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Assets Position in Mixed Marriage Reviewed from Law No. 16 of 2019

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Abstract:

The purpose of this study is to determine the position of marital property in mixed marriages in terms of the provisions of the Marriage Law NO. 16 of 2019, and what are the provisions of the marital property of a foreign citizen who marries in Indonesia with an Indonesian citizen. The results of the study indicate that property acquired during marriage becomes joint property, but the law does not distinguish what kinds of property can be qualified as joint property. The provisions on assets in mixed marriages with different nationalities, namely between a foreign citizen and an Indonesian citizen, are regulated according to the law in force in Indonesia. Likewise, regarding joint assets obtained by husband and wife in marriages of different nationalities.

Keywords: Property position, mixed marriage

1. Introduction and Background

It is nature that all normal human beings have a desire to live together in a household by means of marriage. By holding this marriage, there will be a family who is really need of material or property.

'In public society there is a general judgment that people with families have a more respected position than those who are not married.' (Mardani, 2016:25)

The view of marriage in terms of religion is a very important aspect. 'In religion, marriage is considered a sacred institution' (Mardani, 2016: 25). The marriage ceremony is a sacred ceremony, the bride and groom are made as husband and wife or ask each other for their life partners using the name of Allah, as contained in QS. An-Nisaa.

Marriage brings legal consequences to assets, in the juridical sense the form of household assets is determined, if the marriage will break up (due to divorce or death) and what are the consequences in the relationship between the household and other parties.

In today's world of independence, differences between race, ethnicity, region or religion are no longer desirable. In the colonial era, the Dutch government deliberately made differences on the basis of nationality, ethnicity, place of residence, people's group and religion. Therefore at that time it was known as the Law between Places, Laws between Regions, Laws between Groups, Laws between Religions, all of which were included in the Laws between Laws and Orders. The issue of mixed marriage property cannot be separated from talking about the marriage itself.

According to Law No. 16 of 2019 concerning Marriage, Article 57 states that 'mixed marriage is a marriage between two people who in Indonesia are subject to different laws because of the difference in Indonesian citizenship, one party is a foreign national and the other is an Indonesian citizen.'

In this case, the author wants to limit himself to only reviewing assets in mixed marriages based on the Marriage Law No. 16 of 2019. If you look at Article 59 paragraph 2 of Law No. 16 of 2019 that mixed marriages carried out in Indonesia are carried out according to the marriage law this.

Thus, from the sound of the article, a handle on the regulation of mixed marriage assets will be obtained, namely based on this law.

In general, the notion of property is anything valuable that is owned by someone who is also called wealth, thus thinking will be directed to something that is material or material in nature. Also this property is immaterial, for example self-esteem or honor, descent and so on.

'Wealth in marriage or syirkah is property obtained either individually or with husband and wife during the marriage bond and hereinafter referred to as joint property, without questioning whether it is registered in the name of anyone.' (Mardani, 2016:122)

In Law No. 16 of 2019 specifically the list of marital property is not regulated even though the law has included Chapter VII regarding property in marriage which only consists of 3 (three) articles. However, even this provision can be treated effectively because the provisions are material in nature, the enactment of these provisions does not solely depend on the provisions stipulated in Government Regulation no. 9 of 1975 concerning the Implementation of Law no. 1 of 1974, which has subsequently been amended by Law No. 16 of 2019 concerning marriage.

Based on the description and information on the background, the author chose the title of this research regarding the provisions of property in mixed marriages that often occur in society.

In accordance with the issue above, there are several problems arise, as follows:

- How is the position of marital property in mixed marriages in terms of Law No. 16 of 2019?
- What are the legal provisions regarding the marital property of a foreign citizen who marries in Indonesia with an Indonesian citizen?

2. Marriage According to Law No. 16 Year 2019

In Article 1 of Law No. 16 of 2019 it is stated that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on God Almighty.

