1) Constitution No.1 year 1974, husband or wife could Act on agreement second split party. Therefore if one party grant treasure together must with approval / permission from his wife especially first. Diversion on treasure together which including in category deed oppose law if deed conducted without agreement his wife, so deed the no fulfil condition subjective, because grant is cancelled and is deed oppose law.

REFERENCE

- Muhammad, Abdulkadir. *Law engagement* . Bandung: PT. Image Aditya Bhakti 2002.
- Ichsan, Ahmad . *Law civil* . Jakarta: PT. Advisor Period. 2009.
- Nasution . *Law Protection Consumers* . Jakarta : Sandwiced Media. 2002.
- Susanto, Happy. *Distribution Gono-Gini Treasure Moment Happen divorce* , Jakarta: Visimedia Library . 2008.
- Hadikusuma , Hilman . *Law Marriage Indonesian* . Bandung: Mandarin Madju , 2002.
- Latif, HM. Jamil . *Various Divorce Laws In Indonesian* . Jakarta: Ghalia

- Indonesia. 2002.
- Djojodirdjo, M.A Moegni . *Deeds Oppose Law*. Jakarta: Pradnya Paramita. 2004.
- Abdulhay , Marheinis . *Law civil* , Jakarta : coaching UPN. 2006.
- Ramulyo , Mohd . Idris *Law Marriage Islam Something Analysis From Law no. 1 1974 and Compilation Law Islamic* . New York: Earth Script . 2006.
- Hope . M . Yahya. *Law Marriage National* . Medan : CV. Zahir Trading Co. 2002.
- ; *Legal Aspects of the Agreement* , Bandung: CV. Zahir Trading Co. 2002
- Fuady, Munir . *Ratio Law civil* . Bandung: Image Aditya devotion . 2005.
- Darmabrata , Wahjono and Surini Ahlan Sjarif . *Law Marriage and Family in Indonesian* . New York: Agency Publisher Law University Indonesia. 2005.
- Rochaeti , Ety . *Analysis Juridical about Internal Joint Property (Gono-Gini). Marriage According to Views of Islamic Law and Positive Law* . Bandung. Journal Legal Insights . 2013.
- Puspytasari , Hepy Hyma . *Joint Property in Marriage According to Islamic Law and Positive Law* . Jombang : Jatiswara Vol. 35 No. July 2 , 2020. 2020.
- Nawawi, Kholil . *Joint Assets according to Islamic Law and Legislation in Indonesia*. Bogor : Mizan Journal Sharia Studies FAI Ibn Khaldun University Vol. 1 No. 1. 2013.
- Rothliah , Nunung . *Consequences of Divorce Law Based on Law No. 1 of 1974 concerning Marriage* . Bandar Lampung : Justice Progressive Vol. 5 No. March 1 . 2014.
- Aziza , Linda. *Analysis Divorce In Islamic Law Compilation* . Bandar Lampung : Al- Is . Vol. X No. July 4th . 2012.
- Sudrajat , Dyanita Mustikasari and Aliesa Amanita. *Completion Case Divorce In Compilation of Islamic Law at the Bandung Religious Court* . Bandung : Journal Legal Dialectics . Vol.2 No.2. 2020.
- Dahwadin , Encenglip Syarifudin , Evasofiawati , Muhammad Dani Somantri . *essence Divorce Based on Islamic Law Provisions in Indonesia* . Holy : Journal Islamic Legal Thought and Law. Vol. 11. No. June 1 . 2020.
- Rohayani , Esti . *Distribution Common Assets Consequences Equitable*

- Divorce _ Based on Pancasila* . Yogyakarta : Zahir Publishing . 2020.
- Wijayanti , Winda . *position Wife in Distribution Common Assets Consequences The break up Marriage Due to Divorce Related Bank Confidentiality* . Jakarta : Journal Constitution . Vol. 10 No. 4. 1960s.
- Mushafi , Faridy . *Legal Review above Distribution Gono- Gini treasure Couple Husband Divorced Wife* . _ Probolinggo : Batulis Civil Law Review Vol. 2 No. 1. 2021.
- Budiman, Fika . *Existence Marriage and Divorce According to Islamic Law and Post The enactment of Law no. 1 of 1974* . Kediri : Mizan Journal Law Studies Vol. 8 No. 2. 2019.
- Cahyani , Kartika Nur. *Environmental Impact Analysis In Indonesia Post-Job Creation Law : A Sociological Jurisprudence Approach*. Semarang : Journal of Law and Legal Reform. 2021.
- Abidin, Sultan Zaenal , Fajri Kasim, Abidin Nurdin . *Study Of Sociological Law On Conflict Resolution Through Adat In Aceh Community According To Islamic Law* . Malaysia : Journal of Family Law and Islamic Law. 2020
- Rais Isnawati, Yarakamuyassar. *The Construction Of Religious Court Judges Decisions In The Case Of Joint Assets Basec Of Islamic Law and Legal Development*. Indonesia : Indonesian Law Journal Vol. 10 No. 2. 2022.
- Poesoko, Herowati, Agung Sagung Laksmi Dewi. *The Role Of Legal Opinion as Legal Problem Solving Method*. Indonesia : Sociological Jurisprudence Journal Vol. 3 Issue 1. 2020.
- Zamroni . *Legal Aspect Of Marriage Registration In Indonesia* . Jakarta : Reformation Law Journal Vol. 1 No. 2. 2018.

Book of Laws Base 1945

Civil Law Code _

Constitution Number 1 Year 1974 About Marriage