

Legal Review of Peace Agreements on the Division of Joint Property in Marriage (Civil Law and Islamic Law Perspectives)

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Abstract. This study analyzes the legality of amicable settlement (dading) in the division of joint marital property *in natura* after execution seizure, viewed from civil law and Islamic law. The objective is to determine its legal validity, implications, and conformity with the principle of substantive justice. Using a normative juridical method with statutory, conceptual, and case approaches, the study examines the Civil Code, HIR, KHI, and court decisions such as Supreme Court Decision No. 732 K/Ag/2021. Findings show that post-seizure settlements are valid and binding, fulfilling contract elements under Article 1320 of the Civil Code and consistent with the *ṣulḥ* principle in Islamic law, emphasizing *tarādī* (consent) and *al-'adl* (justice). The integration of both systems demonstrates a balance between legal certainty and public welfare, reinforcing restorative justice in family law disputes.

Keywords: Amicable; Civil; Islamic; Property.

1. Introduction

After divorce, the division of joint property, also known as "gono-gini property," is one of the main issues in Indonesian family law that often causes prolonged conflict between spouses. Differences of opinion regarding the status of assets, the method of distribution, and the proportion of each party's rights after marriage usually lead to disputes. Most studies show that family civil cases are most common in religious courts, especially after divorces that are not accompanied by an amicable agreement between the parties (Hanifah, 2019).

Normatively, Indonesian positive law stipulates that property owned by a couple during marriage is, in principle, joint property, and after divorce, the property is divided equally between the couple. According to the Civil Code and the Compilation of Islamic Law (KHI), a widow or widower who is divorced is entitled to half of the joint property, unless there is another agreement. Conversely, this regulation emphasizes the abstract aspect of distribution and does not provide clear guidance on the distribution of joint property in kind, i.e., the distribution of property in the form of physical objects rather than through sale and

distribution of proceeds (Subekti 2002, Mertokusumo 2013).

The division of joint property in judicial practice often raises legal issues in terms of fairness, legal certainty, and the effectiveness of the implementation of decisions. Because it relates to the economic value of the object, its usefulness, and the interests of the parties in the property, the division of assets often causes ongoing disputes (Sari, 2018). As a result, courts usually request division through auction and proportional distribution of profits, especially in cases where the parties cannot reach an agreement.

Basically, Indonesian civil procedural law strongly supports the settlement of disputes through reconciliation, or dading. Because it emphasizes the principles of deliberation, legal certainty, and speed of the judicial process, reconciliation is considered the most ideal method of dispute resolution. In fact, reconciliation agreements have the same legal force as court decisions (Muhammad Rizal, 2020). In practice, judges are required to maintain peace from the beginning of the trial until before the case is decided.

However, peace efforts are usually made before the execution process. When a case reaches the stage of seizure for execution, there is no possibility for peace because the dispute has reached the stage of enforcement of the decision. Therefore, the occurrence of a peace agreement after the determination of seizure for execution is a rare legal phenomenon and has not been widely studied in legal literature (Rizal, 2020).

In the case of Dewi Firdauz binti H. Abdurrahim A.S. against Dr. R. Agus Sunaryo bin Soedarmo, which was decided through the Semarang Religious Court Decision Number 3214/Pdt.G/2019/PA.Smg, the Semarang High Religious Court Decision Number 348/Pdt.G/2020/PTA. Smg, and the Supreme Court Decision No. 732 K/Ag/2021, this phenomenon was proven. In this case, the parties eventually reached an agreement resulting in the lifting of the attachment and the natural division of the joint property. This occurred despite the attachment having been imposed on the joint property. This situation demonstrates the flexibility of the judicial system, particularly in accommodating the parties' wishes even after the case had entered the execution phase.

From an Islamic legal perspective, the principle of peace (*şulh*) is highly recommended for resolving conflicts within the family. *Şulh* is considered a means of maintaining social harmony and achieving substantive justice, including disputes over joint property between spouses (Al-Jaziri 1990, Hanifah 2019). In addition, Islamic Constitutional Law allows for the division of joint property based on the agreement of the parties as long as it does not conflict with the principles of justice and the provisions of sharia.

Based on the above description, this study aims to examine the legal aspects of peace agreements in the distribution of joint property in kind, particularly those that occur after seizure of assets, from the perspective of civil law and Islamic law. It is hoped that this study will contribute academically to enriching research on peace in the execution stage and provide practical contributions to judicial officials in handling cases of the distribution of joint

property.