The contents of Article 1 consist of (1) the definition of marriage (2) the purpose of marriage (3) the basis of marriage. The definition of marriage compiled in Article 1 is the result of the views of the Indonesian people whose majority of the population is religious. Marriage is understood not only as a physical relationship (physical), but is a physical and spiritual bond. The formulation of the definition of marriage in the marriage law is caused by the view of the people who view that marriage is a sacred act and an inseparable part of the implementation of religious teachings. (Mardani, 2016: 26)

According to the compilation of Islamic law, marriage is 'a very strong contract or *mitsaaqan ghlidhan* to obey Allah's commands and carry them out is worship.' Based on the above definition, what is meant by marriage is: 'a marriage contract. The marriage contract is a series of consents pronounced by the guardian and *kabul* which is said by the groom or his representative witnessed by two witnesses. (Mardani, 2016: 26)

Regarding the conditions of marriage, in this case it is something that must be fulfilled by the parties in a marriage to be carried out, if these conditions are not fulfilled or not fulfilled then the validity of the marriage can occur or even the marriage can be canceled or null and void by law.

This is stated explicitly in Article 22 of Law No. 16 of 2019. Regarding the legal requirements for a marriage, there are several things that must be fulfilled by the parties who will carry out the marriage. These requirements are divided into 2 (two) parts, namely material requirements and formal requirements. The material requirements here are an inherent requirement of the parties to the marriage, and this requirement is absolute and must be fulfilled by these parties. These material requirements are listed in Articles 6 to 11, while the formal requirements are regarding the implementation of a marriage which involves the procedures or procedures for holding a marriage.

The validity of marriage according to the law is regulated in Article 2 paragraph (1) which states, 'Marriage is legal if it is carried out according to the law of each religion and belief'. So, a legal marriage according to national marriage law is a marriage carried out according to the rules of law that apply both in Islam, Christianity, Catholicism, Hinduism, Buddhism. The law of each religion referred to here is the law of one of the religions adopted by the bride and groom or their families.

The validity of marriage according to this law is based on the laws of religion and their respective beliefs, so that since the enactment of this law, the marriage ceremony according to religion determines whether the marriage is legal or not. This is an absolute requirement for a valid marriage.

'Marriage absolutely must be carried out according to the laws of each religion and belief. If it is not done in this way, then the marriage can be said to be invalid. The law of each religion is the basis for the validity of a marriage, this means that the implementation of marriage is only subject to one religious law. (Sirman Dahwal, 2016: 24)

Article 2 paragraph (2) becomes a benchmark for the validity of a marriage before the law, which confirms that, 'Every marriage can be recorded according to the applicable laws and regulations.' This means that a legal marriage is not enough to review its implementation based on religion alone, but also must meet the requirements of Article 2 paragraph (2) that marriages must be registered in an agency legally appointed by law.

From the provisions of Article 2 paragraph (1) it can be seen that a marriage is valid if it is carried out according to the law of his religion and belief. This means that, if a marriage has fulfilled the requirements and the pillars of marriage or an *Ijab Kabul* has been carried out (for Muslims) and the priest or Pastor (for Christians) has carried out a blessing or other ritual, then the marriage is valid, especially in terms of religion. and his beliefs.

Government Regulation No. 9 of 1975 concerning the implementation of the Marriage Law No. 1 of 1974, divides the institution of recording marriage according to the religion and belief of a person who will carry out a marriage into two (2) which are regulated in Article 2 paragraph (1) of PP No. 9 of 1975, which states, 'The registration of marriages of those who carry out marriages according to Islamic religious law is carried out by registrar employees as referred to in Law no. 32 of 1954 concerning Registration of Marriage, Divorce and Referral for adherents of the Islamic religion, and the Civil Registry office or agency/position that assists adherents of religions and beliefs other than Islam.

This marriage registration is stated in the form of an authentic deed referring to the meaning of an authentic deed contained in Article 1868 of the Civil Code which states, 'An authentic deed is a deed in a form determined by and or before public officials in power for that at the place where the deed was made.'

Article 3 paragraph (1) of Law No. 16 of 2019 confirms 'Basically in a marriage a man may only have one wife. A woman can only have one husband. This article emphasizes that there is a principle of monogamy in national marriages, namely a principle that requires that at the same time a man can only have one wife and conversely a wife can only have a husband.

3. Mixed Marriage

The definition of mixed marriage in the Mixed Marriage Ordinance 1898 No. 158 in Article 1 it is stated, 'What is called mixed marriage is marriage between people in Indonesia who are subject to different laws.

