

# JURNAL CITA HUKUM

*Indonesian Law Journal*



- **Human Trafficking in Accordance with Prosperity and National Economic Development**  
*Renny Supriyatni Bachro & Mien Rukmini*
- **Disparity in The Judge's Ruling About Community Property Disputes After Divorce;  
(An Analysis of The Verdict in The South Jakarta Religious Court, Religious Court of Jakarta  
And Supreme Court)**  
*Kamarusdiana*
- **Existence of Local Government Toward the Implementation of Coaching and Legal  
Supervision for Franchisee Business**  
*Ika Atikah*
- **Legislation Fatwa National Sharia Board-Indonesian Council of Ulama (DSN-MUI) In the State  
Economic Policy**  
*Fitriyani Zein*
- **Presidential Threshold Between the Threshold of Candidacy and Threshold of Electability**  
*Suparto*
- **Mahar and Paenre'; Regardless of Social Strata Bugis Women in Anthropological Studies of  
Islamic Law**  
*Yayan Sopyan & Andi Asyraf*
- **Kedudukan Hasil Audit Investigatif Pada Kekayaan Badan Usaha Milik Negara Persero Dalam  
Hukum Pembuktian Pidana di Indonesia**  
*Susanto*
- **Hubungan Hukum Dokter dan Pasien Serta Tanggung Jawab Dokter Dalam Penyelenggaraan  
Pelayanan Kesehatan**  
*Yussy A. Mannas*
- **Paradigma Orientasi Mencari Kebenaran Materil Dalam Proses Pembuktian Akta Otentik**  
*Yustika Tatar Fauzi Harahap & Isis Ikhwansyah*

**Volume 6 Number 1 (2018)**

Jurnal

# CITA HUKUM

**VOLUME 6 NUMBER 1 (2018)**

CITA HUKUM is Indonesian Law Journal published by Faculty of Sharia and Law, State Islamic University Syarif Hidayatullah Jakarta in Associate with Center for Study of Indonesian Constitution and Legislation (POSKO-LEGNAS) UIN Jakarta. This journal specializes in Indonesian Legal Studies and try to present various results of the latest and high-quality scientific research which is issued twice in a year at June and December.

CITA HUKUM has been indexed at **SINTA 3** and become a **CrossRef** Member since year 2015. Therefore, all articles published by CITA HUKUM will have unique DOI number.

#### INTERNATIONAL ADVISORY BOARD

**Prof. Tim Lindsey**, SCOPUS ID: 36785442900; h-index: 5, Melbourne University Australia  
**Prof. Muhammad Munir**, Scopus ID: 54414595100 h-index: 1, Department of Law, International Islamic University Islamabad, Pakistan  
**Prof Mark Cammack**, Scopus ID: 6507998992 h-index: 3, Southwestern Law School Los Angeles USA  
**Prof. Euis Nurlaelawati**, Scopus ID: 56247081700 h-index: 1, Faculty of Sharia and Law, UIN Sunan Kalijaga Yogyakarta

#### EDITORIAL BOARD

**Prof. Gani Abdullah**, h-index Google Scholar: 5, UIN Syarif Hidayatullah Jakarta  
**Prof. Salman Maggalatung**, h-index Google Scholar: 3, UIN Syarif Hidayatullah Jakarta  
**Dr. Asep Saepudin Jahar**, Scopus ID: 57156653300, h-Index Google Scholar: 1, UIN Syarif Hidayatullah Jakarta  
**Dr. Ahmad Tholabi Kharlie**, Thomson Reuters Id: R-5028-2017, h-Index Google Scholar: 3, UIN Syarif Hidayatullah Jakarta

#### EDITOR IN CHIEF

**Nur Rohim Yunus**, Thomson Reuters Researcher ID: F-3477-2017, ORCID ID: 0000-0003-27821266, SSRN ID: 2645355, h-index Google Scholar: 3, Department of Constitutional Law, UIN Syarif Hidayatullah Jakarta, Indonesia

#### MANAGING EDITOR

**Muhammad Ishar Helmi**, Thomson Reuters Researcher ID: F-3345-2017, ORCID ID: 0000-0001-7060-8191, h-index Google Scholar: 1, Department of Criminal Law UIN Syarif Hidayatullah Jakarta, Indonesia

#### EDITORS

**Indra Rahmatullah**, ORCID ID: 0000-0002-6160-4225, h-index Google Scholar: 1, Department of Economic Law, Faculty of Sharia and Law, UIN Syarif Hidayatullah Jakarta, Indonesia.  
**Mara Sutan Rambe**, ORCID ID: 0000-0001-5404-6635, h-index Google Scholar: 1, Department Criminal Law, Faculty of Law, UIN Syarif Hidayatullah Jakarta, Indonesia.

