



JLPH: Journal of Law, Politic and Humanities

E-ISSN: 2962-2816
P-ISSN: 2747-1985<https://dinastires.org/JLPH> ✉ dinasti.info@gmail.com ☎ +62 811 7404 455DOI: <https://doi.org/10.38035/jlph.v5i3>
<https://creativecommons.org/licenses/by/4.0/>

Analysis of the Criminal Law Implications on the Sale of Marital Property Prior to the Agreement on Joint Property Division in Indonesia

Aswadi¹, Muhamad Adystia Sunggara².

¹Pertiba University, Pangkalpinang, Indonesia, aswadimzsh@gmail.com.

²Pertiba University, Pangkalpinang, Indonesia, dr.m.adystiasunggara@gmail.com.

Corresponding Author: aswadimzsh@gmail.com¹

Abstract: The application of law regarding the embezzlement of marital property after divorce in Indonesia faces significant challenges. Marital property, regulated under the Civil Code and Law No. 1 of 1974 on Marriage, often becomes a subject of dispute when one party sells it without the consent of the other. This event is not always categorized as a criminal act of embezzlement, leading to legal uncertainty and harming the affected party, particularly women. This study adopts a juridical-normative approach with a descriptive method. Data were collected through literature review and documentation of legislation, legal doctrines, and court decisions. The findings reveal that the application of criminal law to embezzlement of marital property still has significant shortcomings. Although Articles 35 and 36 of Law No. 1 of 1974 regulate joint consent in the use of marital property, criminal sanctions are not consistently enforced. Regulations in the Compilation of Islamic Law (KHI) emphasize the importance of proving the status of the property and the obligations of spouses in division. Legal uncertainty in the application of criminal sanctions for cases of embezzlement of marital property indicates the need for reform. Strengthening the definition of criminal acts and applying a clearer principle of justice are necessary to ensure fair protection of all parties' rights.

Keyword: Marital Property, Embezzlement, Criminal Law, Divorce, Protection of Rights.

INTRODUCTION

The enforcement of the law against the misappropriation of marital assets after divorce is a complex issue and often sparks debate within legal practice in Indonesia. Marital assets, or harta gono-gini, are assets acquired by spouses during marriage and are regulated under various legal provisions, including the Civil Code (Kitab Undang-Undang Hukum Perdata, KUHPerdata) and Law No. 1 of 1974 concerning Marriage (Rochaeti, Ety, 2015). In divorce situations, the division of marital assets often becomes a source of conflict that necessitates careful legal handling.

One of the main issues in this context is the act of selling or transferring marital assets by one party without the consent of the other. Such actions are often regarded as embezzlement, an act potentially falling under criminal law. However, as seen in several cases decided by the

courts, including Decision No. 593/Pid.B/2015 PN.Sgl and Decision No. 2230k/Pdt/2019 in the Bangka Belitung High Court, even when the defendant was found to have committed the act as charged, the court ruled that the action did not constitute a criminal offense. This raises serious questions regarding how criminal law is applied in cases of embezzlement involving marital assets.

According to Fadhli, Muhammad Rafil (2023), these rulings indicate a gap in the enforcement of criminal law concerning the embezzlement of marital assets. The courts stated that while the defendant was found to have embezzled joint property, the act was not classified as a criminal offense. This suggests ambiguity or differing interpretations regarding what can be categorized as a crime within the context of embezzlement of marital assets. This ambiguity can be detrimental to the aggrieved party, particularly in divorce contexts where asset division is a sensitive and critical issue.

Inequality between spouses in marriage also plays a significant role in these cases. In many cultures in Indonesia, the husband is often regarded as the head of the household with greater control over family assets. The husband typically has broader access to information, economic resources, and decision-making. This inequality can place the wife in a more vulnerable position, particularly concerning access to information about joint assets and her rights post-divorce. When a husband intentionally sells or transfers marital assets without the wife's consent, the wife often lacks sufficient power to pursue her rights through legal means.

From a civil law perspective, marital assets are joint property that should be fairly divided between spouses after divorce. However, this division process often does not proceed smoothly and requires legal intervention to ensure fairness for both parties. Selling marital assets without the consent of one party constitutes a violation of their rights. In the context of criminal law, such actions may be categorized as embezzlement; however, the enforcement of criminal law in these cases is often suboptimal (Limbong, Panal Herbet, Syawal Amry Siregar, and Muhammad Yasid, 2023).

