



DISTRIBUTION OF JOINT PROPERTY DUE TO ANNULMENT OF MARRIAGE DUE TO ONE OF THE SPOUSES CHANGING RELIGION

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Article Info

ABSTRACT

Religious conversion carried out by one of the couples in marriage has various legal consequences, especially in marriages that take place under Islamic law. One of the legal consequences that can arise is the annulment of marriage (fasakh) by the Religious Court because the legal requirements for marriage according to religious law are not met. The annulment of the marriage not only has an impact on the legal status of the husband and wife, but also has implications for the division of joint property obtained during the marriage bond. This study aims to analyze the legal consequences of marriage annulment because one of the couples changes religion and the mechanism of sharing joint property after the annulment of the marriage. The research method used is normative legal research with a regulatory approach and a conceptual approach. Law Number 1 of 1974 concerning Marriage and Compilation of Islamic Law. Thus, even if the marriage is declared null and void, the civil rights of the parties still receive legal protection.

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1. INTRODUCTION

Marriage is widely recognized as the key to building a happy family. Humans are attracted to each other in their lives because it allows them to live side by side. Rather, it can be rationally understood as an attempt to building a lasting, harmonious, and enjoyable family or household in A person.

A legal marriage is called mubah. However, it can be makhruh intended for those who are unable to afford to marry and cannot afford to fulfills the requirements of marriage, and it can be haram if it is only intended for the world and not for worship. Marriage law for them becomes mandatory if they have the ability to marry.

In Article 2 of the Compilation of Islamic Law, it states the meaning of Marriage: "Marriage according to Islamic Law is marriage, which is a very strong contract or mitessaqan ghaldzan to obey Allah's commands and carry them out is worship." While Article 1 Law No. 1 of 1974 on Marriage states, "Marriage is a bond born in the mind between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One Godhead."

Happy and eternal families are formed through marriage, as well as home life Grace, Grace, and Grace. This conclusion can be drawn from the two articles mentioned in top. With eternal marriage, people are expected to be more obedient to Allah SWT because they are bound together for life, perhaps even until death surrenders and follows Allah's guidance. Not all journeys of a marriage go smoothly. Life Marriage is always faced with a problem as a test. Weight or whether the problem not depends on each human being who solves it. Some people are lucky because they can keep their household together, while those who don't Unlucky, ended up choosing to get divorced.

According to the Marriage Law, there are three events that can end a marriage: death, divorce, and a court decision. Marriage is abolished by divorce proceedings, either at the request of one of the spouses or as a result of a judge's decision. Islam prohibits divorce because Allah SWT hates it for whatever reason. However, if there is no longer harmony between two married people, divorce will still occur. Divorce is only allowed in an emergency so as not to cause greater harm to both parties. Currently, there are many divorce cases with different causes, one of which is divorce where one party apostatizes. Different legal consequences should apply to each divorce with different causes.

Apostasy that occurs when one of the parties in a divorce often creates problems. Men and women from various religious backgrounds seek to marry in society. However, Islam prohibits the union of a Muslim man and a non-Muslim woman or vice versa. Article 44 of the Compilation of Islamic Law, which reads: "A Muslim woman is forbidden to marry a man who is not a Muslim," confirms this.⁴ The man made the decision to marry in accordance with Islamic law and convert to Islam as a result. However, after marriage, there are a number of situations caused by this religious gap. Various philosophies should guide home life so as not to defeat the purpose of marriage.

A person's decision to convert is not seen as a criminal act in The era of religious freedom in society today. Many Muslims choose to convert for unknown reasons. In a marriage that was originally established by a Muslim man and woman turn into conflict when the man or the husband decides to convert. They are forced to deal with all the differences that do not exist, resulting in their inability to adapt to these circumstances.

From this perspective, divorce is the last option available when maintaining a married life that is no longer possible. In Article 116 paragraph (8) of the Compilation of Islamic Law, it is stated that "religious conversion or apostasy that causes disharmony in the household." In this way, the basis for divorce could be that one party is moving to another religion. As a legal event, marriage will have consequences for each party, including the relationship between husband and wife as actors in the household, the relationship between parents and children, and regarding marital property which is no less important and can affect domestic harmony.