#### ENGLISH LANGUAGE EDITOR

**Fitria**, ORCID ID: 0000-0001-9733-1233, Department of International Law, York Law School, University of York, UK, United Kingdom.

#### ASSISTANT TO THE EDITORS

**Erwin Hikmatiar**, Thomson Reuters Researcher ID: F-3235-2017, ORCID ID: 0000-0003-4103-818X, UIN Syarif Hidayatullah Jakarta

#### Redaktur Office

Faculty of Sharia and Law UIN Syarif Hidayatullah Jakarta  
Street Ir. H. Juanda 95 Ciputat Jakarta 15412  
Phone. (62-21) 74711537, Faks. (62-21) 7491821  
Website: [www.fsh-uinjkt.net](http://www.fsh-uinjkt.net), E-mail: [jurnal.citahukum@uinjkt.ac.id](mailto:jurnal.citahukum@uinjkt.ac.id)  
Link: <http://journal.uinjkt.ac.id/index.php/citahukum>

**Jurnal**

# **CITA HUKUM**

INDONESIAN LAW JOURNAL

Welcoming contributions from scientists, scholars, professionals, and researchers in the legal disciplines to be published and disseminated after going through script selection mechanisms, reviewing sustainable partners, and rigorous editing processes.

## TABLE OF CONTENTS

<b>Human Trafficking in Accordance with Prosperity and National Economic Development</b>	
Renny Supriyatni Bachro, Mien Rukmini .....	1-18
<b>Disparity in The Judge's Ruling About Community Property Disputes After Divorce; (An Analysis of The Verdict in The South Jakarta Religious Court, Religious Court of Jakarta And Supreme Court)</b>	
Kamarusdiana .....	19-44
<b>Existence of Local Government Toward the Implementation of Coaching and Legal Supervision for Franchisee Business</b>	
Ika Atikah .....	45-70
<b>Legislation Fatwa National Sharia Board-Indonesian Council of Ulama (DSN-MUI) In the State Economic Policy</b>	
Fitriyani Zein.....	71-94
<b>Presidential Threshold Between the Threshold of Candidacy and Threshold of Electability</b>	
Suparto .....	95-108
<b>Mahar and <i>Paenre'</i>; Regardless of Social Strata Bugis Women in Anthropological Studies of Islamic Law</b>	
Yayan Sopyan, Andi Asyraf .....	109-138
<b>Kedudukan Hasil Audit Investigatif Pada Kekayaan Badan Usaha Milik Negara Persero Dalam Hukum Pembuktian Pidana di Indonesia (<i>Position of Investigative Audit Results on State Owned Enterprises' Property in the Criminal Proof of Law in Indonesia</i>)</b>	
Susanto .....	139-162
<b>Hubungan Hukum Dokter dan Pasien Serta Tanggung Jawab Dokter Dalam Penyelenggaraan Pelayanan Kesehatan (<i>Legal Relations Between Doctors and Patients and The Accountability of Doctors in Organizing Health Services</i>)</b>	
Yussy A. Mannas .....	163-182
<b>Paradigma Orientasi Mencari Kebenaran Materil Dalam Proses Pembuktian Akta Otentik (<i>Paradigm of Orientation for Finding Material Truths in the Authentic Deed Proofing Process</i>)</b>	
Yustika Tatar Fauzi Harahap, Isis Ikhwansyah.....	183-200



# Disparity In The Judge's Ruling About Community Property Disputes After Divorce (An Analysis of The Verdict In The South Jakarta Religious Court, Religious Court of Jakarta And Supreme Court)\*