This study aims to analyze the criminal law implications of selling marital assets prior to the agreement on asset division, examining the inequalities that occur between spouses in access to resources and decision-making. The study will also explore how criminal law can be effectively applied to protect the rights of wives, who are often in a weaker position.

Research by Inda Ariani, Muhammad Yahya, and Sri Suatmiati titled "Law Enforcement Against Perpetrators of Embezzlement of Marital Assets After Divorce" (*Jurnal Hukum Doctrinal*, 2022) discusses law enforcement against the embezzlement of marital assets after divorce. This research uses a juridical normative approach and focuses on legal barriers, legal facilities, societal factors, and cultural issues in cases of marital asset embezzlement. The findings indicate that law enforcement is still suboptimal due to a lack of evidence and weak public perception of this issue.

Recent research analyzing the criminal law implications of selling marital assets before the agreement on asset division differs from previous studies by focusing on the criminal law aspect prior to the division agreement, rather than post-divorce. This research explores the legal risks and potential criminal conflicts that occur before an official agreement on asset division, thus adding a new perspective on the regulation and enforcement of laws related to marital property within marriage.

In Decision No. 593/Pid.B/2015 PN.Sgl, the defendant was found guilty of selling marital assets without the consent of his former wife after the divorce. Although the court stated that the defendant committed the act as charged, the act was not categorized as embezzlement. This decision reflects the challenges in the enforcement of criminal law against embezzlement of marital assets, particularly because the existing law may not explicitly cover this situation or due to narrow judicial interpretation.

Similarly, in Decision No. 2230k/Pdt/2019 in the Bangka Belitung High Court, a similar issue arose, where the defendant, who was found to have sold joint property without the consent

of his former wife, was not subject to criminal punishment. This case underscores the need for legal reform and clearer interpretations regarding the application of criminal law in cases of embezzlement of marital assets.

The inequality between spouses further exacerbates this issue. The husband, regarded as the head of the household, has more control over joint property and often has easier access to information and economic resources. In divorce situations, this inequality can make it difficult for the wife to claim her rights and obtain justice. Therefore, a more inclusive and equitable legal approach is needed to protect the rights of wives in the division of marital assets (Elviyanti, Rita, and Iwan Romadhan Sitorus, 2022).

In conclusion, the enforcement of criminal law against the embezzlement of marital assets after divorce remains suboptimal in Indonesia. Cases such as Decision No. 593/Pid.B/2015 PN.Sgl and Decision No. 2230k/Pdt/2019 in the Bangka Belitung High Court show that even when the defendant is found to have committed the act as charged, the action is often not considered a crime by the court (Ariani, Inda, Muhammad Yahya Selma, and Sri Suatmiati, 2022).

This indicates the need for clearer and more inclusive legal reforms to ensure that criminal law can be effectively applied to protect the rights of spouses in marriage, particularly those of wives who are often in a weaker position. The recent research analyzing the criminal law implications of selling marital assets before the agreement on asset division differs from previous studies by focusing on the criminal law aspect before the division agreement, rather than post-divorce.

This study explores the legal risks and potential criminal conflicts that occur before an official agreement on asset division, thus contributing a new perspective to the regulation and enforcement of laws concerning marital property within marriage.

To achieve this goal, this study will conduct an in-depth analysis of existing legislation, case studies, and relevant literature to identify legal gaps and provide recommendations for improvements. Consequently, it is hoped that this research can contribute to the development of a more just and inclusive legal framework in the context of marital assets and divorce in Indonesia.

METHOD

This study adopts a juridical-normative legal research method focusing on the analysis of legislation, legal doctrines, and related court rulings to explore the application of criminal law to embezzlement of marital assets (Benuf, and Azhar, 2020). This method was chosen for its capability to analyze the applicable legal framework and examine how legal principles are applied in practice. The aim of this study is to identify existing legal gaps and provide recommendations that could enhance legal protection for the parties involved.

The type of research employed is descriptive research with a juridical-normative approach, which aims to provide a detailed description of how the existing legal regulations address cases of embezzlement of marital assets (Suganda, 2022). The author examines the legal context and its implementation in real-life situations. Data collection is conducted using two main methods, namely library research and documentation study. Library research involves searching for and analyzing legal literature, such as academic books, scholarly journals, and relevant previous studies, as well as regulations such as Law No. 1 of 1974 on Marriage and the Civil Code (KUHPerdota). Other sources include the Compilation of Islamic Law, which is relevant for understanding the Islamic legal perspective on the regulation of joint property.

