

Transfer of Intellectual Property Rights (Studies on the Division of Joint Property (Gono-gini) Post-Divorce)

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ABSTRACT

Intellectual property right is a set of legal rights to express ideas into tangible form in the form of property. Such rights generally is copyright, patents and trademark rights. IPR is still a wealth are not yet commonly understood in terms of “Gono-gini” division of property in divorce cases in Indonesia. In some cases of divorce, there are important matters concerning intellectual property should really be taken into account in the division of property in case like Gono gini. This study aims to examine and analyze and formulate the transfer of IPR as a joint property in marriage and the division of property after divorce. The method used in this research is juridical-Empirical. The research are using primary and secondary data. While Techniques of collecting data through library research and field study. Analysis of descriptive data analytics. The study found that the transfer of IPR as a joint property in marriage, based on the provisions of IPR legislation. The common property object needs to be aligned with respect to the field of IPR both the copyright, trademark, or patent. Such as spring rolls brand express, Suharti fried chicken, etc. Gonogini case post-divorce division of property would continue to rely on the provisions of the marriage law Law No. 1 of 1974 on Marriage, The provisions of Article 35 paragraph (1) has been mentioned that the property acquired during the marriage become community property, with no record of a marriage agreement on segregation of assets. Everything objects that have economic value can be categorized as a property, whether it is immovable property (land), the moving object (gold), also in the development of the law, such as electricity (intangibles) were categorized as having economic value. Wealth in the field of IPR in the category of asset for the intangibles that have economic value. Based on the provisions of article 37 paragraph 1 of the Marriage Law and Article 95 Compilation of Islamic Law . By way of this peace, the division of property, said that the Gono-gini relies on consultation between husband and wife. It could be a husband and wife got 50% 50% or husband and wife get 30% to 70%, the husband was able to get 70% and 30% wives, and may also division by the ratio (percentage) in the other. Everything is justified Personality ', immersion was the result of the peace that has been taken based on the willingness of each.

Keywords: IPR, Gono gini, divorce

1. INTRODUCTION

Based on Article 1 of Law No. 1 of 1974 on Marriage, Marriage is inner and outer bond between a man and a woman as husband and wife with the aim of forming a family (household) who are happy and everlasting based on God.

Act No. 1 of 1974 recognizes the right of each husband and wife to manage each of their property and required approval for joint property of both to take legal action against the joint property[1].

Joint property together, that all property acquired during the marriage automatically come joint property. The assertion also limit does not include the property along with treasures brought thereto by their respective spouses and obtained specifically as inheritance or grants or gifts.

From above, while background is sounding the interest to be studied with depth in terms of how the legal construction of the transfer of Intellectual Property Rights As joint property in Marriage in Indonesia, and the concept of Intellectual Property Rights Ideal as property division after divorce gonogini in Indonesia.

2. RESEARCH MOETHODS

The method used in this research is socio-legal[2]. The data used are primary and secondary data[3]. Techniques of collecting data through library research and field study[4]. Analysis of descriptive data analytics[5].

3. RESULTS AND DISCUSSION

3.1. The Transfer of Intellectual Property Rights as Joint Property (Gono-Gini) in Marriage in Indonesia

Intellectual Property Rights are rights that originate from the results of creative activities in the ability of human thought. The existence of IPR arises as a form of appreciation for intellectual activities or human thought in realizing an intellectual work.[6] The realization of the ability of intellectual works that is all the results of the power of human thought, among others in the fields of technology, science, art, literature, and industrial property rights.[7]

The most common and best known forms of IP are copyrights. Copyrights can include music (compositions and audio records), literary works (books, articles, screenplays, or scripts), works of visual art (paintings, photographs, sketches, or sculptures), dramatic works of art (plays), motion pictures, other audio/visual works such as computer games, architectural works/designs, software and dance (including other choreographic works). Additional forms of IP include patents, trademarks, trade secrets, performance rights, rights of publicity, and domain names[6].

