

The Strength of Private Agreements on the Division of Joint Assets Before Divorce and Their Consequences in Joint Asset Claims

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Received: July 25, 2024

Revised: September 21, 2024

Accepted: September 23, 2024

Published: November 27, 2024

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Abstract: The purpose of a marriage bond is to form a household that is *sakinah mawadah warrahmah* that lasts until the end of life. However, often this goal cannot be realized due to various kinds of conflicts in a marriage bond that eventually results in divorce. The end of the marital relationship due to divorce does not necessarily solve problems between divorced husband and wife, sometimes new conflicts arise after the occurrence of divorce, including regarding common property that is contested through a Joint Property Lawsuit. One way to anticipate the emergence of such conflicts is to make a Prenuptial Agreement that is carried out before marriage. The problem is what if the agreement is made before the divorce and how the strength of the joint property division agreement made before the divorce is reviewed from the Civil Code against the joint property lawsuit. Qualitative Research Method Using the Normative Juridical Approach Method. The result of his research is the evidentiary power of the agreement on the division of common property carried out under the hands before the divorce reviewed from article 1338 of the Civil Code and article 1320 of the Civil Code which guarantees the legal force of the agreement made before the divorce in the joint property lawsuit and also whether the agreement under the hands can be said to have perfect evidentiary power as per the principle of *pacta sunt servanda*.

Keywords: Agreements, Divorce, Joint Asset,

INTRODUCTION

The 1945 Constitution is the 4th paragraph that the purpose of the development of the State of Indonesia is to protect the entire nation of Indonesia, and all of Indonesia's bloodshed, and to promote public welfare, educate the nation's life and participate in implementing a world order based on independence, lasting peace, and social justice. Meanwhile, the Pancasila philosophy is classified as a religious philosophy, meaning that the Pancasila philosophy in terms of wisdom and truth recognizes the existence of absolute truth that comes from God Almighty (religious truth) while acknowledging the limitations of human abilities, including the ability to think. The One Godhead contains the understanding and belief in the existence of God Almighty, the creator of the universe and its contents.¹

Indonesia is a country based on law (*rechtsstaat*) only after the amendment of the 1945 Constitution is expressly mentioned in Articles 1 and 3, in Indonesia a country based on law, the government must ensure the existence of law enforcement and the achievement of legal goals. Law enforcement has three elements that are always considered, namely justice, usefulness or usefulness (*doelmatigheid*), and legal certainty, in the doctrine the main purpose of law is order.² Obedience to order is a basic requirement for an orderly

¹Journal of Lex Generalis (JLS), Penyelesaian Pembagian Harta Akibat Perceraian, Vol. 2 No. 2 Mei 2024, hal 6

²Muh.Yamin, Naskah Persiapan Undang Undang Dasar 1945, Yayasan Prapanca, Jakarta, 1959, hlm. 2



society, another legal goal is the achievement of justice. To achieve order and interhuman interaction in society, it must reflect legal certainty.³

In principle, for the formation of a happy, peaceful, peaceful and eternal family, it must be adhered to or based on the One Godhead, as in accordance with the first principle in Pancasila. Human beings are natural to live in society and interact with each other. Humans cannot live alone without the help of others, because they are always looking for and needing other humans to live together and then organize socially. In this case, the smallest form of human beings living together begins with the existence or by forming a family.⁴

Between people of different genders in establishing relationships to be able to live together to form a family, must get married. Marriage is a way for humans to pass on offspring, this is in accordance with the position of humans as intelligent beings, with the intellect that humans have, the relationship of two different types, namely men and women on the basis of love and affection united by a marriage. Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage, in Article 1 it has been explained that what is meant by marriage is an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or home based on the One Godhead.⁵

In a marriage, what is meant by the inner birth bond is that the marriage that is carried out is not enough just by having a birth bond or an inner bond alone. However, there must be both, so that there will be a bond of birth and mind which is a strong foundation in forming and fostering a happy and eternal family.⁶

The purpose and purpose of marriage itself is to form a harmonious, happy and eternal family or household based on the One Godhead. It is intended that the marriage should be able to last once in a lifetime and should not end just like that. Because in principle, for the formation of a happy, peaceful, peaceful and eternal family, it must be adhered to or based on the One God as in accordance with the first principle in Pancasila. As a result of a valid marriage, one of them is the union of property that has existed since the marriage. This means that with the marriage between husband and wife, their property is fused into one. Thus, in a family there is one common property or what is often called joint property.⁷

The common property includes immovable objects, movable objects and securities, tangible or intangible objects, both existing and those that will exist at a later date⁸. While the intangible can be in the form of rights and obligations⁹. Both can be used as collateral by one party with the consent of the other party¹⁰. The husband or wife without the consent of one of the parties may not sell or transfer the joint property¹¹. The provisions regarding property in marriage have been explained in Articles 35, 36 and 37 in

³Soerdjono Soekanto, *Mengenai Sosiologi Hukum*, Bandung Alumni, 1979, hlm. 15.