RESULTS AND DISCUSSION

Criminal Law Regulations in Indonesia Governing the Sale of Joint Property Before the Agreement on Division of Assets

Joint property is a term that has developed within Indonesian societal traditions and is implemented in marriage law to this day. According to the Kamus Besar Bahasa Indonesia (KBBI), joint property refers to assets accumulated during marriage that become the shared rights of husband and wife. Article 35 of Law No. 1 of 1974 on Marriage stipulates that (1) property obtained during the marriage becomes joint property, and (2) the personal property of each spouse, as well as property received as gifts or inheritance, remains under the control of the respective owner unless otherwise agreed by the parties.

Article 36 of Law No. 1 of 1974 explains that for joint property, either spouse may act with the consent of both parties. Conversely, for personal property, both spouses have full rights to perform legal acts on their respective assets. Article 37 of the same law provides that in the event of a divorce, the division of joint property shall be carried out in accordance with applicable legal provisions.

From an Islamic legal perspective, joint property is also specifically regulated. According to Besse Sugiswati (2014), joint property can be categorized into three types: (1) personal property owned before marriage, whether acquired through inheritance, gifts, or individual efforts; (2) property obtained by each spouse after marriage, such as individual gifts or inheritance; and (3) property acquired through joint effort during the marriage.

Drs. H. Abd. Rasyid As'ad, M.H. explains that based on Article 37 of Law No. 1 of 1974 and Articles 96 and 97 of the Compilation of Islamic Law (KHI), in the event of divorce or death, each party is entitled to half of the joint property. This is further supported by the Supreme Court Jurisprudence No. 424.K/Sip.1959, which asserts that in divorce, each party's right to joint property is equal (Alfaruqi, 2019).

Abd. Rasyid also states that if a husband and wife decide to settle the division of joint property through mutual agreement, the division is valid as long as it is based on consensus and free of coercion. For instance, the former husband might receive one-third of the joint property, while the former wife receives two-thirds, or vice versa. The main emphasis is that the percentage of the division must be based on mutual consent and reconciliation.

In practice, proving the status of joint property is essential to ensure that the disputed assets are indeed joint property, allowing for the division to comply with Article 97 of the KHI, which stipulates that any widow or widower is entitled to half of the joint property unless otherwise agreed. Joint property needs to be distinguished from personal property and assets acquired as gifts or inheritance, as regulated in Article 87 paragraph (1) of the KHI.

The obligations of husband and wife within the household also influence the division of joint property. Article 80 of the KHI regulates the husband's obligations, while Article 83 of the KHI outlines the wife's obligations. The implications of these obligations are evident in various court rulings. For example, in Supreme Court Decision No. 266K/AG/2010, the wife received three-quarters of the joint property due to her dominant contribution to acquiring the property, while the husband received only one-quarter as he had failed to provide maintenance for 11 years. This decision reflects the application of the principle of justice, where neglecting duties impacts the portion of joint property post-divorce.

In this context, it can be concluded that the provisions for the division of joint property under Article 97 of the KHI are not absolute. The fulfillment of the husband and wife's obligations within the household becomes a crucial factor in determining the portion of joint property, with the principle of "for the sake of justice" serving as the foundation for the court's judgment in cases of joint property division.

Criminal Law Implications on the Sale of Joint Property Before the Agreement on Division in the Context of Protecting the Rights of the Parties Involved

In the context of Indonesian law, the sale of joint property before an agreement on division can lead to complex issues, particularly regarding the protection of the rights of the

parties involved. The sale of joint property without consent or agreement may be seen as a violation of the law, carrying potential criminal sanctions for the party responsible.

Civil law, as outlined in Articles 35 and 36 of Law No. 1 of 1974 on Marriage, establishes that property obtained during the marriage is joint property, and any actions involving such property must be conducted with the consent of both parties. The sale of joint property without agreement can lead to disputes resulting in violations of the rights of the dissenting party.

However, the criminal aspect becomes more prominent if the sale involves elements of fraud, embezzlement, or other fraudulent acts. Articles 372 and 378 of the Criminal Code (KUHP), for instance, regulate embezzlement and fraud. If a husband or wife sells joint property without the knowledge or consent of the other spouse, and this act is done with the intent to harm the other party, it could be categorized as embezzlement or fraud.

The protection of the rights of the parties involved in the sale of joint property before the division agreement is crucial to prevent the abuse of rights. The aggrieved party may file a civil suit or report the act to law enforcement authorities. In this case, the court plays a significant role in determining whether the sale has violated the law and assessing the extent of the harm incurred by the aggrieved party.