Intellectual property rights are part of intangible objects that can be valued economically, so that rights can be transferred through inheritance, wills, grants, endowments, agreements and other causes based on statutory regulations. With the marriage results in the union of property, unless there is a marriage agreement that regulates the separation of property. so it was very influential at the time of the divorce.

In the concept of community property does not preclude the possibility of private ownership of each husband and wife and that was basically the ceremony (wedding) does not give effect to the union as a treasure which the provisions of Articles 85 and 86 KHI.

These two principles are stated in general, covering the entire treasure husband and wife, both of which they brought before the marriage they acquire during the marriage including inheritance and gifts. Each property specified in section 85 KHI is all husband and wife form of property obtained during marriage as stated in Article 35 paragraph (1) and excluded in paragraph (2) of Law No. 1 of 1974. Due to the innate property, inheritance and grants, have been excluded in Article 35 paragraph (2) that are not recognized as joint property and may not be intended as a joint property as found in Article 85 KHI. So KHI regard that the property acquired during marriage can be jointly owned and optional. And also KHI look, that form of community property is not absolute in Islam. This can be carried out and also not, because true Islamic principles that distinguish the ownership of husband and wife were affirmed by article 86 paragraph (1), whereas in practice KHI is obvious follow Law No. 1 of 1974 which

implement the joint property in a marriage when there is no the marriage contract specify otherwise.

Article 85 KHI

"The existence of joint marital property does not preclude the possibility of property each spouse"

Article 86 KHI

- (1) Basically there is no mixing between husband and treasure treasure his wife because the marriage;
- (2) Treasure wives remain the property of the wife and controlled by it, as well as the husband assets remain the property of the husband and controlled by him "

Article 87 KHI

- (1) the innate property of each husband and wife and their acquired property as a gift and inheritance is under the control of each, so long as the parties do not otherwise in the marriage contract,
- (2) A husband and wife have the full right to take legal actions on each property in the form of grants, gifts, sodakoh or more " .

Article 88 KHI

"In the event of a dispute between husband and wife concerning joint property, dispute settlement was filed with the Court of Religion".

Article 89 KHI

"The husband is responsible for maintaining joint property, possessions and possessions wife alone"

Article 90 KHI

"A wife is partly responsible for keeping the common property or property that is her husband"

Article 91 KHI

- (1) A treasure together as stated in section 85 above can be tangible or intangible objects;
- (2) Tangible property that may include immovable, movable and securities;
- (3) Intangible property that can be either rights or obligations;
- (4) Common property can be used as collateral by one party to the other party consent " .

Article 92 KHI

"A husband or wife without the consent of the other party is not allowed to sell or transfer joint property"

Article 93 KHI

- (1) Accountability for spouses debt imposed on each of his property;
- (2) Responsibility for the debt undertaken for the benefit of families charged to the joint property;
- (3) If the joint property is insufficient, charged to the husband's wealth;
- (4) When the husband's property does not exist or is insufficient charged to treasure his wife.

Article 94 KHI

- (1) A property ownership together on the marriage of a husband who has a wife more than a respective separate and stand-alone;
- (2) Ownership of common property of the marriage a husband whose wife has more than one such as paragraph (1), calculated at the time of the marriage contract a second, third or fourth " .

Article 136 KHI

- (1) To put sequestration of joint property without their request for divorce, if one acts that harm and endanger the community property such as gambling, drunkenness, and so on;
- (2) During the period of seizure can be the top selling joint property for family purposes with the permission of the Religious Court".

So against the property of husband and wife are in a period called the marital bond as joint property, in Acehnese society known as the "Seharkat Tersembunyi". Malay society known as the " harta serikat", and the Java-Madura society known as the " Gono-Gini". Until now the use of these names still characterize the judicial practice[8].