In her book Indonesian Family Law, Sayuti Thalib claims that: "Property is property acquired during marriage outside of gifts or inheritances. It means property obtained by their efforts or individually during the marriage bond." Meanwhile, based on KBBI, common property: "Property can mean goods (money and so on) that become wealth, both tangible and intangible wealth and of course valuable. Shared property means property that is used (utilized) together."

A person can have various different types of property, one of which is shared property. Property is considered important for a person in daily life because it allows the individual to live justly and can achieve a high social status in society. In classical fiqh books, joint property is known as gono-gini property, defined as wealth generated by husband and wife as long as both parties are bound by the marriage bond.

In other words, common property or also known as gono-gini property is wealth created by means of shirkah (sharing) between husband and wife so that they are mixed into and cannot be separated. "Divorced widows and widowers are each entitled to one half of the joint property as long as it is not otherwise specified in the marriage agreement," stated Article 97 of the Compilation of Islamic Law. Based on the description above, the author is interested in researching how common property is divided

On the one hand, it is bid'ah. In Islam, a marriage is considered valid if it is performed by two people according to the religion they follow. However, after the marriage occurred, on the way one of the parties chose to change religion and the husband and wife who were once harmonious began to have a dispute. The cause of divorce, one of which is apostasy, will later be a determining factor for division. Together with the hope that the output of this research will increase knowledge about topics that have been discussed previously and not.

2. RESEARCH METHODS

The type of research used is normative research, this research provides a systematic explanation of the rules that govern a certain category of law, analyzes the relationship between regulations explaining areas of difficulty and may predict future development which serves to provide juridical arguments when there is a vacuum, ambiguity and conflict of norms. Normative research as a literature study, basically serves to show the way to solve research problems. The nature of the research used by this researcher is descriptive research. In general, descriptive research is a type of research that aims to describe in detail a phenomenon that occurs, both naturally occurring and as a result of human actions. These phenomena can include forms, activities, characteristics, changes, relationships, similarities, and differences between one phenomenon and another.

The data sources used in this study are secondary data which includes primary legal materials, secondary legal materials, and tertiary legal materials. As well as qualitative analysis, namely data analysis or legal materials that focus more on the process of drawing conclusions with deductive and inductive methods. Where it always focuses on phenomena that involve humans, carried out in its natural order, comprehensive, developing. The data collection tool used in this study is library research conducted in Higher Education Libraries, which is based on Article 20 of Law Number 43 of 2007 concerning Libraries, which states that data collection through literature research is a legitimate and appropriate method to support research.

3. RESULT AND ANALYSIS

Legal Consequences of the Move of One Party in Marriage

Marriage is a bond of birth and mind between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One Godhead. In the practice of married life, it is not uncommon for one party to move around, either in the form of a change of residence (domicile), nationality, religion, or certain legal status. The transfer can have various legal consequences that affect the sustainability of the marriage, the rights and obligations of the husband and wife, as well as the status of children and property.

Discussion of the legal consequences of the transfer of one party in marriage is important, especially in the context of pluralistic marriage law in Indonesia, which is influenced by religious law, customary law, and national law. Therefore, this study aims to analyze the legal consequences arising from the transfer of one of the parties in marriage based on the applicable laws and regulations in Indonesia.

A transfer in the context of marriage can be interpreted as a change in the legal or social circumstances of one of the parties after the marriage takes place. These transfers can be classified into several types, including:

- a. Change of domicile or residence
- b. Transfer of citizenship
- c. Religious conversion
- d. A transfer of legal status, such as a change in employment status or a certain legal status.

Each of these forms of transfer has different legal implications for marriage and the legal relationship between husband and wife.

The transfer of domicile of one of the parties in the marriage basically does not abolish the marriage bond. However, this move can have certain legal consequences, including related to alimony obligations, child care, and the relative competence of the court in the event of a marital dispute.

In Indonesian marriage law, the husband is in principle obliged to provide support and determine where to live together. If one of the parties' changes domiciles without the consent of the other party and results in the non-fulfillment of household obligations, it can be used as a reason for disputes and even divorce.