⁴Lili Rasjidi, *Hukum Perkawinan dan Perceraian*, Remaja Rosdakarya, Bandung, 1991, hal 1

⁵<https://www.jogloabang.com/pustaka/uu-16-2019-perubahan-uu-1-1974-perkawinan> diakses pada tanggal 13 Mei 2024 pukul 00.17 WIB

⁶Djoko Prakoso dan I Ketut Murtika, *Azas-azas Hukum Perkawinan di Indonesia*, PT Bina Aksara, Jakarta, 1987, hal 4

⁷J. Satrio, *Hukum Harta Perkawinan*, PT Citra Aditya Bakti, Bandung, 1987, hal 38

⁸Haq, M., & Akbarizan, A. (2023). Tinjauan Hukum Terhadap Harta Bersama Dalam Perkawinan Yang Berasal Dari Intellectual Property Rights (Ipr) Hak Cipta, Hak Paten Dan Hak Merek. *Jotika Research in Business Law*, 2(1), 30-42.

⁹Rizkiawan, T. (2022). Kekayaan Intelektual Sebagai Objek Jaminan Kredit Perbankan: Prospek dan Kendala. *Lex Renaissance*, 7(4), 883-894.

¹⁰Sinaga, N. A. (2020). Implementasi Hak Dan Kewajiban Para Pihak Dalam Hukum Perjanjian. *Jurnal Ilmiah Hukum Dirgantara*, 10(1).

¹¹Safithri, H. (2020). Sita Marital (Maritale Beslag) Atas Harta Bersama Dalam Perkawinan Dalam Hal Terjadi Perceraian. *Jurnal Kepastian Hukum dan Keadilan*, 1(2), 1-13.

Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning "Marriage" which in essence every property obtained during marriage, is common property.

Judging from the content of the article, it means that what is called joint property only includes property acquired by husband and wife during or during marriage only. Property acquired other than during the marriage is not called joint property. Meanwhile, the inherited property of each husband and wife and the property obtained by each as a gift or inheritance, is under the control of each as long as the parties do not specify otherwise. The inheritance of the husband or wife, returned to each of the persons who brought the property into the marriage.¹²

The division of joint property in marriage is always a crucial thing from the consequences of divorce. Because both husband and wife will make a fuss about the division of common property owned during the marriage, both husband and wife consider or postulate each other to have the right to the property in the marriage. This is because most husbands and wives in the family do not record the wealth owned by the husband and wife, so there is often a mixture of inherited property and common property during the marriage. This situation makes it difficult to know and detail which property belongs to the husband and which property belongs to the wife. The lack of public understanding of the procedure for the division of common property has resulted in many disputes between husband and wife who fight over the division of common property. That disputes over the division of common property must be resolved through the Court, for Muslims the lawsuit for the division of common property is filed at the Religious Court¹³.

Based on the description described above, the author is interested in conducting research on compiling legal writing on matters related to the implementation of the division of joint property due to divorce. Which the author then constructs as a title, namely: The Power of the Joint Property Distribution Agreement Carried Out Under the Hand Before Divorce and Its Consequences in a Joint Property Lawsuit Reviewed in the Law of Agreements, In this case, there are 2 (two) things that will be discussed regarding how the strength of the Joint Property Distribution Agreement Carried Out Under the Hand Before Divorce is Reviewed in the Law of the Agreement and What are the Legal Consequences of the Joint Property Distribution Agreement Carried Out Under the Hand on the Joint Property Lawsuit.

METHOD

Qualitative Research Method using the Normative Juridical approach method, namely legal research is a form of scientific activity, which is based on certain methods, systematics, and thoughts, which aims to study one or several specific legal phenomena, by analyzing them by prioritizing secondary legal materials such as books, articles, papers, law books, laws and regulations.¹⁴

RESULTS AND DISCUSSION

1. The Power of a Joint Property Distribution Agreement Conducted Under Hand Before Divorce Reviewed in The Law of The Agreement

An agreement is basically a relationship that occurs between the parties involved and binds each other. As the definition of agreement in article 1313 of the Civil Code and 1314 of the Civil Code which explains that an agreement is "An agreement is an act in which one or more persons bind themselves to one or more other persons".