Article 1 of *Regeling op de Gemengde Huwelijken* (hereinafter referred to as GHR states that what is called mixed marriage is marriage between people who in Indonesia are subject to different laws.

From the two laws and regulations, namely the mixed marriage ordinance stb 1898 no. 158 and the Marriage Law both regulate mixed marriages. However, in terms of the understanding of mixed marriages there are differences between the two, where in the Mixed Marriage Ordinance stb 1898 No. 158, it is regulated about marriages that do not differentiate between religion, ethnicity, nation or descent, while in Law No. 16 of 2019 concerning mixed marriages only mention only differences in nationality, both in Article 57 and in other articles.

Then, if it is understood Article 66 of Law no. 16 of 2019 which states that: 'for marriage and everything related to marriage based on this law, with the enactment of this law the provisions stipulated in the Civil Code, the Indonesian Christian Marriage Ordinance, mixed marriage regulations and regulations -Other regulations governing marriage to the extent that it has been regulated in this law are declared null and void.

In the opinion of most jurists and jurisprudence, what is meant by mixed marriage is the marriage of a man and a woman, each of whom is generally subject to different laws. From the description above, it is known that the legal situation of Indonesian marriage is of various natures for each different population group, this situation has created legal problems between groups in the field of marriage which will be carried out on a marriage of two people from different population groups and the legal system. different.

Article 7 of the Mixed Marriage Ordinance 1898 No. 158 also stipulates that 'differences in religion, ethnicity, nation or descent are not at all an obstacle to marriage.' This provision opens the widest possibility for holding marriages of different religions, ethnicities, nations and descendants.

In determining the name law that applies to people who carry out mixed marriages, the GHR further states that in the case of a woman engaging in mixed marriages, so long as the marriage has not been broken, she is subject to the laws that apply to her husband, both in the field of public law and civil law. . In other words, women who do mixed marriages change their status to follow the legal status of their husbands. So there is a legal bride, from her own law to be submissive and follow the law of her husband by going through a legal election.

Mixed marriage according to Stb.1898 No. 158 is to answer legal issues between groups in the field of marriage law through the marriage law.

3.1. Mixed Marriage before the Enactment of Law No. 1 of 1974

Prior to the enactment of Law No. 1. 1974 in Indonesia, various regulations regarding marriage were found, including:

- European Civil Registry Ordinance (stb 1849 No. 25)
- Civil registration ordinance for the Chinese group (stb. 1917 No. 136 yostb. 1919 no. 81)
- Civil Registry Ordinance for Indonesian Christians (stb. 1933 No. 75 yo stb.1936 No. 607)
- Civil registry ordinance for mixed marriages (stb.1904 No.279)

The regulations mentioned above are the implementation of marriage registration which is carried out based on the provisions of the Civil Code, namely Stb 1847 No. 23, Indonesian Christian Marriage Ordinance and mixed marriage regulations.

Article 1 of the GHR provides a definition of mixed marriage as follows: 'The marriage of Indonesians is under different laws'. The law referred to in this article is because it is caused by differences in citizenship, population, race, place of residence and religion.

Based on this difference, the division of mixed marriages is as follows:

- Mixed marriages between places (interlocal)
- Mixed marriages between groups (intergentiel)
- Mixed marriages between religions (interreligious)
- Mixed marriages between countries (international)

3.2. HOCI (*Huwelijk Ordonantie Christian Indonesia*)

In HOCI the notion of mixed marriage is not marriage of different nationalities but marriage of different religions. Article 72 paragraph (1) states: for marriages that have been carried out according to the provisions of the Ordonantie and regulations or the holding of civil registration registers for Christian Indonesians in Java and Madura, in Minahasa, Ambon (Stb. 1933 No. 75). This ordinance becomes effective if and immediately the bride becomes a Christian, with no exception whether the marriage in question has been held before and after the enactment of this ordinance except in cases where the husband is bound in the marriage of more than one wife.

This HOCI provision is a narrow rule specifically in mixed marriages, namely:

- The definition of mixed marriage in question is a mixed marriage between religions, where a person is Muslim.
- The area of application is also only in the areas of Java, Minahasa, Ambon and Saparua.