2. Research Methods

The purpose of this study is to examine and analyze legal provisions and judicial practices related to settlement agreements in the division of joint property in kind between husband and wife. This study uses a normative approach because the focus of the study is to analyze legal norms, legal principles, and judicial considerations as reflected in laws, court decisions, and official court documents.

This study uses three approaches: the statute approach, the conceptual approach, and the case approach. The statute approach is used to study the regulation of joint property distribution and settlement in civil law and Islamic law, particularly the Civil Code, the Herzien Indonesisch Reglement, and the Compilation of Islamic Law. The conceptual approach is used to study the division of joint property and reconciliation in Islamic law. However, the case approach is used to evaluate how these principles and standards are applied in judicial practice.

The primary and secondary legal materials used in this study are relevant laws and regulations and court decisions directly related to the subject of the study, such as the Semarang Religious Court Decision Number 3214/Pdt.G/2019/PA.Smg, the Semarang High Religious Court Decision Number 348/Pdt.G/2020/PTA. Smg, and Supreme Court Decision Number 732 K/Ag/2021.

The method of collecting legal materials was a literature study of legal materials that were inventoried, researched, and classified according to the subject of the research. The analysis of legal materials was conducted qualitatively using descriptive-analytical analysis techniques, which explained the applicable legal provisions and linked them to the legal facts found in court decisions and seizure reports. The results of the analysis were then systematically compiled to reach conclusions about the status and validity of the settlement agreement in the division of joint property in kind according to civil and Islamic law.

3. Results and Discussion

3.1. Concept and Characteristics of the Division of Joint Property in Kind

In the Indonesian civil law system, a settlement agreement (dading) is an agreement made by the parties to end an ongoing dispute or prevent new disputes from arising in the future. This provision is explicitly regulated in Articles 1851-1855 of the Civil Code (KUHPerdata), which states that a settlement is a legally binding agreement and has the same legal force as a final court decision (res judicata).

According to (Subekti, 2002), a settlement is a final agreement because the parties voluntarily end the dispute without going through further legal proceedings. (Harahap, 2005) emphasizes that a settlement is a manifestation of the *pacta sunt servanda* principle, whereby every

legally valid agreement is binding on the parties who made it. Thus, a settlement agreement has binding force not only morally but also legally, equivalent to a judge's decision.

Furthermore, Article 130 of the Herziene Indonesisch Reglement (HIR) requires judges to first seek peace between the parties before the main examination of the case begins. This confirms that in the Indonesian legal system, peaceful dispute resolution is seen as the primary and ideal mechanism, while litigation is a last resort if peace cannot be achieved.

In practice, settlement agreements are often used in cases involving disputes over joint property after divorce. However, the phenomenon examined in this study has its own uniqueness: the settlement agreement was reached after the court ordered the seizure of joint property. This condition differs from common practice, where settlements are usually made before the execution stage as part of the mediation process.

In the case that is the focus of this study, as reflected in Supreme Court Decision Number 732 K/Ag/2021, the parties chose to settle after the seizure was requested. Based on an examination of court documents (Semarang Religious Court Decision No. 3214/Pdt.G/2019, Semarang High Religious Court Decision No. 348/Pdt.G/2020, and the Seizure Appointment Report), the settlement resulted in the division of joint property in kind, meaning that the division was carried out in physical form without first selling or converting the assets.

This type of post-seizure settlement has significant legal implications. First, enforcement is no longer relevant because the parties have reached a valid and final agreement. Second, the court may issue a Seizure Appointment Report as a legal consequence of the termination of enforcement. This is in line with the provisions of Article 195 paragraph (6) of the HIR, which allows for the termination of execution if there are valid legal reasons, in this case, the existence of a binding peace agreement between the two parties.

This practice shows that a settlement agreement has a substitute function for the execution of a decision. It replaces the authority of formal execution with a more efficient and equitable mechanism of voluntary agreement. In the context of legal principles, this phenomenon illustrates the application of substantive justice (materiële gerechtigheid) values rather than formal procedural justice.

Philosophically, peace agreements reflect the principle of deliberation to reach consensus as mandated in Article 2 of Law Number 48 of 2009 concerning Judicial Authority, which emphasizes that dispute resolution must be pursued in a fair and peaceful manner that prioritizes social harmony. A study (Rahmat & Abdullah, 2023) shows that the principle of substantive justice in the division of joint property is not only the basis of Islamic legal ethics but also a normative foundation in Indonesian positive law. Thus, dispute resolution through peaceful agreement actually implements the value of al-'adl (justice) which is recognized in both the sharia and national legal contexts. In the context of family cases, this is very important because disputes over joint property often stem from emotional ties that still exist between the parties.