¹²Nikmatun Nuzula, Pembagian Harta Bersama Akibat Perceraian, Jurnal Mahakim, Vol. 1 No. 1 Januari 2017, hal 29

¹³ Muttaqin, Z., & Usqak, S. U. (2020). Proses Penyelesaian Sengketa Pembagian Kasus Harta Gono Gini Akibat Perceraian Pasangan Suami Istri di Pengadilan Agama Mataram. *CIVICUS: Pendidikan-Penelitian-Pengabdian Pendidikan Pancasila Dan Kewarganegaraan*, 8(2), 127-138.

¹⁴Soerjono Soekanto, Pengantar Penelitian Hukum, Penerbit Universitas Indonesia Press, Jakarta, 1986, hal 51

In a marriage relationship, a marriage agreement is made for the benefit of legal protection for each party, both husband and wife, which contains Rights, Obligations, Prohibitions and causes that will arise if one of the parties does not carry out the contents of the agreement¹⁵. Although the law does not regulate the purpose of the marriage agreement and what can be promised, everything is left to both parties.¹⁶

The marriage agreement made aims to provide legal protection, namely as a law for parties with good intentions¹⁷. If at any time a conflict arises between the parties, it can be used as a reference and one of the foundations for each couple in carrying out, and providing the boundaries of rights and obligations between them. As discussed earlier, marriage agreements are contained in Indonesia legislation, namely article 1313 of the Civil Code and 1314 of the Civil Code regarding engagements born from contracts or agreements. As well as Article 1320 of the Civil Code regarding the conditions for the validity of an agreement.

The Agreement in Marriage can occur before the marriage (Prenuptial Agreement) and can occur after the marriage. The Prenuptial Agreement is made and agreed upon by the Prospective Husband and Wife Parties where the agreement regulates all rights and obligations as well as prohibitions that will arise when the parties have united in the marriage bond¹⁸.

The agreement that occurs after marriage is basically the same as the Prenuptial Agreement, but the difference is the time when the agreement is made after the marriage bond occurs¹⁹. So that the matters stipulated in the agreement are about things that will happen in the future regarding the relationship in marriage.

In practice, the Marriage Agreement usually always contains property obtained during the marriage period. Property obtained during the marriage period, which is usually as gono-gini property, has basically been regulated in the law in accordance with Article 97 of the Compilation of Islamic Law article 35 paragraph (1) of Law No. 1 of 1974 concerning Marriage which basically states that all property obtained during the marriage period is joint property, regardless of the acquisition, both obtained from the work of the wife and husband. However, there are exceptions in terms of acquisition from inheritance and grants from each party's parents.

However, in the Marriage Agreement these things can be ignored, how the parties determine their attitude to and regarding what matters will be agreed²⁰.

Article 1 of Law Number 1 of 1974 concerning Marriage explains that marriage is a physical and inner bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead. That is, based on this definition, the purpose of marriage or building a household is for eternity, not just to play around or find a mere sensation. However, many of a person's marriage bonds run aground in the middle of the road which

¹⁵ Susanti, D. O. (2018). Perjanjian Kawin Sebagai Bentuk Perlindungan Hukum Bagi Pasangan Suami Istri (Perspektif Maqashid Syari'ah). *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam*, 1(2), 1-30.

¹⁶ Jurnal dunia-ibu.org online, Perjanjian Pranikah, http://www.duniaibu.org/html/perjanjian_pra_nikah.html, diakses pada 08 Juli 2024.

¹⁷ Wati, R. D. (2022). The Marriage Agreement in Article 29 of Law Number 1 of 1974 is Reviewed According to Islamic Law. *Al Hurriyah: Jurnal Hukum Islam*, 7(2), 116-130.

¹⁸ Maulita, S. (2022). *Analisis Yuridis Terhadap Harta Kekayaan Dalam Perjanjian Perkawinan Menurut Hukum Positif Di Indonesia* (Doctoral dissertation, Universitas Islam Kalimantan MAB).

¹⁹ Syah, A., & Tholatif, I. (2022). Urgensi Perjanjian Pranikah Sebagai Kesepakatan Awal Perkawinan. *Legal Standing: Jurnal Ilmu Hukum*, 6(2), 115-128.