It can also be seen that this HOCI applies only to Bumi Putra who are Christians, whose objectives are: 'To protect against polygamy, and also to ensure legal certainty for Christians living in Java, Minahasa, Ambon and Saparua, both regarding the procedure for their marriage and in terms of terminating the marriage.' (Sunarjati Hartono, 1979: 113)

According to Article 52 Stb 1933 No. 74 states that: A marital divorce can only be decided by the state court for the following reasons:

- Adultery with a third person.
- One party leaves the other party on purpose.
- One of the parties during the marriage gets corporal punishment
- Persecution by one side of the husband and wife so that it is feared that it will be dangerous for the parties concerned.
- Disability or disease that occurs after the marriage takes place so that the marriage will not be useful.
- An irreparable dispute between husband and wife.

'The dissolution of a marriage that has been determined by the court or due to death will have legal consequences for property and heirs and so on. In resolving the legal consequences, it raises a question which law will be used. (Wirjono Prodjodikoro, 1983: 139)

To resolve these matters, it can be seen in Article 11 AB which states: 'As long as the Bumi Putra group does not submit to Civil Law and Commercial Law (Europe) then customary law is required (Goddienstingwetten, VolkkesInstellingen en Gebruiken) to what extent the customary law does not contrary to the principles of decency and justice which are recognized by the public.' (Wirjono Prodjodikoro, 1983: 19)

If one considers the contents of Article 11 AB and the specializations of HOCI which only apply to Bumi Putra, it is clear that in the event of a divorce, customary law will settle the case.

Based on the descriptions above, the marital property which consists of inherited property and joint property shall be governed by customary law.

If it is reviewed that the HOCI applies only to the regions of Java, Minahasa, Ambon and Saparua, then customary law is also needed.

This is the understanding of HOCI regarding marriage and its consequences, which when reviewed based on Article 66 of the marriage law, this HOCI is declared no longer valid because the provisions have been regulated.

3.3. *Mixed Marriage after Law No. 1 Year 1974*

Mixed marriage is a very broad interpretation, different from the definition of mixed marriage contained in Law No. 1 of 1974. Article 57 is a marriage between two people who in Indonesia are subject to different laws, due to differences in Indonesian citizenship.

The marriage bond between husband and wife according to the above article is clearly stated to be different from Indonesian citizenship and residing in Indonesia. So the elements that must exist according to this law are:

- The two prospective husbands or wives must be subject to different laws.
- The two prospective husbands or wives are of different nationalities.
- Held in Indonesia.

A marriage, whether it is between fellow Indonesian citizens or mixed marriage as referred to in Article 57, if it is not registered within 1 year after returning to Indonesia, is considered invalid.

The implementation of mixed marriages in Indonesia and outside the territory of Indonesia has different arrangements. In Article 59 paragraph (2) it is stated that 'Mixed marriages performed in Indonesia are carried out according to this law'.

By paying attention to the article above, it means that every mixed marriage must meet certain conditions, namely: material requirements and formal requirements.

The terms of marriage according to this law, the legislators do not make in detail, to see what is included in the material requirements and what is included in the formal requirements, for example the material requirements, namely: the conditions attached to the prospective husband or wife are regarding the age limit of the prospective husband or wife contained in Article 6 paragraph (2), Article 7 paragraph (1), Regarding the prohibition of marriage contained in Article 8 and Article 9 and Article 10. While the formal requirements are 'regarding the conditions that have to do with the methods or formalities of the intended continuity.

Regarding the procedure for its implementation, Article 12 is designated a separate statutory regulation, namely Government Regulation No. 9 of 1975 which states that: marriages take place after the tenth day after the announcement of the marriage by civil registration officials as referred to in Article 8 of this Government Regulation.

An implementation of a new marriage that can be realized must first be notified to the Civil Registry employee which is then announced until a limit of ten days, after which the marriage can be carried out.

Article 10 paragraph (2) of this Government Regulation states, 'the procedure for marriage is carried out according to each law, the law of religion and belief'. Taking into account the above article, in accordance with Article 2, it stipulates that a new marriage is valid if it is carried out according to the laws of each religion and/or belief.

Article 56 paragraph (1) reads as follows: 'a marriage which is conducted outside Indonesia, between two Indonesian citizens or an Indonesian citizen and a foreign national is legal if it is carried out according to the law applicable in the country where the marriage took place and for Indonesian citizens, does not violate the provisions of this law.