Legally, peaceful agreements also fulfill the elements of a valid agreement as stipulated in Article 1320 of the Civil Code, namely agreement between the parties, competence, a specific matter, and a lawful cause. With the fulfillment of these four elements, the peace agreement becomes legally valid and binding, and can become a new legal basis that replaces the original verdict.

Thus, a settlement agreement in the division of joint property is not only an instrument for dispute resolution, but also a form of preventive and corrective legal protection. It prevents further conflict after divorce and provides space for the parties to negotiate their rights and obligations on an equal footing. In terms of effectiveness, the peace agreement also strengthens the role of the religious court as an institution that not only enforces positive law but also values social and spiritual justice.

3.2. Legal Analysis According to Civil Law

In the Indonesian civil law system, joint property (*gemeenschap van goederen*) is a direct legal consequence of marriage without a prenuptial agreement (property separation agreement). Pradoto (2015) reinforces this by emphasizing that both civil law and Islamic law recognize joint property as the result of the mixing of assets since marriage, with the only difference being in the normative basis and terminology. Based on Article 119 of the Civil Code, from the moment the marriage is solemnized, according to the law, there is a pooling of assets between husband and wife. All assets acquired during the marriage, whether in the name of the husband or wife, are considered joint property unless otherwise specified in a valid marriage agreement.

This view is confirmed by Subekti (2002), who states that "all property acquired during marriage is, in principle, joint property between husband and wife." This idea shows that civil law treats marriage as a community of property (*communio bonorum*) in which each party has equal rights to the fruits of their labor during the marriage.

In this context, when a marriage ends in divorce, the joint property becomes an object that must be divided. However, civil law does not explicitly regulate the form of division, whether in *natura* (physical) or *non-natura* (sold and divided). Therefore, the form of *natura* division was born as a legal practice based on the principles of freedom of contract and proportional justice.

Division in kind means the division of property in its physical form as it is, without first altering or selling it. Division in kind can be carried out as long as the objects being divided can still be used proportionally by each party without reducing their utility and economic value (Mertokusumo, 2013). For example, a plot of land is divided in two with fair boundary adjustments, or a house is divided with an equal distribution of utility value. In the context of civil law, *natura* division is based on the principles of *gerechtigheid* (fairness) and *billijkheid* (equity). These principles emphasize that division should not only be oriented towards the nominal value of the assets, but also towards aspects of benefit and emotional interest.

The practice of *natura division* can be seen in Supreme Court Decision Number 190/Pdt.G/2020/PA.Kds, in which the court decided to divide joint property in the form of land and buildings without selling them, but rather dividing the area and its use proportionally. This approach demonstrates the flexibility of civil law in providing substantive justice for the disputing parties.

In the case that is the subject of this study (Supreme Court Decision No. 732 K/Ag/2021), a settlement agreement was reached after an execution order was issued, resulting in the division of joint property in kind. This confirms that civil law recognizes the validity of settlements even after a decision has been issued, as long as they do not conflict with the law or public morality.

One of the main issues in this study is whether a settlement agreement reached after an execution order can stop the execution process that has been ordered by the court. Based on Article 130 of the HIR and Article 1851 of the Civil Code, a valid settlement has the same legal force as a final and binding court decision (*kracht van gewijsde*). Therefore, if the parties have reached a settlement agreement, the previous court decision becomes irrelevant for execution.

Harahap (2005) states that a settlement contains its own *executoriale kracht*, meaning that it can be implemented directly without going through a formal execution process. If the settlement is made before a judge and recorded in a settlement deed, the deed has the same executory power as a court decision. In this context, when a settlement is reached after seizure, the court is obliged to record and ratify the agreement and issue a Seizure Release Report. This document serves as administrative evidence that the execution seizure has been legally nullified because the object of the dispute is no longer in dispute. This practice is in line with the principle of procedural economy and prevents unnecessary execution.

Post-seizure peace agreements demonstrate how civil law can function in a restorative and adaptive manner to meet the needs of society. The power of peace agreements to halt enforcement can also be seen in the practice of religious courts, which facilitate peace even after seizure has been imposed (Rais, 2018). This demonstrates the flexibility of civil law in providing space for the parties to reach an amicable solution without having to go through rigid enforcement of the verdict. In many family cases, settlement through peace better reflects social justice than forced execution. From a legal protection perspective, peace provides legal certainty (*rechtkerheid*) because it is set out in an official deed recognized by the court. On the other hand, settlement also embodies the principle of justice (*gerechtigheid*) because it allows the parties to determine for themselves the form of distribution that is considered fair.