Kamarusdiana<sup>1</sup>

Universitas Islam Negeri Syarif Hidayatullah Jakarta

DOI: [10.15408/jch.v6i1.8266](https://doi.org/10.15408/jch.v6i1.8266)

## Abstract:

There is a discretion in the South Jakarta Religious Court with the provisions of the Compilation of Islamic Law. Thus, the fundamental problem of legal theory and theory which is used by the Judge to decide upon the joint property, why the decision is different between the judges at the first level, the appeal and the cassation, and how the parties' argument in acquiring the common property. The result shows that the argument used by the panel of judges at the first level is in fact of the law property obtained from the income of the wife in addition to meet the sense of justice and benefit. While the judges at the higher level and Cassation in the Supreme Court are more normative to the existing of legal norms. The theoretical approach used by judges at the first level is the theoretical approach of legal realism while the judges at appeal level and Cassation use theories of legal positivism.

**Keywords:** Joint Property, Legal Positivism, The Ijtihad of Judges, The Disparity of The Verdict

---

\* Received: March 12, 2018, Revised: April 13, 2018, Accepted: Mei 23, 2018.

<sup>1</sup> Kamarusdiana is an Associate Professor at Department of Law, Universitas Islam Negeri (UIN) Syarif Hidayatullah Jakarta. E-mail: [kamarusdiana@uinjkt.ac.id](mailto:kamarusdiana@uinjkt.ac.id). ORCID ID: <https://orcid.org/0000-0002-6812-7249>.

*Disparitas Putusan Hakim  
Tentang Sengketa Harta Bersama Pasca Perceraian  
(Analisis Putusan Di Pengadilan Agama Jakarta Selatan,  
Pengadilan Tinggi Agama Jakarta dan Mahkamah Agung)*

**Abstrak:**

Terdapat ketidaksesuaian putusan mengenai pembagian harta bersama pada Pengadilan Agama Jakarta Selatan dengan ketentuan dalam Kompilasi Hukum Islam. Sehingga yang menjadi permasalahan mendasar hukum dan teori apa yang digunakan oleh Hakim untuk memutus harta bersama tersebut, kenapa putusan tersebut berbeda antara hakim di tingkat pertama, banding dan Kasasi, serta bagaimana argumentasi para pihak dalam memperoleh harta bersama. Berdasarkan hasil penelitian penulis, argumentasi yang digunakan majelis hakim di tingkat pertama ialah secara fakta hukum harta yang diperoleh lebih banyak dari hasil penghasilan isteri di samping untuk memenuhi rasa keadilan dan kemaslahatan. Sedangkan hakim di tingkat II (PTA) dan Kasasi di Mahkamah Agung lebih normatif kepada norma hukum yang sudah ada. Pendekatan teori yang digunakan oleh hakim di tingkat pertama lebih kepada pendekatan teori realisme hukum sementara hakim di tingkat banding dan Kasasi lebih banyak menggunakan teori positivisme hukum.

**Kata Kunci:** Harta Bersama, Positivisme Hukum, Ijtihad Hakim, Disparitas Putusan

**Recommended citation:**

Kamarusdiana. "Disparity In The Judge's Ruling About Community Property Disputes After Divorce (An Analysis of The Verdict In The South Jakarta Religious Court, Religious Court of Jakarta And Supreme Court)" JURNAL CITA HUKUM [Online], Volume 6 Number 1 (2018).

## Introduction

Marriage in the teachings of Islam is to form a peaceful, and eternal family home forever. Therefore, the process of getting the divorce is not easy and even complicated, a husband cannot simply drop the divorce to the wife and vice versa the wife cannot ask or sue for divorce her husband. Every problem, both husband, and wife are given the opportunity to seek a peaceful solution by way of deliberation. If you still do not get a deal and feel no longer able to continue the relationship then the parties can bring the issue to the courts in order to find the best way out. The court as the last resort for the parties to solve the problem of husband and wife, it will reopen the peace gate to the parties through a mediation process by a judge. For a Muslim, this case will bring to the Religious Courts while for other religions refer to the District Court.

Divorce not only affects on religious law and legislation but also the extent to which the cultural influence of shame and control of society, in a society whose kinship is very strong, divorce is a tabu issued but in people who have weaknesses kinship system, it will be easy the divorce occurs. A divorce will bring various legal consequences, one of it is related to mutual property in marriage.