²⁰ Shidqi, M. (2021). *Perjanjian Perkawinan Pemisahan Harta Bagi Pasangan Suami Istri Dalam Putusan Mahkamah Konstitusi No. 69/PUU-XIII/2015 Prespektif Maqasid Al Syari'ah* (Doctoral dissertation, IAIN Ponorogo).

as a result leads to divorce. Thus, the consequences of the divorce arise due to other laws as a consequence of a divorce, such as child custody (hadhonah), iddah and mut'ah maintenance, the wife's idah period, the maintenance of the wife and children, and those related to material property are common property.

Joint property is property obtained throughout the marriage, from the time the marriage takes place until the marriage ends or breaks up the marriage due to divorce, death, or court decision²¹. The problem of settlement of common property often becomes complicated and sometimes difficult to solve. This is because each party argues that they are the ones who contribute the most to the acquisition of the common property among the other parties. In Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law in 97 it is stated that "Widows or widowers who divorce each have one-half rights to the joint inheritance as long as it is not otherwise specified in the marriage agreement". In addition, the provisions regarding joint property are also regulated in Articles 128-129 of the Civil Code which explain that when the marriage bond between husband and wife is broken, the joint property is divided in half between husband and wife. Thus, based on the 2 (two) provisions mentioned above, as long as the joint property is not regulated in the marriage agreement, each ex-husband and ex-wife are entitled to 1/2 (half) of the joint property.

An agreement is stated in Article 1313 of the Civil Code, namely an agreement is an act by one or more people and another person makes something binding on them, or can be interpreted as a legal event and an engagement that becomes a legal relationship. It is also explained in article 1338 paragraph 1 of the Civil Code regarding the principle of freedom which contains an open system, which reads: "all agreements made legally apply as law to those who make them." So, it can be understood from the understanding of the above article that the parties are allowed to make an agreement that contains anything and is in the form of a binding thing between those who make the agreement, and is based on the law. Given this, that the articles containing the agreement are complementary or optional laws so that they can be eliminated if both parties want. Then the parties can contain their own provisions that are considered to deviate from the articles of the law of the agreement. As for the marriage agreement, it has been regulated in the Civil Code in the First Book of Chapters Seventh and Eighth, starting from article 139 to article 179, in article 139 it is explained: "By entering into a marriage agreement between husband and wife, they have the right to prepare several deviations and laws and regulations related to joint property, as long as the agreement does not violate good morals or general order and is also heeded as follows." Article 139 of the Civil Code states that before marriage, the prospective husband and wife can enter into a marriage agreement, and it can also be understood that the marriage agreement between husband and wife aims to regulate the consequences of marriage and related to the property of both parties. Therefore, a marriage agreement can be defined as an agreement made before the marriage takes place and is binding between the two parties, namely the prospective bride who wants to get married and is valid since the marriage takes place. Thus, the word agreement can be associated with the law, if it has a relationship with the word marriage whose discussion includes the promise of marriage, as a promise of nobility between a man and a woman, the meaning of taklik talaq is an agreement or promise of allegiance by a husband to his wife, as well as the meaning of unity and separation of a personal property by the prospective husband and wife who are the object of the agreement.

Regarding the power of an authentic deed, according to Retnowulan Sutantio, and Iskandar Oeripkartawinata, in the book "Civil Procedure Law in Theory and Practice", authentic deed has 3 (three) kinds of powers, namely:

²¹ Utami, S. M. P., & Dalimunthe, S. N. I. S. (2023). Penerapan Teori Keadilan Terhadap Pembagian Harta Bersama Pasca Perceraian. *Jurnal USM Law Review*, 6(1), 433-447.

- a. The power of formal proof, proves between the parties that they have explained what is written in the deed.
- b. The power of material proof proves between the parties that the event mentioned in the deed has actually occurred.
- c. The force is binding, proving between the parties and the third party that on the date mentioned in the deed concerned has appeared to the public employee and explained what is written in the deed.

In addition, the author relates to the principles in the law of agreement, namely the principle of *pacta sunt servanda* which is one of the principles contained in an agreement. Of the various principles in the agreement, the principle of *pacta sunt servanda* is considered the most fundamental principle because it underlies the birth of an agreement. The principle of *pacta sunt servanda* comes from Latin whose meaning is to be observed, so that in positive law the formulation of the norm means that every agreement that is legally made applies as a law to those who make it. In terms of agreements, the principle of *pacta sunt servanda* can be found in Article 1388 of the Civil Code. A new agreement can be said to be valid if it meets the requirements in Article 1320 of the Civil Code, namely the agreement of the parties, the legal prowess of the parties, the object of the agreement, and the *halal* cause.