According to the article above, a principal understanding can be taken in marriages that take place outside Indonesia, both between Indonesian citizens and between foreign citizens, namely that the marriage is carried out according to the law where the marriage takes place and does not conflict with the provisions of the marriage law. .

If you pay attention to the provisions contained in this law, and compared to mixed marriages before the issuance of Law No. 1 of 1974, there are many differences. In a marriage, both national and international, it has the following consequences:

- Relationship between husband and wife
- Relationship with children
- Relationship to marital property.

The three effects of marriage above each other cannot be separated.

In a classic marriage, the wife is subject to the husband's law, both public and civil. In this connection, it can be seen that the nature of the wife is to follow her husband wherever he goes, while according to modern opinion, the system of following the husband is changed into a sect that wants freedom (emancipation) for the wife. This can be seen in Article 31 which determines, among others:

- The rights and position of the wife are in balance with the rights and position of the husband in domestic life and the association of living together in society.
- Each party has the right to give birth to legal actions
- The husband is the head of the family and the wife is a housewife.

In a family of different nationalities, there are good problems regarding their relationship to marital property.

4. Types of Wealth in Marriage

4.1. Inherited Wealth

It has been explained that in a marriage there will be various kinds of assets, one of which is related to innate property. The definition of innate property can be defined as property brought by a husband or wife into the household environment that they form.

Article 35 paragraph (2) of Law No. 16 of 2019 states that 'the innate property of each husband or wife is under the control of each party as long as the parties do not determine otherwise'. 'Legally, the existence of personal property in marriage is still recognized and to each party husband and wife still have full power over their respective personal assets.' (Fahmi Al Amruzi, 2014: 23)

This personal property can come from the assets of the business results of each party obtained before they get married or from inheritance or grants, both those obtained before the marriage takes place or after the marriage which is intended for each husband or wife individually. special.

The article means that if an agreement is not made, the property is managed by each party, but if an agreement is made in terms of the inherited property, the property can change its nature according to the sound of the agreement.

If you pay attention to the sound of Article 119 of the Civil Code which states that, at the time the marriage takes place by law, the property becomes one property (joint property between husband and wife), if other provisions are not made. This means that it has become something that is contradictory in nature. This is what the author describes for comparison. Likewise, if viewed from the Customary Law, the assets obtained before the marriage remain their respective property. So it seems that there are similarities between customary law and marriage law, this is natural because according to marriage law, the existence of a marriage does not directly combine the innate assets into one. Likewise according to Customary Law that:

'As a legal consequence of a marriage, there is no mixing of assets, meaning that with the marriage, the assets brought by the husband are not automatically and the property brought by the wife becomes one, but are separate from each other.' (Datuk Usman, 1980: 108)

It is known that although in Indonesia there has been a unification of marriage law in which there have also been provisions in outline regarding the management of assets, but this has not been regulated in detail so that regarding matters that have not been regulated, the regulation is still considered valid. This is in accordance with the marriage law which means as follows, 'for marriage and everything related to it is regulated according to this law, then the provisions contained in other marriage laws are declared invalid'.

This innate property if it is associated with Islamic law, where according to Islamic law each husband's or wife's wealth is separate, the property of each at the time the marriage begins remains the property of each. Likewise, all the goods obtained during the marriage are not mixed but separated from each other, meaning that the property of the husband, the wife has no right and vice versa or in other words that the husband does not use the wife's belongings and vice versa. without the consent of the parties. This permission does not need to be expressly but can be tacit.

Of the three regulatory systems regarding inherited assets, it turns out that Islamic Law is the most clearly regulated system of regulation according to Law No. 16 of 2019

According to Islamic law, each husband and wife have their own wealth, both the items they brought with them at the time of the marriage and the items they acquired during the marriage.

It also makes it easier to figure out who has to manage and who has the power to sell the goods. Provisions in Islamic law make it easier for a woman who is married to be free to carry out all legal actions regarding her belongings. As regulated in the BW, that a wife can only carry out legal actions legally if or is authorized by her husband. Article 108 paragraph (a) of the Civil Code which states that 'a wife may marry outside the property union or have separated in that case, but she is not allowed to donate goods or change her hands or obtain them free of charge or at a burden, but with the assistance or with the written permission of her husband'. If it is connected with the Supreme Court Circular (SEMA) No.