Customary Law in Indonesia has stipulated that the property of marriage is all possessions held during marriage bonds, whether the property of the controlled relative or personal property derived from the inheritance, the treasure of grant, the property of his own income, the livelihood of the proceeds with the husband and wife and the goods, gift items.<sup>2</sup> However, usually newly married couples are not too concerned about this property issue because the most important is to maintain the integrity of the harmony relationship.<sup>3</sup>

Marriage life is not as beautiful as we think, many couples whose marriages ran aground on the way and ended in divorce and resulted in new problems such as the seizure of common property. In 2012, the divorce rate reached 372,557. In other words, there are 40 divorces per hour in Indonesia, and this is done by young couples under the age of 35, it can happen because of a young marriage. In 2013 the National Family Planning and Family Planning Agency (BKKBN) has been informing the number of divorces in Indonesia

---

<sup>2</sup> Hilman Hadikusuma, *Antropologi Hukum Indonesia*, (Bandung: Alumni, 1986), p. 156.

<sup>3</sup>Hapy Susanti. *Pembagian harta Gono Gini Saat Terjadi Perceraian, pentingnya Perjanjian Perkawinan untuk Mengantisipasi Masalah Harta Gono Gini.*, (Jakarta: Visi Media, 2008), p. 1.



## Kamarusdiana

occupying the highest figures in the Asia Pacific and there is no declined from year to year.

This is had an impact on the seizure of common property, and the legislation in force in Indonesia stipulates that any property acquired during the marriage period is made as a joint treasure regardless of who works or earns the property and on whose behalf, as long as the property is not an inheritance, gift or marriage agreement in the case of ownership of joint property.

The issues of sharing of common property are discussed only when divorce occurs between husband and wife. In the Qur'an and Hadith, this issue is not explicitly regulated. Likewise, the Jurisprudence books of various schools of thought have not discussed or discouraged them. However, Indonesian legislation has established provisions relating to the joint property. This is the result of the *ijtihad* of Indonesian jurists and scholars who seek to break the vacuum of Islamic law in dealing with the problem of common property.

Law Number 1 the Year 1974 on Marriage regulates the common property, in Article 35 (1) Declared that the property acquired throughout marriage into the joint property. (2) The property of each husband and wife and the property acquired respectively as a gift or inheritance is under the satisfaction of each recipient, the parties do not specify otherwise. Article 36 (1) Regarding joint property of husband and wife may act upon the agreement of both parties. (2) Regarding their respective possessions, husbands and wives have the full right to engage in legal acts concerning joint property. Article 37 (1) When marriage is terminated due to divorce, the joint property shall be regulated according to their respective laws. In the explanation of Article 37 paragraph (1), this is affirmed by each law is religious law, customary law and other laws concerned with the distribution of such joint property.

Joint treasure is a treasure at the time of marriage takes place, while the property is acquired before the marriage. However, in reality in families in Indonesia, many do not record about their common property. In a new marriage, the separation of property and common property is still visible. However, at the age of marriage that is old, property and shared property is difficult to explain in detail one by one. The most frequent occurrence of the majority Muslim community of Indonesia today is that after the divorce, regarding the position or division of joint property between the divorced husband and wife, many people choose the Religious Court to settle the dispute over the sharing of common property. A common property dispute often creates a new problem when one party feels more dominant in obtaining

property by working, and the other is just taking care of the household, so that when a divorce proceeds to a common property struggle, the judge's ruling is perceived as lacking a sense of justice, law in accordance with the provisions of the Act, especially those who work are the wives who are parties who have no full responsibility as a breadwinner, but when divorce and judges decide equally, then the verdict becomes an injustice on the part of the wife.