With the existence of Article 1388 of the Civil Code and Article 1320 of the Civil Code, it guarantees the legal force of the agreement made under the hand, and also this includes agreements that have the power of formal proof, the power of material proof, binding force which is a binding evidence in the sense that what is written in the deed must be believed by the judge or the person concerned, that is, it must be considered as true, as long as the untruth cannot be proven. The agreement gives perfect legal force, as the principle of *pacta sunt servanda*.

2. Legal Consequences of the Joint Property Distribution Agreement Carried Out Under the Hand of the Joint Property Lawsuit

The judicial process is part of an effort to seek justice and in order to ensure legal certainty for all citizens who are subject to the provisions of applicable laws and regulations. The judicial power is the determining body and the strength of positive legal principles in concretization by judges through their decisions. However good all the laws and regulations created in a country, in an effort to ensure the safety of the community towards the welfare of the people, these regulations are meaningless, if there is no free judicial power that is manifested in the form of a free and impartial judiciary, as one of the elements of the State of law. The judge as the executor of the judicial power has authority in the applicable laws and regulations, and this is done by the judge through his decision.

Contextually, there are three essences contained in the freedom of judges in exercising judicial power, namely:

- a. Judges are subject only to law and justice;
- b. No one, including the government, can influence or direct the verdict to be handed down by the judge;
- c. There are no consequences for the judge's personality in carrying out his judicial duties and functions.²²

To be able to explain the basis of the judge's consideration, the author will first write what is meant by the Judge's Duties. The judge's task is to give a decision in every case or conflict faced with

²²Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*, Citra Aditya Bakti, Bandung, 2001, hlm. 23.

him, determining things such as legal relationships, the legal value of behavior, as well as the legal position of the parties involved in a case, so that to be able to resolve disputes or conflicts impartially based on the applicable law, the judge must always be independent and free from the influence of any party, especially in making a decision.²³

In formulating the content of the Decision, the judge must consider a case after the applicable legislation in Indonesia which is connected to the legal facts that are open in front of the trial, both from the content of the petitum, the content of the posita of evidence and witnesses whether they are in accordance with the applicable laws and regulations in Indonesia, including the Procedural Law. Judges are also required to have fair and good legal reasoning to make a decision in a case. Where apart from the legal facts that are open in the trial, the Judge as a representative of God also has the authority to decide a case based on his beliefs and conscience.

From the description above, the author analyzes the Implementation of the Distribution of Common Property in the Subang Court in Religious Case Number 3284/PDT. G/2022/PA. The judge has considered the following matters:

- 1) Considering, that the Convention Plaintiff postulates that the common property has not been divided;
- 2) Considering, that the Convention Defendant denied that the common property had not been divided, according to the Convention Defendant, the joint property had been divided by the making of a joint statement on May 18, 2021;
- 3) Considering, that in its replica, the Convention Plaintiff rejected the joint statement because it contained fraud, coercion, distributed by unauthorized persons, contained non-halal causes, one-sided, so that it did not meet article 1320 letter d of the Criminal Code;
- 4) Considering, that based on the answer above, the postulate of the Convention Plaintiff has been refuted by the Convention Defendant, the Plaintiff should not have fulfilled article 1320 letter d of the Criminal Code;
- 5) Considering, that based on the above answer, the Convention Plaintiff's argument has been refuted by the Convention Defendant, the Convention Plaintiff should be the one who gets the burden of proof, but because the Convention Plaintiff's argument that "the common property has not been divided" is a negative postulate, the burden of proof lies with the Convention Defendant who must prove that the common property has been divided, The Convention Plaintiff must prove its postulates in the form of conditions that are not fulfilled in the Joint Statement Letter dated May 18, 2021, this is in accordance with the legal rules contained in the Decision of the Supreme Court of the Republic of Indonesia Number 547K/Sip/1971 which reads "proving something negative is heavier than proving something positive, therefore the burden of proof is imposed on the party who postulates something positive;
- 6) Considering, that in order to prove the rebuttal as well as the postulate, the Convention Defendant submitted evidence T.5 (joint statement) the evidence is the same as that submitted by the Convention Plaintiff P.5)
- 7) Considering, that T.5/P.5 essentially contains a letter of agreement on the division of common property signed by the Convention Plaintiff and the Convention Defendant on May 18, 2021, whose signatures and contents are not disputed by both parties so that it

²³Wildan Suyuthi Mustofa, Kode Etik Hakim, Edisi Kedua, Prenadamedia Group, Jakarta, 2013, hlm 74