Thus, amicable agreements on the division of joint property in kind demonstrate the synchronization between the principles of freedom of contract, justice, and legal certainty.

This also confirms that Indonesian civil law not only enforces formal norms but also focuses on fair, humane, and contextual resolutions to the social dynamics of the family.

3.3. Legal Analysis According to Islamic Law

In the perspective of Islamic law, *şulh* (الصلح) is a peace agreement that aims to end disputes and prevent hostility between conflicting parties. The practice of *şulh* in modern religious courts is an adaptation of classical fiqh principles that place peace as the primary instrument for resolving family disputes (Maula, 2023). The term comes from the word *şalaha*, which means to repair or reconcile. According to (Al-Jazīrī, 1990) in Al-Fiqh 'ala al-Madzahib al-Arba'ah, *şulh* is a peace agreement between two disputing parties to end the dispute through a mutually agreed voluntary agreement without coercion.

The legal basis for *şulh* can be found in the Qur'an, Surah Al-Hujurat (49):10, which states: "The believers are but brothers, so make peace between your brothers."

This verse is the moral foundation for every peace effort, both in the public and private spheres, including in family matters. In addition, Surah An-Nisa (4):128 also emphasizes that if a wife fears a dispute, they can reconcile amicably, because peace is more important.

In the context of Islamic law, *şulh* is recognized as a means of non-litigious dispute resolution that has binding legal force if it meets the conditions of a valid contract, namely *tarādī* (the consent of both parties), *al-'adl* (justice), a clear object (*ma'lūm*), and does not contradict the Sharia. Thus, *şulh* can be functionally equated with *dading* in civil law, as both are forms of binding and final voluntary agreements.

Although classical fiqh does not explicitly recognize the term joint property, this concept can be analogized with *musyarakah* or *syirkah*, which is joint ownership arising from the contribution of two parties in acquiring property. According to Al-Jaziri, *musyarakah* is a form of cooperation in which two or more people pool their capital or labor to obtain joint profits, and each party is entitled to a share according to their contribution.

In Indonesian Islamic family law, this concept is adopted through the Compilation of Islamic Law (KHI), specifically Articles 85–97, which state that: "Property acquired during marriage becomes joint property, regardless of who acquired it or in whose name it is registered."

Furthermore, Article 97 of the KHI emphasizes that in the event of divorce, each party is entitled to half of the joint property, unless otherwise agreed upon. This provision shows that Islamic law allows for deliberation and agreement (*şulh*) as the basis for fair distribution.

Thus, if the husband and wife agree to divide the property in kind, the agreement is not only legally valid but also has *shar'i* legitimacy. The principle of justice upheld in Islam does not always mean equal distribution, but rather proportional distribution that brings benefit.

The principle of distribution in kind has strong relevance to the concept of distributive justice (al-'adl al-tawzī'i) in Islamic law. This principle emphasizes that justice is not always measured by mathematical equality, but by the balance of benefits, welfare, and the needs of each party. As explained by Jamil, Nikmah, & Rahman (2025) in their study on Distributive Justice in the Division of Joint Property after Divorce, a fair division does not have to be equal, but rather takes into account the contributions and needs of the parties involved. This principle is in line with *maqāṣid al-syārī'ah*, which places *ḥifẓ al-māl* (protection of property) and *ḥifẓ al-nafs* (protection of personal welfare) as the main objectives of the law.

A peaceful agreement reached after seizure and execution has a strong basis in the principle of *ṣulh*, as long as it does not violate Sharia provisions. In Islamic law, disputes can be settled at any time as long as there is no unjust action against either party. In fact, the scholars of the four schools of thought (Hanafi, Maliki, Shafi'i, Hanbali) agree that *ṣulh* is valid even if the case is before a judge, as long as no execution or implementation of the verdict has been carried out.

The case analyzed (Supreme Court Decision No. 732 K/Ag/2021) shows that the parties reached a settlement after the execution was requested. This illustrates the application of the principles of *tarāḍī* (mutual consent) and *raf' al-'adāwah* (elimination of hostility), which are the main objectives of *ṣulh*. With this settlement, the court issued a Seizure Removal Report, which in Islamic law can be seen as a sign of the achievement of *ishlāh* (reconciliation) and the end of hostility legally and morally.

From a restorative justice perspective, post-seizure *ṣulh* demonstrates the flexibility of Islamic law in prioritizing peace over legal formalism. This shows that Islamic law is not rigid in its procedures, but rather emphasizes outcomes that bring social welfare and harmony. In this context, peace becomes a tangible manifestation of the application of the principle of al-'adl wa al-iḥsān justice and kindness in the resolution of family disputes.