The transfer of citizenship of one of the parties in a marriage, especially in a mixed marriage, has complex legal consequences. A change in citizenship can have an impact on the legal status of the husband or wife, the status of children, and the control of joint property.

Law Number 1 of 1974 concerning Marriage recognizes the existence of mixed marriage, which is a marriage between two people who are subject to different laws due to differences in nationality. In the event that one of the parties' changes nationalities after marriage, it is necessary to pay attention to the provisions of citizenship law and the marriage agreement that may be made by the parties.

The conversion of one party to marriage is the most sensitive and complex issue in marriage law in Indonesia. Given that the validity of marriage is determined by the laws of each religion, religious conversion can have direct implications for the validity and sustainability of marriage.

In judicial practice, the conversion of one party is often used as a reason for divorce because it is considered to cause disharmony and the purpose of marriage is not fulfilled. In addition, religious conversion can also affect the authority of the court that examines divorce cases, whether it is the authority of the Religious Court or the District Court.

Any transfer made by one of the parties in the marriage can affect the implementation of the rights and obligations of the husband and wife. These rights and obligations include maintenance obligations, loyalty, cooperation in the household, and protection of children.

If the transfer causes one of the parties to be negligent in carrying out its obligations, then the other party has the right to demand the fulfillment of obligations or file a lawsuit in court.

The transfer of one party in the marriage also has an impact on the child, especially related to the child's upbringing, education, and citizenship status. Indonesian law places the best interests of children as the main principle in any decision making related to children.

In the event of a dispute due to the transfer of one of the parties, the court will consider the interests of the child in determining the custody and responsibilities of the parents. Wealth in marriage consists of joint property and inherited property. The transfer of one of the parties, especially related to nationality or domicile, can affect the control and management of common property.

The existence of a marriage agreement is very important to provide legal certainty for the arrangement of wealth in the event of a change in the legal situation of one of the parties.

If the transfer of one of the parties in the marriage causes a dispute, then legal remedies that can be taken include mediation, civil lawsuits, or divorce applications to the competent court. The court in examining the case will consider laws and regulations, religious law, as well as the principles of justice and utility.

The transfer of one of the parties in a marriage has a variety of complex and multidimensional legal consequences. Therefore, a comprehensive understanding of the provisions of marriage law is needed so that

the rights and obligations of the parties are protected. In addition, the renewal and harmonization of marriage laws is also important to answer the evolving social dynamics.

Legal Consequences of Cancellation Because One of the Spouses Changed Religion

In Indonesia, a marriage can be annulled through the fasakh mechanism if one of the spouses changes religion. Fasakh is the annulment of marriage carried out by a religious court without the consent of both parties, different from talaq or divorce which requires further proceedings. The main legal basis is:

- a. Compilation of Islamic Law (KHI) Articles 116-119: Declares that a marriage can be annulled if one of the parties apostatizes. Apostasy is defined as a change of religion from Islam to another religion, which is considered a violation of the marriage contract
- b. Law No. 1 of 1974 concerning Marriage: Article 2 paragraph (1) states that marriage is valid if it is carried out according to the law of each religion. If one of the spouses converts, this can result in cancellation due to religious disagreement.
- c. Supreme Court Decision: Several rulings, such as Supreme Court Decision No. 140 K/AG/2015, confirm that fasakh can be enforced if there is valid evidence of religious conversion.

The annulment process begins with a lawsuit to the Religious Court, where the judge will examine evidence of religious conversion, such as a certificate from the Ministry of Religious Affairs or a personal confession. If proven, the marriage is declared null and void from the date of the decision, not from the date of the change of religion. This is different from other countries such as Malaysia or Saudi Arabia, where Islamic law is stricter in terms of apostasy, but in Indonesia, the Marriage Law provides protection for human rights

Annulment of marriage due to religious change has broad legal consequences, including civil, family, and criminal aspects. Here are the key details:

