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## The Consequences Of The Law Caused By The Division Of Gono- Gini Property In The Gorontalo Religious Court

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The type of research used by researchers in the preparation of scientific articles is a type of normative legal research with juridical sociological research methods that have objects of study of behavior in society. The termination of marriage will inevitably have legal consequences, for example, marriage between a man and a woman is a legal relationship that gives rights and obligations to both parties. Legal consequences are also interpreted as the consequences given by law for an action of a legal subject. Not only will a marriage have legal consequences, but the termination of the marriage will also have legal consequences either the termination of the marriage due to death or a court ruling.

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## I. INTRODUCTION

Marriage is a very important institution in society. The existence of this institution is legalizing the legal relationship between a man and a woman. What is meant by marriage is the bond of inner birth between a man and a woman as a husband and wife to form a happy and eternal family (household) based on the Supreme Divinity.<sup>1</sup> All that God created is paired as it is to the most perfect being, man. A marriage that begins and is based on mutual love and affection between both husband and wife, will always be expected to run well, eternally, and eternally based on the Supreme Godhead. In principle, marriage not only unites a man and a woman in a household, but also marriage always brings legal consequences both for the husband and wife and for the child. The legal consequences have been arranged, including regarding the rights and obligations of each party during the marriage, both their responsibility to children and the consequences to joint wealth (gono-gini).<sup>2</sup>

Law No. 16 of 2019 on Marriage accommodates the principles and provides the basis of marriage law that has been handled and has applied to various groups and societies. By the philosophical foundation of Pancasila and the 1945 Constitution, Law No. 16 of 2019 on Marriage must be able to realize the principles contained in it while on the other hand must also be able to accommodate all the realities that live in society.<sup>3</sup>

The purpose of marriage is of course to get happiness from each other's spouses. If happiness is not obtained, it will cause various problems in the household. Divorce is then used as a solution for couples who experience many problems in their household. The sweetness of the relationship at the beginning of the marriage becomes bitter at the end of the story. Not infrequently divorce is shrouded with commotion, such as vilifying a couple, even causing legal problems.<sup>4</sup> It is not young to form a family that is peaceful, secure, happy, and prosperous. It takes sacrifice and responsibility from each party in carrying out a role in the family. Love, respect, loyalty, mutual respect, and so forth is mandatory thing that needs to be built both husband and wife. By knowing and understanding the rights and obligations of a good husband and wife is expected to

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<sup>1</sup>Salim Hs, 2014, *Hukum Perdata Tertulis (BW)*, Jakarta, Sinar Grafika, hlm. 61

<sup>2</sup> Jurnal: Ety Rochaei, 2013, *Analisis Yuridis tentang Harta Bersama (gono-gini) dalam Perkawinan menurut Pandangan Hukum Islam dan Hukum Positif*, Wawasan Hukum Vol. 28 No. 1 2013

<sup>3</sup> Yudin Yunus dan Siti Alfisyahrin Lasori, 2017, *Hukum Perkawinan*, Gorontalo, Ideas Publishing, Hlm. 4

<sup>4</sup> Darda Syahrizal, 2011, *Kasus-kasus Hukum Perdata Di Indonesia*, Yogyakarta, Pustaka Grhatama, Hlm. 36

facilitate family life based on religious teachings and applicable laws.<sup>5</sup> If divorce occurs, it can certainly cause consequences for people related in a household, wherein this case of course also concerns the property during the marriage. The seizure of gono-gini property is the most concerning issue of couples who are in the process of divorce in addition to child custody. Gono-Gini property is property acquired during the marriage. Gono-Gini property and the treaty often go unnoticed by the public because it often considers marriage sacred so it is unethical to talk about matters of objects let alone the division of property during the marriage. If at any time there is a divorce of property and its management and in the third book Chapter VI Article 126 Article 119 of the Civil Code (BW) states that: From the time the marriage takes place, for the sake of the law applies a unanimous union between the property of husband and wife, only about it with the marriage agreement there are no other provisions.