Since the marriage begins, naturally occurs divulging mixture of wealth and riches husband and wife. This is a general provision, if not held the promise of marriage. The condition lasts beyond and can not be changed during the marriage took place. If someone wants to deviate from these provisions it must make the covenant of marriage[2]. The same thing also expressed by Vollmar that the consequences of the marriage of wealth and income married couple depends on the presence or absence of a marriage contract[3].

Against this common property of husband and wife may act to do something or not to do anything on the shared property by consent of both parties. All property acquired husband and wife for the marital bond into common property such property acquired either individually or jointly acquired. Likewise, property purchased during the marriage bond takes place is becoming common property. Not be a problem if the wife or husband who buy it, do not be a problem as well if their wife or husband know at the time of purchase it or on whose behalf the property is registered[4]. For the purpose of his life, but when the household is obtained as a joint effort between husband and wife, then by itself such property into community property. The size of the property becomes part of each depends on a lot or a little effort they are doing in meeting the needs of the household. If his efforts are equally large, the properties owned on the acquisition of the balance. But if the husband is a big business rather than the wife the husband's right to be larger than the wife, and vice versa, in addition to the enactment of the general provisions of the above may also be possible to mixing the assets acquired husband and wife in the form of an agreement for the efforts of husband and wife together.[5]

In Islamic marriage law wife has the right living that must be met by the husband. Treasure that is rightfully the wife in marriage is derived from the husband's income.

Property law is tantamount to the meaning of the law of property is known in Common Law systems. In Black's Law Dictionary is said that the law of property is a category of law relating to the rights of a person against penuntutanya objects that can be maintained for everyone.[6]

In Indonesia, which adheres to the legal system of the Civil Law, the regulation of property rights stipulated in the Burgerlijk Wetboek (BW) or so-called Civil Code. It all legal matters relating to the objects set in Book II BW, while matters relating to the law of the engagement is set

in Book III of the BW. Article 499 BW explains that the material is any goods and rights that can be mastered with the right property. From these definitions, it can be concluded that the definition of the object is anything that can be used as proprietary. With such interpretation, resulting in a very abstract meaning of things. Meaning objects can we interpret as goods and rights based on the provisions of BW. Goods are tangible objects and rights are intangible. Making of objects in BW often do not distinguish between what is called good or right. This is evident from the lack of regulation in the BW regulating.

3.2. Ideal Concepts Intellectual Property Rights as Property Division After Divorce (gonogini) In Indonesia

To understand the intellectual property rights as a property, according to Ras Ginting in his Elyta Copyright Law Indonesia - Analysis of the Theory and Practice, can be distinguished by viewing it from two sides of the interrelated aspects of the juridical and economic aspects.

Legally, the term wealth is always associated with the ownership rights to the moving object (moveable goods), immovable (immoveable goods), tangible object (tangible goods) or intangible (intangible goods). In terms of the nature and shape, Intellectual Property Rights classified as intangible moving objects (intangible goods).

However, if between husband and wife is never made marriage agreement, based on Article 119 Code of Civil Law, Since the marriage happens, by law, there was mixing property between them (if the marriage is done before the enactment Law No. 1 of 1974 on Marriage- "Marriage Law"). Consequently treasure treasure wife becomes the husband, and vice versa. This is what is referred to as joint property. Against the joint property, in case of divorce, it must be divided equally between husband and wife. The division of the community property includes all gains and losses obtained from the business as well as the efforts made by the husband / wife are as long as they are still bound by marriage.

Slightly different from the arrangement before the enactment of the Marriage Law, after the enactment of the Marriage Law, of property in marriage is regulated in Article 35 paragraph (1) and (2) different marriage case. Act is part of the property where owned together. In the Civil Code, all assets become property of husband and wife together. In Marriage Act, which became the joint property is property acquired during the marriage, while property acquired before the marriage became an innate property of their respective husband and wife. Treasure congenital and acquired possessions respectively as a gift or inheritance is under the control of each and all the parties could not agree otherwise.

Therefore, if the investment (property) was acquired in a marriage, then it becomes a property that should be shared between husband and wife in the event of divorce (Article 37 of the Marriage Act).