3.4 Integration of Civil Law and Islamic Law

Both civil law and Islamic law have a common ground in placing agreements as a source of binding legal force. In civil law, the principle of *pacta sunt servanda* as contained in Article 1338 paragraph (1) of the Civil Code states that every agreement made legally is valid as a law for the parties who made it. This principle recognizes the autonomy of the parties to determine the content and legal consequences of an agreement.

Meanwhile, in Islamic law, the equivalent principle is *tarāḍī*, which is the mutual consent of the parties in a transaction (QS. An-Nisa: 29). Every contract is considered valid if it is based on consent, fairness, and does not contain elements of coercion. Therefore, *ṣulh* in Islamic law and *dading* in civil law have equivalent substantive meanings: both arise from the free will to end disputes peacefully and are legally binding.

This equivalence shows that both legal systems place deliberation and mutual agreement as the basis for the validity of dispute resolution, not state coercion. This means that even though their sources of law are different, positive and Sharia, both have similar philosophical values, namely agreement-based justice.

The phenomenon of post-seizure peace in Supreme Court Decision Number 732 K/Ag/2021 shows how the two legal systems operate harmoniously in judicial practice. In civil procedure law, a settlement reached after seizure remains valid because the law does not prohibit the withdrawal of an execution request on the basis of agreement. Meanwhile, in Islamic law, *şulh* is still permitted as long as there has been no implementation of the decision that causes injustice to either party. Thus, a post-seizure settlement agreement can be understood as the embodiment of the integration between the principles of civil law (efficiency and finality of agreements) and the principles of Islamic law (justice and public interest). The lifting of the seizure by the religious court serves as administrative evidence of the achievement of a legally valid reconciliation (*ishlāh*) under both positive and Sharia law.

In addition, this practice is in line with Article 130 of the HIR and Article 31 of Supreme Court Regulation (Perma) Number 1 of 2016 concerning Mediation Procedures in Court, which emphasizes that reconciliation can be carried out at any stage of the case examination. This means that the integration between dading and *şulh* has been legally legitimized in the national legal system through religious court regulations. Both legal systems also share a commonality in placing substantive justice above formal justice. In civil law, progressive legal theory emphasizes that dispute resolution should prioritize social justice and expediency (doelmatigheid), not merely procedural compliance. This is in line with Mertokusumo's (2013) view that the law serves to realize justice and certainty in society.

In Islamic law, the principle of *al-'adl wa al-ihsān* requires that dispute resolution results in benefit and eliminates hostility (*raf' al-'adāwah*). Justice does not always have a mathematical meaning, but rather moral and social justice that considers the contributions, needs, and benefits for each party.

The division of joint property in kind is a concrete example of the application of this substantive value of justice. By not selling or executing the property, the parties obtain direct ownership that has personal and strategic value, in accordance with the principles of *hifz al-māl* (protection of property) and *hifz al-nafs* (protection of the welfare of the family).

4. Conclusion

Based on the findings and discussions, it can be concluded that the division of joint property in kind between spouses after divorce is basically possible under the Indonesian legal system as long as it is based on the agreement of both parties and does not conflict with laws and regulations. Indonesian civil law does not prohibit this division in kind, and the parties are given joint property through the principle of freedom of contract and a peace mechanism known as dading. A peaceful agreement on the division of joint property has legal and binding

status, including when peace is achieved after the case has entered the stage of seizure and execution. A settlement agreement between the parties can be the legal basis for the lifting of seizure, according to decisions made by the Semarang Religious Court, the Semarang High Religious Court, and the Supreme Court. This shows that the main purpose of execution is not only to enforce the decision but also to provide substantive justice to each party. From an Islamic law perspective, a settlement agreement in the division of joint property is naturally in line with the principle of *ṣulḥ*, which emphasizes willingness, justice, and benefit. The removal of seizure as a result of a settlement shows that Islamic law and positive law work together in religious court practice, especially in the settlement of family disputes. Therefore, peace after seizure of assets can be considered a legal practice that is valid, fair, and in line with the advancing needs of society. This study shows that the practice of peace after seizure of assets enables religious courts to better handle cases of joint property distribution. Even at the execution stage, judges and judicial officials are expected to be more flexible in accepting peace agreements between the parties, as long as they do not conflict with the law and principles of justice. These findings can also be used as an academic reference for the development of family law research, particularly in relation to the position of peace and seizure in the distribution of joint property in kind..

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