- is proven that there has been an event of signing an agreement on the division of common property between the Convention Plaintiff and the Convention Defendant;
- 8) Considering, that the Plaintiff of the Convention in its replica rejected the agreement as in evidence T.5/P.5 because the content of the agreement contained fraud and was forced to be distributed by a person who did not have the authority to do so , made at the police station by a police officer, contains an unhalal cause, at the unilateral will of the Convention Defendant, the Convention Plaintiff does not see the money and jewelry, so it does not meet the requirements of article 1320 of the Criminal Code letter d "the existence of a justifiable cause (cause) (goorloofde oorzak)", thus the agreement is null and void;
 - 9) Considering, that since the Convention Claimant postulates this in the replica, the Convention Claimant must prove it;
 - 10) Considering, that to prove the postulate. The Convention Plaintiff submitted 5 letter evidence and 3 witnesses which from the evidence of the Convention Plaintiff in front of the trial there was only 1 witness, namely Medi whose testimony was related to the event of making a joint statement, by the arena of only one witness and no other supporting evidence, including P.5, so it has not met the minimum limit of witness evidence (ullus testicis nullus testicles) so that Medi's testimony cannot corroborate the argument of the Convention Plaintiff;
 - 11) Considering, that in order to strengthen the evidence and rebuttal, the Convention Defendant, in addition to presenting evidence of the letter T5, also presented 1 witness named Oman Sutisna who, among other things, explained that the Convention Plaintiff and the Convention Defendant came together asking for help in making a joint statement , who makes a joint statement is the Convention Plaintiff and the Convention Defendant, the witness only types the concept, the joint statement is read repeatedly before being signed by the Convention Plaintiff and the Convention Defendant, there is no coercion from anywhere, the Convention Plaintiff and the Convention Defendant understand the content of the letter;
 - 12) Considering, that even though only one witness was presented by the Convention Defendant, it turned out that the testimony of the Oman witness was consistent and corroborated by evidence T.5 which, among other things, contained a statement made at the will of both parties and without any coercion from any party;
 - 13) Considering, that based on the above evidence, the Convention Defendant has been able to prove the existence of a joint property division agreement, while the Convention Plaintiff cannot prove that the joint statement contains fraud, coercion, distributed by a person who does not have the authority for it, made at the police station by a police officer, containing an unhalal cause, at the unilateral will of the Convention Defendant;
 - 14) Considering, that in order to find out the property that has been divided between the Convention Plaintiff and the Convention Defendant, the Panel of Judges will examine and consider the assets in evidence T.5/P.5.

In the Joint Asset Case at the Subang Court in accordance with Case Number 3284/PDT. G/2022/PA. SBG, the author assesses that the Panel of Judges who examined and tried the case was right in imposing the Verdict. Where in the Amar Decision, the judge has decided based on his Legal Considerations by looking at the position of the Joint Property obtained during the Marriage between the Parties and also looking at the position of the Agreement under his hands regarding the division of the joint property in it. Then the agreement under the hand has been corroborated by witnesses, as the agreement under the hand should be proven in a court, to prove that the agreement under the hand is a valid agreement.

The division of 1/2 of the common property for each party based on article 97 of the Compilation of Islamic Law article 35 paragraph (1) of Law No. 1 of 1974 concerning Marriage must be ignored when there is an agreement that has been agreed upon by the parties regarding the Joint Property of the Parties. In accordance with the Legal Principles of Pacta Sunt Servanda which means that the Law applies to the Parties who bind themselves in it.

CONCLUSION

The agreement on the division of common property carried out under the hands before the divorce is reviewed in Article 1338 of the Civil Code and Article 1320 of the Civil Code regarding the agreement is valid. However, at the time of the trial, the agreement under the hand must be accompanied by other evidence or other witnesses to prove its validity because the agreement under the hand has limited evidentiary power. When the proof has been fulfilled, the agreement under the hand has the power of formal proof and material proof, binding power which is a binding proof in the sense that what is written in the deed must be believed by the judge or the person concerned, that is, it must be considered as true, as long as the untruth cannot be proven. The agreement provides perfect legal force, as the principle of pacta sunt servanda, namely the agreement that is made applies as a law for the parties who bind themselves in it. Legal Consequences of the Legal Consequences of the Joint Property Distribution Agreement Carried Out Under the Hand of the Joint Property Lawsuit which has been proven by other evidence is that the Agreement is the basis for being filed in a joint property division lawsuit which is an effort to carry out civil legal remedies through the trial to the court decision.

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