In some court decisions, for example, it has been ruled that if one party intentionally sells joint property without consent, the act may be deemed a violation of rights, leading to obligations for compensation or relevant criminal sanctions. Moreover, legal protection for the party not involved in the sale includes the right to compensation or equitable division of the joint property.

In practice, there are cases where one party intentionally sells joint property before an agreement on division. For example, in a case handled by the Supreme Court, one party committed embezzlement by selling joint assets and diverting the proceeds unilaterally. The court's decision could result in criminal sanctions and the obligation to return the assets.

The criminal law implications on the sale of joint property before the division agreement also highlight the importance of oversight in the management of joint assets. The court plays a role in ensuring that the division is carried out fairly and in accordance with the principles of justice, as outlined in Article 97 of the KHI and relevant rulings.

The sale of joint property before the division agreement can potentially lead to serious legal violations, resulting in both criminal and civil penalties. This underscores the importance of protecting the rights of the parties involved to prevent abuse or harmful acts. Criminal law regulations, as specified in the Criminal Code regarding embezzlement and fraud, serve to prevent unauthorized actions that harm others. The court is essential in assessing violations and applying appropriate sanctions. Therefore, understanding the rights and obligations related to the management of joint property is necessary to protect all parties' rights and ensure that the division process is conducted fairly and in accordance with the principles of justice.

CONCLUSION

The enforcement of law concerning the embezzlement of joint property after divorce in Indonesia faces significant challenges, particularly related to legal uncertainty and injustices in practice. Although the law, in theory, aims to protect the rights of all parties, in reality, the application of criminal law in cases of embezzlement of joint property is often inconsistent, which disadvantages the weaker party, especially women. This study highlights the importance of bridging the gap between legal principles and real-world practices by reforming the legal system to strengthen protection for rights related to joint property, including before an agreement on division is reached. Although marriage law and Islamic law provide a basis for the division of shared property, the roles and obligations of husband and wife within the household also play a significant part in ensuring fairness in that division. Therefore, clearer

and more inclusive law enforcement is essential to ensure that the division of joint property takes place fairly and in line with the principles of justice.

REFERENCE

- Ariani, I., Selma, M. Y., & Suatmiati, S. (2022). Penegakan hukum terhadap pelaku tindak pidana penggelapan harta gono gini setelah perceraian (Studi Kasus No. 2230k/Pdt/2019 di Pengadilan Tinggi Bangka Belitung). *Doctrinal*, 7(1), 75.
- Alfaruqi, D. (2019). Pembagian harta bersama menurut kompilasi hukum Islam dan implementasinya di Pengadilan Agama Jakarta Selatan perspektif keadilan jender (Master's thesis, Fakultas Syariah dan Hukum Universitas Islam Negeri (UIN) Syarif Hidayatullah Jakarta).
- Benuf, K., & Azhar, M. (2020). Metodologi penelitian hukum sebagai instrumen mengurai permasalahan hukum kontemporer. *Gema Keadilan*, 7(1), 20-33.
- Elviyanti, R., & Sitorus, I. R. (2022). Sengketa harta bersama istri turut mencari nafkah (Analisis Putusan Pengadilan Agama Bengkulu Nomor: 642/PDT. G/2020/PA. BN). *Qiyas: Jurnal Hukum Islam dan Peradilan*, 60.
- Fadhli, M. R. (2023). Penyelesaian sengketa perceraian melalui pengadilan agama dan pengadilan negeri. *Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora*, 143.
- Limbong, P. H., Siregar, S. A., & Yasid, M. (2023). Pengaturan hukum dalam pembagian harta bersama perkawinan menurut hukum perdata yang berlaku saat ini di Indonesia. *Jurnal Retentum*, 178.
- Rochaeti, E. (2015). Analisis yuridis tentang harta bersama (gono gini) dalam perkawinan menurut pandangan hukum Islam dan hukum positif. *Jurnal Wawasan Yuridika*, 28(1), 650.
- Sugiswati, B. (2014). Konsepsi harta bersama dari perspektif hukum Islam, Kitab Undang-Undang Hukum Perdata dan Hukum Adat. *Perspektif*, 19(3), 201-211.
- Suganda, R. (2022). Metode pendekatan yuridis dalam memahami sistem penyelesaian sengketa ekonomi syariah. *Jurnal Ilmiah Ekonomi Islam*, 8(3), 2859-2866.
- Kompilasi Hukum Islam, Peraturan Presiden No. 1 Tahun 1991.
- Kitab Undang-Undang Hukum Perdata (KUHPperdata).
- Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.