Article 38 of Law No. 16 of 2019 on Marriage mentions at least three causes of the marriage breakup, namely; by death, by divorce or talaq, and by the judgment of the Court. The death of one of the spouses automatically leads to the breakup of the marriage. The breakup of marriage due to divorce can occur through talaq or based on divorce from the wife granted by the Religious Court. Marriage can also be interrupted due to the court's decision at the request of one party where the other party is missing infallible forest in a row and lasts for at least 2 years (article 39 of the Marriage Law No.16 of 2019, jo. Article 28 PMA Number 3 of 1975, jo. Article 16 and 19 of Government Regulation No.9 of 1975).<sup>6</sup>

The gono-Gini property includes all forms of active and passive during the marriage period. Couples who are married are allowed to determine in the marriage agreement that the acquisition and innate property is a gono-gini property. This is set out in the Compilation of Islamic Law article 49 paragraph (1): "The marriage agreement of personal property may include all property, both brought into the marriage and obtained by each during the marriage."<sup>7</sup>

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<sup>5</sup> Op.cit, Yudin Yunus dan Siti Alfisyahrin Lasori, Hlm. 6

<sup>6</sup> Jurnal: Kholil Nawawi, 2013, *Harta Bersama Menurut Hukum Islam dan Perundang-undangan di Indonesia*, Ilmu Syariah Vol. 1 No. 1 2013, Hlm. 2

<sup>7</sup>Jurnal: Binka LG Simatupang dan Taufik Siregar, 20117, *Tinjauan Yuridis Akibat Perceraian terhadap Pembagian Harta Gono-Gini Menurut Kitab Undang-Undang Hukum Perdata pada Putusan Nomor : 706/Pdt.G/2012/PN.Medan*, Penegakan Hukum Vol. 4 No. 2 2017, Hlm. 31

The division of gono-gini property includes a fairly complicated problem solved in a marriage that leads to divorce, this problem is very sensitive because it relates to the property owned by the husband and wife, either the property of the common property (gono-gini property) or the property of the individual. Islam considers the division of gono-gini property to provide a solution to the importance of the distribution of gono-gini property fairly by Surah Al-Hujurat (49:13). From this verse, we can take an important lesson that a husband and wife relationship is an equal relationship. Both need to be fair to each other, neither of them is wronged. Prophet Muhammad (peace be upon him) said, "The best among you is the best to his family."

Article 37 of the Marriage Law related to the division of common property due to divorce mentioned that the consequences of divorce are the division of common property that must be regulated according to their respective laws. That is, divorced married couples must share property by their respective laws. Therefore, divorce and the model of sharing common property (gono-Gini) are left to the husband and wife, then the division of common property from each divorced couple can vary.

Based on the data obtained at the Gorontalo Religious Court related to the common property will be described in the table as follows:

No.	Year	Accepted	Rejected
1.	2018	10	-
2.	2019	9	1
3.	2020	7	-

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*Source: Gorontalo Religious Court 2021*

Similarly, the case in the Gorontalo Religious Court was held by the court with case number 12 / Pdt.G / 2020 / PA. Glo, where a couple is divorced, which is basically that the division of property with each husband and wife gets the same part that is 1/2 part for the husband and 1/2 part for the wife, as stipulated in article 97 of the Compilation of Law of Islam. But in fact, the Panel of Judges stipulates the division of property against the common property by comparison of two to one, namely the Defendant (wife) gets 2 parts or 2/3 of the joint property and 1 part or 1/3 of the joint property becomes part of the Plaintiff (husband). Defendant expressed objection because Plaintiff as a husband does not have a permanent job and is more unemployed even Plaintiff has divorced Defendant by leaving children without providing a living to children, thus

adding to the burden of suffering for Defendant who must fight to live children and send them to school, while Defendant still pays installments in the Bank, on the other hand, Defendant a wife who should get protection and the decent life of the Plaintiff, but in reality, the Defendant took pains to help the Plaintiff by giving capital to open a photocopying business whose results were not given to the Defendant, besides that the Defendant worked as a Civil Servant who painstakingly helped the family finances, and the acquisition of the joint property, was derived from the provision of the Defendant's parents.