3/1963 which states that a woman who has a husband can act freely in carrying out legal actions and is allowed to appear before the court without the permission of her husband.

In the article of the Civil Code above, it is stated that the wife does not have freedom by herself, but with written permission or the assistance of her husband, both in terms of donating an item, transferring it, obtaining it for free or by trying. So, in the Civil Code, the husband's role is more dominant in terms of law, especially in terms of the aspect of mastering the rights of the wife.

4.2. *Assets in the form of Gifts or Inheritance*

Gifts and grants are something from one person to another, but each other has different meanings and regulations, for example Article 1666 of the Civil Code which states, 'Grant is an agreement with which the donor in his lifetime is free of charge.' and irrevocably, surrender something for the purposes of the recipient of the grant who received the delivery.

In Article 1666 of the Civil Code it is explained that the gift is for the needs of the recipient of the grant, whereas if it is considered about the gift it is a gift that has no purpose and also without any special requirements.

A gift may be given because of the joy of the gift giver. Another in this gift-giving is the beginning of marriage where many friends of the boy or girl give special gifts.

'In Islamic law, what is meant by a gift is giving a substance with no exchange and taking it to the place given because you want to glorify it'. (Rashid Sulaiman, 1976: 311)

The sentence above gives freedom for those who receive gifts to use these gifts in the hope of honoring them.

4.3. *Shared Property*

In general, joint assets obtained during marriage, according to Article 35 paragraph (1) of Law No.1 of 2019, it is stated that 'Property acquired during marriage becomes joint property'. If you pay attention to the sound of this article, it means that all property acquired since the marriage took place, both assets obtained by the husband and those obtained by the wife are joint livelihood assets commonly referred to as union assets.

The husband-and-wife property in marriage, either as joint property or as personal property, clear provisions have been given by Article 35 and Article 36, but such husband-and-wife assets in the event of a divorce Article 37 does not provide clear provisions, but left to their respective laws.

This situation is in accordance with the family life of the Indonesian nation which has various kinds of laws, coupled with many ethnic groups whose customary law is different and still applies in their respective customs.

'Broadly speaking, there are two assets owned by husband and wife after marriage, namely personal property and joint property.' (Fahmi Al Amruzi, 2014: 23)

In marriage, it is stated that if a husband and wife do not enter into a marriage agreement at the time of their marriage, the result will be a mixture of wealth and each share in the wealth is half. The half share is an inseparable part, which means that it is impossible for each husband and wife to ask for the distribution of assets which can only occur through a certain event contained in the Civil Code. So according to the Civil Code, from now on, the marriage takes place, by law, there is a unanimous union between husband and wife's wealth, only regarding that with a marriage agreement and no other provisions are made (Article 119 of the Civil Code).

All the wealth of a husband and wife, whether they acquired or owned before or during the marriage, is mixed into one, which is called joint property.

5. **Position of Assets in Mixed Marriage Reviewed from Law No. 16 of 2019**

The logical consequence of the development of the era and the rapid development of tourists coming to Indonesia have resulted in the increasing prevalence of mixed marriages. Such mixed marriage events are not only a legal act that creates a problem and has civil legal consequences, but also causes problems and public legal consequences.

In mixed marriages between Indonesian citizens and foreign nationals there is a link and two legal systems, namely the Indonesian legal system and the foreign legal system concerned, where the linking of the two legal systems concerned is caused by differences in the citizenships of the two parties, so that the difference is a the question of international civil law, namely which law applies to the legal event.

Marriage or marriage including mixed marriage is something sacred, therefore marriage cannot be separated from the values of religious teachings. Therefore, this law stipulates that: marriages must or must be carried out in accordance with the provisions of religion and belief and are registered based on the applicable laws and regulations.

Based on Article 58, people of different nationalities who perform mixed marriages can obtain Indonesian citizenship from their husbands and may also lose their citizenship according to the methods stipulated in the applicable citizenship law of the Republic of Indonesia.

According to Article 35 paragraph (1) states that: 'the property acquired during the marriage becomes joint property. If you pay attention to the sound of the article, it means that all property obtained since the marriage took place, whether the property obtained by the husband or wife is a joint livelihood property which is commonly called union property.