Property Gono Gini is a joint property of husband and wife that they acquired during the marriage. Thus understanding Gono-gini property in accordance with Article 35 of the Marriage Law in Indonesia, Gono-gini property is property acquired during the marriage become sharing owned property. "This is because the property within a family has three possibilities: **First**, Have the property of the husband only. It property owned by the husband without the slightest wife ownership in the property. For example treasure husband before marriage, or property derived from the work of her husband and was not given as maintenance to his wife, or property donated others to their own husbands in particular, or property bequeathed to her husband, and so on.

Second, Possessions wife. It property owned by the wife alone without the slightest ownership of the husband on the treasure. For example, the property of the wife before marriage, or property derived from the work of his wife without having to interfere with its obligations as a wife, or property donated another person for him, or property bequeathed to his wife, and others.

Third, Possessions together. For example, someone donated property to the husband and wife, or property such as houses, land, or other purchased with money from both of them, or property they acquired after marriage and the husband and wife both work that generates income and so on. The third one is then termed Gono-gini .

However treasures acquired a direct family should not automatically become the property of Gono-gini. The details are as follows:

Generally husband who works and is responsible for the economic livelihood and family. It is mentioned by Allah and His Messenger[9].

Of Aisha, indeed Hind bint Utbah said: "O Messenger of Allah, verily Abu Sufyan a very stingy. He did not give sufficient treasure for me and my son, except what I take myself without his knowledge. "So the Prophet said," Take what is sufficient for you and your child in a way that ma'ruf[10].

From Hakim bin Muawiyah from his father said: I asked, "O Messenger of Allah is our wife right?" He said, "You feed him if you eat, you give him clothes when you get dressed[11]

As for the wife, then its activity there are two possibilities:

First, Did not have economically valuable activities. If so, then the property in the family is a treasure husband, and no treasure-gini Gono. Because there is no wife share in the treasure.

Second If wife have economically valuable activities. As he works alone, or help her husband in his work, or become a working partner for a husband, or a similar one, then in the condition the property within a family there are the so-called Gono-gini.

Shari'a does not share this treasure with the Gono-gini each section with certainty, for example, a wife and husband of 50% to 50%. Therefore, there are no texts which require such – in our opinion- both the Qur'an and the Sunnah. However, the division can be viewed from several possibilities:

First, If known definitely treasure calculation of husband and wife. That work certainly reduced husband living for his family, as well as the work of with bound wife. the calculation of property in gono gini are clear, that conformed the calculation.

Second, Otherwise known calculation of the marital property. Picture: The husband and wife are working, or to work together in building the economy of the family. And any family needs covered both of their work. so that the remaining part of the property how husbands and wives how part of the property is unclear. And this is the picture of most families in the country of Indonesia.

In such conditions, a property owned-Gono Gini is not possible unless the road is divided sulh, 'urf or qadha (verdict).

Sulh itself is an agreement between husband and wife by consensus on the basis of mutual good pleasure. Proposition peace in sharia concept between husband and wife, among others:

Of Kathir bin Abdillah bin Amr bin 'Auf al-Muzani, from his father from his grandfather, that the Prophet sallallaahu 'alaihi wa sallam said: "Coming to terms that may be made between the Muslims, but a peace that forbids kosher or justify the unlawful. And the Muslims was conditional on them, except for requirements that forbid lawful or justify the unlawful (Among the QS. Ath Thalaq: 7).

When describing the above hadith, ash-San'ani said, "The scholars have divided the ash-shulh (peace) into several types: peace between Muslims and unbelievers, peace between husband and wife, peace among groups bughat (unjust) and group fair, peace between two people who report the problem to the judge, for peace in the act of wounding as forgiveness for sanctions treasure that should be given, and peace to give a number of jointly owned property and rights. This division is referred to here, the division called by the jurist with ash-shulh (peace).