While with a different case handled by the religious court with case number 560 / Pdt.G / 2019 / PA. Because the plaintiff's lawsuit is obscure libel then the plaintiff's lawsuit must be declared unacceptable (*Niet Onvankelijke Verklaard*), because plaintiff's claim is imperfect or unclear then the panel of judges argued that the plaintiff's lawsuit belongs to the category of libel obscure and must be refined especially the object and content of the claim. Therefore, the subject matter is declared unacceptable then the reconvening lawsuit as an assessor, in this case, will be ruled out.

## **II. PROBLEM FORMULATION**

What are the legal consequences of the distribution of gono-gini property in the Gorontalo Religious Court?

## **III. RESEARCH METHODS**

The type of research used by researchers in the preparation of scientific articles is a type of normative legal research with juridical sociological research methods that have objects of study about behavior in society. The process of collecting data from the objects studied in this study is using interview techniques. The data obtained by researchers in this study uses qualitative methods that mean the data will be analyzed using no statistics or mathematics or the like but simply by descriptively deciphering the data obtained.

## **IV. DISCUSSION**

Joint property or gone-gini property is property obtained throughout the marriage that lasts until the marriage ends due to divorce, death, or court ruling. What is meant by the gono-gini property is property produced by husband and wife during their marriage. The marriage in question is legal, as stipulated in Law No. 16 of 2019 concerning Changes to Law No. 1 of 1974 on Marriage. The gono-Gini property belongs to the husband and wife, even if the only husband or wife works. Regarding when the formation of gono-gini treasure, it is determined by the sense of justice of

each party, but generally determined according to reasonableness, not time. The distribution of gono-gini property must be done fairly, so as not to cause injustice between which is the right of the husband and which is the right of the wife.<sup>8</sup>

Discussing the legal consequences caused to gono-gini property in marriage will surely give birth to some legal consequences. Marriage always has legal consequences. Due to the law arises because of a legal relationship, for example, marriage between a man and a woman is a legal relationship that while the rights and obligations of both parties. Legal consequences are also interpreted as the consequences provided by law for an act of legal law. Not only will a marriage have legal consequences, but the termination of the marriage will also have legal consequences, both the breakup of the marriage due to death and the court's decision.<sup>9</sup> One of the legal consequences of a legal marriage is the creation of marital property. Marital property or wealth to meet all the needs needed in family life. The law of wealth governs the relationship between an individual and his wealth and how a person is held accountable for his actions relating to his wealth.

Marriage law includes the law governing the legal relationship of the husband and wife in marriage and the law of marital property. The law of marital property is a rule of law that regulates the consequences of marriage to the property of the husband and wife who have carried out the marriage. The division of marriage law is based on the legal consequences that arise from marriage, namely the consequences of marriage to the husband and wife and the legal effect on marital property. The enactment of Law No. 16 of 2019 on Marriage is intended as a unification of marriage law about the values embraced and believed by the community.<sup>10</sup>

The issue of property in a marriage is very important because one of the very significant factors about happiness and prosperity or not of home life lies in the property. Although the reality shows there is still a rift in household life not due to property but other factors. Property is only a support for that welfare. The position of marital property as a wealth capital to finance married home life can be classified into 4 parts, namely:

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<sup>8</sup> <https://pengacaraperceraian.xyz/tag/artikel-tentang-harta-gono-gini/>

<sup>9</sup> Jurnal: Muhamad Jefri Ananta dkk, *Perceraian dan Akibat Hukumnya Terhadap Anak dan Harta Bersama Menurut Hukum Adat Osing di Desa Aliyan Kecamatan Rogojampi Kabupaten Banyuwangi*, Lentera Hukum Vol. 4 2017

<sup>10</sup> Achmad Kardiansyah, *Harta Bersama Sebagai Objek Jaminan Hak Tanggungan (Studi Di Pengadilan Negeri Tanjung Karang)*, Program Pasca SarjanaProgram Studi Magister Kenotariatan Universitas Diponegoro Semarang, 2008, Hlm. 79

1. The proceeds of their own business before they marry or personal property. Personal property is the property owned by each and is under the control of the husband and wife.
2. Treasures obtained at the time of the wedding ceremony or called wedding gifts. All the original property is given when the wedding ceremony is a wedding gift, both from the gift of relatives and non-relatives. But judging from the place, time, and purpose of the gift, the marital gift can be distinguished between those received by the bride and those received together when officially married.
3. Grant and inheritance obtained by one of the husband or wife. An inheritance obtained from the relatives themselves remains the property of the husband or wife who comes from the relative who gave the inheritance. So at the dissolution of the marriage due to divorce, the property still follows the husband or wife as the original owner after the owner dies, the property does not move out if it does not fall into the hands of the wife or husband who is still alive.
4. Property obtained during marriage or property with the husband and wife as well as the original goods, which remain bound to the unity of the original relatives, then it is also common to the provision that the property obtained during the marriage period becomes a property with the husband and wife so that it is a property.