Regarding this joint property, husband or wife can act with the consent of both parties. From this provision it is clear that the husband can act on the joint property after the wife's consent and vice versa the wife can act on the joint property after obtaining the approval of the husband.

Thus, in principle, joint assets are jointly regulated and used together and in everything there must be mutual agreement. So the joint property can be used for the benefit of the family. However, its use may be carried out by either

party on condition that the other party agrees. Good use for the benefit of household needs and shopping. And of course this is the first use of common property. However, in this case the meaning of the article is not so rigid in its interpretation, meaning that the agreement of both parties in using the joint property is an absolute obligation in all cases. Because if every use of this joint property must have a mutual agreement, this will bring difficulties to domestic life.

Joint assets can be used to pay the debts of husband or wife, if the debt was born due to family interests. However, if the debt is a personal debt that arose before the marriage, then it is clear that the joint property cannot be responsible for paying the debt. So that the payment of personal debt is taken from the personal property that owes itself.

So personal debt before marriage is debt that is independent of joint property debt whose payment fulfillment is taken from personal property, unless the other party (husband/wife) agrees to pay from joint property, if personal property is not sufficient to pay personal debt.

The provisions of Article 36 paragraph (1) state that payments cannot be taken from joint assets. This is to prevent waste and leakage from property, so one of the parties must be placed on the joint property which can bring misery to family life. And vice versa to warn third parties not to easily without thinking about the risk of being so free to give unlimited loan debt to someone without careful calculation to what extent the personal wealth ability is concerned. Article 37 states that if a marriage breaks up due to divorce, joint property is regulated according to their respective laws. According to the explanation of the article above, what is meant by the respective laws are religious law, customary law and other laws.

If you pay attention to the contents of Article 37 and in the official explanation, the article does not provide a variety of positive laws regarding joint property in the event of a divorce. This article emphasizes the division of joint property in the event of a divorce, then in accordance with the method of distribution, the law submits it to the law that lives in the community where the marriage and household are located.

In the elucidation of Article 37 of this law, it gives way to assets, namely:

- It is carried out based on religious law if the religious law is a living legal awareness in regulating divorce procedures.
- The rules of distribution will be carried out according to customary law, if the law is a legal awareness that lives in the community concerned.
- Or other laws.

Regarding inheritance, Article 35 paragraph (2) states that the innate property of each husband and wife and the assets obtained by each as a gift or inheritance are under their respective control as long as the parties do not specify otherwise.

The article above means that if an agreement is not made, the property is managed by each party, but if an agreement is made in terms of the innate property, the property may change its nature according to the contents of the agreement or to both parties. Parties are given the opportunity to enter into an agreement that regarding joint property or only certain parts that are included in the joint property, while the other parts remain under their respective supervision. In the event that each husband and wife enter into an agreement to include the innate property into joint property, then the provisions that apply to joint property must be used for its management.

According to Article 36 paragraph (2), it is stated that regarding the innate property, each husband and wife have the full right to carry out legal actions regarding their property.

If you look at what is regulated by Article 35 paragraph (2) in relation to Article 36 paragraph (2), it seems that this law follows the flow contained in customary law. However, if we examine further Article 36 paragraph (2), it is as if this law makes a distinction between the property of each individual in the sense of:

- Congenital assets of each husband and wife and property obtained as gifts or inheritance after marriage, these items are under the control of each as long as the parties do not specify otherwise.
- Regarding the innate property, each husband and wife have the full right to take legal actions regarding their property.

Meanwhile, according to Article 35 paragraph (2) it is clear what is called the assets of each husband and wife, namely:

- The property of each husband and wife.
- Assets acquired after marriage;
- Including grants
- Present
- Get inheritance

All of these assets, both innate property, grants, gifts and acquisitions because inheritance is under the control of each.

Based on the provisions of the article above, regarding property obtained personally in marriage such as grants, gifts or inheritance, there is a lack of clarity, while when it comes to innate property it is expressly stated that they are under the absolute and full control of each. meaning that each is free to act and act on the innate property as long as the act is justified by law.

Regarding other personal property, such as grants, gifts and inheritances obtained, each is under the control of each party. However, if you look at Article 36 paragraph (2), only innate assets are fully controlled and owned.