Therefore, based on the argument of tradition Amr ibn Awf al-Muzani above, if the husband and wife are separated and wanted to divide the property Gono-gini between them, can be taken the way of peace (ash-shulh). Therefore, one of peace between husband and wife, or peace when there is a dispute concerning joint property.

By way of this peace, the division of property, said that the Gono-gini relies on consultation between husband and wife. It could be a husband and wife got 50% 50% or husband and wife get 30% to 70%, the husband was able to get 70% and 30% wives, and may also division by the ratio (percentage) in the other. Everything is justified Personality ', immersion was the result of the peace that has been taken based on the willingness of each.

Indeed, in Compilation of Islamic Law is applied to the Religious Courts, Gono-gini property between husband and wife is not divided but each gets 50%. Compilation of Islamic Law mentioned in article 97: "The widow or widower divorced, each entitled to one-half of the community property along not otherwise stipulated in the marriage contract."

Yet Compilation of Islamic Law provision in the law is not a decision that the patent, if the husband and wife agreed

to divide the assets by a certain percentage, then the deal and good pleasure of their precedence.

'Urf, the customs prevailing in a society, so that it becomes law in the society. The scholars agreed 'urf could be one legal reference. In one of the rules of jurisprudence mentioned, "*A customs law that can be relied upon.*" With the provision of: 'Urf it is generally accepted, Does not conflict with the texts syar'i, 'Urf have come into force since a long time, not a habit that just happened, and Does not clash with Tashrih.

So, if the property issue Gono-gini which no agreement between husband and wife, it is seen whether that society is no 'urf applicable on property issues in Gono-gini or not. If anything, that was imposed. And Allah knows best.

Qadha, if no sulh and 'urf, then enter the final system, which is making up. Qadha itself is a decision taken by a local judge on issues presented to her. In these conditions a judge must look at the condition of the husband and wife, in order to determine the Gono-gini as well as sharing. And in this condition may be for the judge to use civil law in force in the judiciary, while not in conflict with Islamic law.

Economically, the exclusive rights contained in the Intellectual Property Rights serves to legalize their owners monopolize its use or to enjoy the results given by the intellectual property. The exclusive rights also serves as a regulator for the owner to prohibit others who unlawfully use or derive economic benefits from the intellectual property, control the quality of the quality of goods, keeping the contents of a work is not changed arbitrarily, and others.

To answer the question whether property or royalties that are still running or have run also included Gono gini divided into divisions, needs to be explained more fully, as I describe below.

If an idea is embodied in a tangible form for the wedding so that it becomes the intellectual property, the reference to Article 35 paragraph (1) of the Marriage Law, intellectual property becomes joint property of both husband and wife. In a divorce, there are many questions that must be answered if the couple has intellectual property rights. In this case in order to further narrow the topic, we take the example of any patent, copyright or trademark.

One example of the importance of the division of joint property on intellectual property rights owned during the time of marriage were married couples homeowners suharti fried chicken. In this case, the property "Gono-gini" they are the right brand, in which after the divorce, the couple decided by the courts can use the same brand for house eating on their fried chicken, which was on its way then the parties distinguish by name suharti for eating wife's house, and NY. Suharti for home meal husband's property.

Meanwhile, in the international world, the dispute between Michael Douglas and his wife on the distribution of copyright royalties on the movie Wall Street: Money Never Sleeps which has lasted for more than 14 years.

In general, intellectual property rights owners have several options that can be taken in the event of divorce. Honestly,

the sharing of intellectual property rights at the time of divorce is not as simple as dividing the wealth of tangible objects such as houses, cars, and others. Such options for example is making calculations on the economic value of intellectual property rights generated during the marriage or the other option is to negotiate the division of revenue or royalties from intellectual property acquired after the divorce occurred. Both of these options was not something very easy to run and certainly requires a very serious process regarding the proportion of each.

The couple who are divorcing and have intellectual property rights during marriage, shall determine any intellectual property rights that they have. Assessment of the calculation of the economic value of an intellectual property rights should be spelled out clearly. One way to identify and help calculate the economic value of an intellectual property rights generated.