- a. Annulment of Marital Status
 - 1) Marriage is considered to have never occurred legally (retroactive fasakh). Both parties return to single status, and children born before the annulment remain valid as legal children. However, if a change of religion occurs after the child is born, the child's status is not affected, but custody is debatable.
 - 2) As a result, the couple is no longer bound by spousal obligations, such as alimony or intimate relationships. This can trigger a conflict if one of the parties refuses to annul, even though fasakh does not require approval.
- b. Distribution of Joint Property
 - 1) Based on the Marriage Law Article 35-37, the property acquired during the marriage is divided fairly. However, in fasakh, this division is often complicated because the marriage is considered null and void from the start. KHI Article 97 states that the property obtained during the marriage is still divided, but with the consideration that fasakh makes the marriage contract invalid.
 - 2) Example: If the husband apostatizes after 10 years of marriage, the wife is entitled to half of the property, including the household and investments. Courts often use the principle of justice to avoid injustice, especially if a change of religion is made to avoid liability.
- c. Custody and Child Support
 - 1) The children of the marriage remain valid, and custody is determined based on the best interests of the child (Marriage Law Article 41). If the father apostatizes, Muslim mothers often get full custody of the child's religious education.
 - 2) Child support must be given by both parents, even after fasakh. KHI Articles 105-106 stipulate that the father remains responsible for child maintenance until adulthood. If the father apostatizes, the court can decide the alimony from the divided property.
 - 3) Complex cases occur if the child is an adult and chooses a new religion: this can affect inheritance rights.
- d. Inheritance Rights
 - 1) In Islamic law, apostasy loses the right of inheritance from a Muslim family (QS. Al-Ma'idah: 51). If the husband apostatizes, he is not entitled to inherit the property of his Muslim wife or children. On the other hand, the wife and children still have the right to inherit their property if they die.
 - 2) Articles 83-85 of the Marriage Law regulate mixed inheritance, but in fasakh, religious courts often apply Islamic law for Muslims and civil law for non-Muslims.

Annulment of marriage due to religious change in Indonesia has significant legal consequences, including cancellation of status, division of property, custody, and inheritance. This process is regulated by the KHI and the Marriage Law, with a focus on the protection of children's rights and justice. Although there are no criminal sanctions, the social impact can be severe. For specific legal consultations, it is advisable to contact a lawyer or a Religious Court.

Distribution of joint property after the annulment of marriage because one of the spouses changed religion

The division of property after fasakh is governed by a combination of national law and Islamic law, with a focus on the principles of justice and the protection of the economic rights of the spouse.

- a. Law No. 1 of 1974 concerning Marriage (Marriage Law): Article 35 states that property acquired during marriage is joint property, unless there is a prenuptial agreement that stipulates otherwise. Articles 36-37 regulate the fair distribution of property based on the interests of the household and the contribution of each party. In the context of fasakh, property is still divided even if the marriage is considered void, because fasakh does not abolish the economic rights that have been established
- b. Compilation of Islamic Law (KHI): Article 97 confirms that joint property is divided fairly, with the consideration that fasakh makes the marriage contract invalid from the beginning. However, KHI emphasizes protection for innocent people, such as wives who remain Muslim. If the change of religion is carried out by the husband, the wife often gets priority in the distribution.
- c. Supreme Court Decision: Supreme Court Decision No. 89 K/AG/2020 affirms that the division of property in fasakh must take into account the duration of the marriage and economic contributions, without discrimination based on religion.

The basis of this law shows that the division of property is not automatically canceled by fasakh; On the contrary, the court is in charge of ensuring justice. Comparisons with other countries, such as Malaysia where Islamic law is stricter in the distribution of property after talaq, shows that Indonesia is more flexible by adopting the principle of universal justice.

The process of distributing property is carried out through the Religious Court for Muslim couples, or the District Court if there are mixed elements. The main steps include:

- a. Filing of a Lawsuit: One of the parties submits an application for the division of assets at the same time as the fasakh lawsuit. The court will examine evidence of property ownership, such as land certificates, bank accounts, and household inventory.
- b. Property Valuation: The judge determines the value of the property through an independent appraiser. Assets acquired during the marriage include salary, investments, and property, but inherited assets (e.g. inheritance) are excluded.
- c. Partition Judgment: The court divides the estate proportionately, usually 50:50, unless there is a compelling reason such as an unbalanced contribution. This judgment can be executed through the bailiff if the losing party refuses.
- d. Processing Time: On average 3-6 months after the fasakh verdict, depending on the complexity of the case.

This process is designed to avoid conflict, but often requires mediation to reach a peaceful agreement.