In order to explain the relationship between the two articles above, the most appropriate solution according to the background of awareness based on customary law, the provisions of the two articles must be interpreted as follows:

- Regarding inherited assets and inheritance obtained in marriage, then to these two assets what is meant by Article 36 paragraph (2), each has the right and full power according to the law over these assets.

- However, regarding grants and gifts or for the results of their respective efforts, they are included in the category of Article 35 paragraph (2), which is under their respective supervision, but their control is not completely absolute as applies to inherited and inherited assets.

To see the problem further, the author provides several main issues concerning private property, including:

- To the extent that personal assets are responsible to third parties, as explained that family debts are really for the benefit of the family, the main payer of the debt is from joint assets. However, if the joint property is not sufficient to pay the debt, then in terms of the obligations and position of the husband as the head of the household who is responsible for protecting and providing all the necessities of household life, it is reasonable and appropriate if the settlement is taken from the husband's private property. So the priority falls on the husband's property. If the debt is made by the husband not directly for the benefit of the family and not with the knowledge and consent of the wife,
- All income that comes from the personal property of the husband and wife, automatically the additional income will become the joint property of the husband and wife.

Furthermore, it is clear that the property of each individual, especially in the form of inheritance and inheritance, is a very personal property that is bound to the owner of each party, without the consent of the parties concerned.

6. Legal Provisions Regarding Marriage Assets of an Asing Citizen Who Married in Indonesia with Indonesian Citizens

The legal provisions for marriages of different nationalities, namely between a foreign citizen and an Indonesian citizen whose marriage takes place or are held in Indonesia, as well as regarding joint assets obtained by husband and wife in marriages of different nationalities, that property that can be owned by citizens Foreigners are objects that move only, while immovable objects such as land and which are equated with land cannot be owned by the foreign citizen.

This can be seen in Law No. 5 of 1960 concerning Basic Regulations on Agrarian, Article 21 which determines, among others:

- Paragraph (1) : Only Indonesian citizens have property rights
- Paragraph (2) : The government shall determine legal entities that can have property rights under conditions.
- Paragraph (3): Foreigners who after the enactment of this law obtain property rights due to inheritance without a will or mixing of assets due to marriage, as well as Indonesian citizens who have property rights and after the enactment of this law loses citizenship are obliged to relinquish that right in a period of one (1) year from the acquisition of said right or loss of citizenship.

In the Marriage Law itself, there is no article that regulates the position of marital property in a mixed marriage, namely the marriage of a foreign citizen with an Indonesian citizen carried out in Indonesia.

If we look at the contents of Article 21 paragraph (1) of Law No. 5 of 1960 above, it is clearly stated that land ownership rights in Indonesia are clearly restricted. So it is increasingly clear that the meaning of property that can be owned by foreign citizens is only limited to movable objects.

Regarding innate property brought by a husband or wife into marriage, it is under the control of each party unless an agreement is made before the marriage takes place. This can be seen more clearly in the provisions of Article 36 paragraph (2).

7. Conclusions and Suggestions

7.1. Conclusion

- Law No. 16 of 2019 does not clearly regulate joint assets, for whose efforts the property was obtained/originated. The Marriage Law only states that property acquired during marriage becomes 'joint property' but does not distinguish what kinds of property can be qualified as joint property.
- The provisions on assets in marriages of different nationalities, namely between a foreign citizen and an Indonesian citizen, are arranged according to the law in force in Indonesia. The same applies to joint assets obtained by husband and wife in marriages of different nationalities, namely that the property that can be owned by foreign nationals is only movable objects, while immovable objects such as land and which are equated with land cannot be owned.
- Regarding innate property brought by a husband or wife into marriage, it is under the control of each party unless there is an agreement made before the marriage takes place.

7.2. Suggestion

- Nowadays regarding mixed marriages are often found in Indonesian society, while the regulation of marital property, namely regarding joint property, there is still no implementation regulation, it is necessary to implement implementing regulations immediately, so that what is written in the Marriage Law No. no longer cause problems as it is today.
- In order to settle the provisions regarding assets in marriages of different nationalities, the government should make a clear regulation, so that there are stricter regulations regarding legal provisions regarding assets in mixed marriages of different nationalities implemented in Indonesia.

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