1. Who is the true owner of intellectual property rights (copyrights, trademarks, patents) generated? Business entities or individuals?
2. If owned enterprises, who controls those rights? Is the couple owns 100% of the rights to be divided?
3. Are there rights are transferred to another party?
4. Is intellectual property rights has been really registered?
5. Are there any ongoing royalties paid? What are the requirements in the contract with the other party?
6. If the rights to share associated with the display or performing rights whether it will be shared as well?
7. Are there any payments in the future have been received and there will still be the completion of payment at a later date?
8. Is the license agreement signed with the other party? If yes, when the expiration of the license agreement?

And many more questions that can be raised to parse and assess how big the actual intellectual property rights should be divided.

Intellectual property rights is just one of the many assets that need to be shared as community property in a divorce case and can not be denied, there is the financial future of intellectual property rights must be shared equitably.

Gonogini post-divorce division of property would continue to rely on the provisions of the marriage Law No. 1 of 1974 on Marriage, The provisions of Article 35 paragraph (1) has been mentioned that the property acquired during the marriage become owned sharing property, with no record of a marriage agreement on segregation of assets. Everything is objects that have economic value can be categorized as a property, whether it is immovable property (land), the moving object (gold), also in the development of the law, such as electricity (intangibles) were categorized as having economic value. Wealth in the field of IPR in the category of asset for the intangibles that have economic value.

Based on the calculation will be the economic value of intellectual property rights, a married couple who are divorcing can negotiate on the division of joint property

was good for intellectual property rights that have enjoyed the results during the marriage, as well as on the distribution of royalties or transfer of rights to certain compensation to one couples after divorce. in Compilation of Islamic Law is applied to the Religious Courts, Gono-gini property between husband and wife is not divided but each gets 50%. Compilation of Islamic Law mentioned in article 97: "The widow or widower divorced, each entitled to one-half of the community property along not otherwise stipulated in the marriage contract. In this case, the property "Gono-gini" they are the right brand, in which after the divorce, the couple decided by the courts can use the same brand for house eating on their fried chicken, which was on its way then the parties distinguish by name suharti for eating wife's house, and NY. Suharti for home meal husband's property. By way of this peace, the division of property, said that the Gono-gini relies on consultation between husband and wife. It could be a husband and wife got 50% 50% or husband and wife get 30% to 70%, the husband was able to get 70% and 30% wives, and may also division by the ratio (percentage) in the other. Everything is justified Personality ', immersion was the result of the peace that has been taken based on the willingness of each.

4. CONCLUSION

The transfer of IPR as a joint property in marriage, based on the provisions of IPR legislation. The common property object needs to be aligned with respect to the field of IPR both the copyright, trademark, or patent. Such as spring rolls brand express, Suharti fried chicken, etc. Gonogini post-divorce division of property would continue to rely on the provisions of the marriage Law No. 1 of 1974 on Marriage, The provisions of Article 35 paragraph (1) has been mentioned that the property acquired during the marriage become community property, with no record of a marriage agreement on segregation of assets. Everything is objects that have economic value can be categorized as a property, whether it is immovable property (land), the moving object (gold), also in the development of the law, such as electricity (intangibles) were categorized as having economic value. Wealth in the field of IPR in the category of asset for the intangibles that have economic value. Ideal Concepts Intellectual Property Rights as property division after divorce (gonogini) In Indonesia. Based on the provisions of article 37 paragraph 1 of the Marriage Law and Article 95 Compilation of Islamic Law . By way of this peace, the division of property, said that the Gono-gini relies on consultation between husband and wife. It could be a husband and wife got 50% 50% or husband and wife get 30% to 70%, the husband was able to get 70% and 30% wives, and may also division by the ratio (percentage) in the other. Everything is justified Personality ', immersion was the result of the peace that has been taken based on the willingness of each.

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