Property division is not always 50:50 courts consider several factors to ensure fairness:

- a. Duration of Marriage: The longer the marriage, the larger the share of property divided. For example, in a 20-year marriage, the division is more evenly distributed than in 2 years.
- b. Economic Contributions: The more contributing parties (e.g., the husband as the main breadwinner) may get a larger share, but the courts often adjust to protect the less fortunate parties.
- c. Child and Household Interests: If there are children, property such as a family home may be given to the party who gets custody.
- d. Religious Change as a Factor: If the religious change is done to avoid obligations (e.g., joint debts), the court may award a smaller share to the apostate party. However, the Human Rights Act prohibits discrimination, so this factor is rarely used explicitly.
- e. Prenuptial Agreement: If any, this agreement may change the standard division.

These factors make the division of property causal, depending on the evidence presented. The distribution of joint property after fasakh due to religious change is regulated by the Marriage Law and KHI, with the principle of justice as the basis. The process involves the valuation of assets, consideration of factors such as duration and contributions, and court decisions. Despite the challenges, the system aims to protect the economic rights of all parties. For specific cases, consult an attorney.

4. CONCLUSION

Based on the research findings, the annulment of marriage due to religious conversion, particularly in the context of Indonesian marriage law, has significant legal implications. The annulment, known as fasakh, results in the retroactive dissolution of the marriage, impacting the legal status of both parties, including their rights and obligations. Importantly, the division of joint property remains a key issue, where even though the marriage is deemed null, the property acquired during the marriage is subject to division, based on principles of fairness and justice as outlined in both Islamic law (KHI) and national regulations. Factors such as the duration of the marriage, the contributions made by each spouse, and the presence of children are critical in determining the

distribution. While religious conversion may affect marital stability, it is not considered a sole determinant in property division. Ultimately, the court's role is crucial in ensuring a fair division and protecting the economic rights of the parties involved. This process highlights the importance of maintaining justice while addressing the evolving dynamics of marriage law in Indonesia.

5. REFERENCES

- [1] The book "The Law of Property in Marriage" by Sri Wahyuni, Pustaka Siswa, Yogyakarta, 2012, p. 45-50.
- [2] Analysis in "Fasakh and the Distribution of Property" by Ahmad Rofiq, Rajawali Press, Jakarta, 2018, p. 120-125.
- [3] Comparison: "Islamic Family Law in Southeast Asia" by M.B. Hooker, Institute of Southeast Asian Studies, Singapore, 2008, p. 150.
- [4] The book "Islamic Marriage Law in Indonesia" by Ahmad Rofiq, Pustaka Siswa, Yogyakarta, 2010, p. 150-152.
- [5] Analysis in "Fasakh in Islamic Law" by Abdul Manan, Rajawali Press, Jakarta, 2015, p. 200.
- [6] Sudikno Mertokusumo, Indonesian Marriage Law, Yogyakarta: Liberty.
- [7] Hilman Hadikusuma, Indonesian Marriage Law According to the Law, Bandung: Mandar Majuan.
- [8] Soerjono Soekanto, Introduction to Legal Research, Jakarta: UI Press.
- [9] Yahya Harahap, Civil Procedure Law, Jakarta: Sinar Grafika.
- [10] Center for Language Development and Development of the Ministry of Education and Culture, 1995, Large Dictionary
- [11] Indonesian, Second edition, cet-4, Jakarta: Balai Pustaka, p. 342.
- [12] Book "Prenuptial Agreement in Indonesia" by Abdul Manan, Pustaka Siswa, 2014, p. 80
- [13] Journal "Mediation in Family Law" by Luthfi Assyaukanie, Vol. 4, No. 2, 2019.
- [14] Case study: "Children's Rights in Divorce" by Sri Wahyuni, Journal of Family Law, Vol. 3, No. 1, 2018.
- [15] Comparative law: "Islamic Family Law in Malaysia and Indonesia" by Noraini Othman, Journal of Islamic Studies, Vol. 25, No. 2, 2014
- [16] Juridical analysis: "Factors of Property Distribution in Fasakh" by Sri Wahyuni, Journal of Family Law, Vol. 5, No. 1, 2020