Based on the results of an interview with Mrs. Dra. Hj. Hasina HD, MH as a judge at the Gorontalo Religious Court, that the legal consequences arising during divorce due to the property are many obstacles so that when it is compiled or merged then the divorce can be reversed and the process will belong. While from both parties some want to hold a second marriage and the implementation of the division of property with the divorced husband and wife but during the marriage obtained joint property which then asks for the joint property is divided 1/2 for each husband and wife regardless of the property obtained in the name of whom. After the judge handed down the verdict, the implementation was up to both parties, namely the husband and wife where the division of common property was done willingly to divide. But if both sides do not want to share it willingly and no one is aware of the law then one of them will apply for execution in court. And in the implementation of the division of gono-gini property must also have obstacles, namely, for example,

the property that will be divided is no longer there and has been disbursed.<sup>11</sup>

Meanwhile, according to Mr. Agus Mashudi, S.Ag as the Substitute Clerk at the Gorontalo Religious Court that the implementation of the division of joint property or gone-gini property can be done peacefully, namely with an agreement between the two parties where each party must accept and implement the agreement that has been made. If the process of sharing the common property can not be done by peaceful means, then it can be done through religious courts based on applicable regulations. As for the process of implementing the division of joint property, namely filing a lawsuit, paying the case fee, registering the case filed, given the case number, date, month and year of the case, etc. After the annexes are examined and corrected both parties are brought to the chairman of the Religious Court.<sup>12</sup>

The main consequences and causes of divorce are:

1. Domestic violence  
Divorce because domestic violence is also one of the main causes of divorce. Many couples choose to save their lives by getting divorced because they often get mistreated both physically and verbally.
2. Economic issues  
Economic problems are also a trigger for couples who want a divorce because they consider their partner unable to meet the material needs of the family, thus leaving their partner with a divorce.
3. Infidelity  
Another cause of divorce is that one of the couples is having an affair. A hurt couple cannot forgive and choose to divorce. Or vice versa, the cheating partner chooses for the sake of his new partner.
4. Failed to communicate  
Incompatibility with failure to communicate between husband and wife becomes a trigger for divorce. Lack of communication makes a lack of mutual understanding and often quarrels occur.
5. The child becomes a victim

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<sup>11</sup> Interview With The Judge at the Gorontalo Religious Court, Tuesday July 13, 2021

<sup>12</sup> Interview With a Substitute Clerk at the Gorontalo Religious Court, Tuesday July 13, 2021



Children are the most injured when their parents decide to divorce. Children can feel scared because they lose the love of parents who do not now live at home. It's also possible that they feel guilty and consider themselves the cause.

6. Childcare issues

After a divorce, another problem arises when it comes to sharing child custody with your partner because it could be that you still feel hurt by the treatment of your ex so it is difficult to be fair. Things to talk about such as education or a child's discipline may cause arguments because they disagree and pain can make this worse.

## V. CONCLUSION

Marriage always has legal consequences. Due to the law arises because of a legal relationship, for example, marriage between a man and a woman is a legal relationship that while the rights and obligations of both parties. Legal consequences are also interpreted as the consequences provided by law for an act of legal law. Not only will a marriage have legal consequences, but the termination of the marriage will also have legal consequences, both the breakup of the marriage due to death and the court's decision. And married couples should not mind who is most entitled to the property because it is clear in the Marriage Act asserts that joint property is a common property that can be during the marriage. So that all legal acts arising during the marriage using the common property must be borne together and must get approval from both parties. And preferably before conducting a sacred marriage between prospective spouses first understand and learn how home life is like, especially the common property and innate property of each party.

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