Facts in the field of a famous artist in 2000's Dewi Made Hughes had to divorce her husband who is none other than his own manager Afin. Hugh's divorce lawsuit was granted by the South Jakarta Religious Court and determined the distribution of common property earned during the marriage 50:50 of each. On the verdict, Dewi Hughes finally appealed on the grounds that the treasure earned in the marriage was Hughes's own property, as she worked alone, while Afin was the only manager in charge of Hughes's schedule. So, as a manager, he is only entitled 10% of the income from Hughes when she was receiving a job.<sup>4</sup> The legal basis of the judges of South Jakarta religious court which refers to the provisions of the Compilation of Islamic Law Article 97 which determines the widow and widower division if the divorce of life each get 50 parts. The division of common wealthy 50:50 does not necessarily meet the element of a sense of justice because it also needs to pay attention who is most contribute to obtaining the treasure. Moreover, as a wife, huges has no obligation to earn a living, it is her husband who must seek and provide for the family.

In another case, Sarmila when her husband Arwana has had another wife when her husband wandered. And Sarmila struggled to earn a living to support her children by selling fish. And when the divorce happens finally Sarmila who came out of the house because the husband asked her to go out from the house without carrying any joint treasure, and she has to ride home in her parents' house with 3 (three) children.<sup>5</sup>

Many people do not have knowledge about the joint property in marriage, especially women. Because women often who become disadvantaged. Therefore, this research will focus on how the argumentation of a woman (wife) in this case gain and defend her rights in case of seizure of joint property after divorce in South Jakarta Religious Court, High Court of Religion and Supreme Court with decision case of Number 981/Pdt.G/2013/PA.JS, and

---

<sup>4</sup> Kompas, 27 June 2005.

<sup>5</sup> Anggun Magazine, number 2, Volume 2 March 2007.

resumed in the case of appeal as the case number 57/Pdt.G/2015/PTA.JK, and at the cassation level became the case number 378/K/Ag/ 2016.

## Understanding and Legal Basis of Joint Property

In Indonesian Dictionary, the joint treasure is interpreted with the term of "*gono-gini*", which legally means, "the treasure that has been collected during the marriage so that the rights of both husband and wife'. In the community, the common property is known by the term *gono gini* that is the acquisition of joint property during the marriage, whereas in Indonesian law the term is known as common property.<sup>6</sup> The concept of *gono gini* actually comes from the Javanese tradition is termed as a family whose have only two siblings, one son, and one daughter.<sup>7</sup> After that this term developed to become a marriage live both men and women, hence the treasure obtained in the marriage is called *gono gini* treasure.

In various regions it is also known as *Gono* treasure with terms of meaning same with *gono gini*, like in Aceh known it is known as *hareuta sihareukat*, in Minangkabau known as *suarang* treasure, in sunda known for *guna kaya*, in Bali called *druwe gabbro*, in Kalimantan known as a *barang perpantangan* , but the term *Gono gini* is more popular in society either juridical, sociological and psychological approach.

The legal basis of the provision of joint property in a marriage is originated from 1). Act No. 1 of 1974 on Marriage. Article 35 paragraph (1) states that what is meant by joint property (*gono-gini*) is the property acquired during the marriage. This means that all property acquired before the marriage does not enter into joint property; 2). What is meant by the joint property is all the property acquired during the marriage, the treasure is obtained or the work of husband and wife together or the husband because of his own effort, her husband is a joint treasure; 3.) In the use of the joint property by one of the parties of the husband or wife, the law determines that there must be an agreement of both parties (Article 36 of Law Number 1 the Year 1974). The term used herein is used for domestic purposes. Likewise, if there is a change of joint property such as sold or pawned or granted by the husband or wife must also have the agreement of both parties; 4). In the event of a marriage breakup due to a divorce, then according to Law No. 1 of 1974 the joint property is regulated

---

<sup>6</sup> Hapy Susanti. *Pembagian harta Gono Gini Saat Terjadi Perceraian, pentingnya Perjanjian Perkawinan untuk Mengantisipasi Masalah Harta Gono Gini*, (Jakarta: Visi Media, 2008), p. 1.

<sup>7</sup> Kamus Besar Bahasa Indonesia, 2001, p. 330.

according to their respective law (art 37 of Law Number 1 the Year 1974); 5). Similarly, with others in the explanation of Law Number 1 the Year 1974 Article 35 states that if the marriage breaks up then the joint property is regulated according to their respective laws; 6). What is meant by their respective laws is religious law, customary law and other law (art. 37 Elucidation of Law Number 1 the Year 1974). The reality in society shows that while most societies are Muslims who can be said to be obedient, in this case, common property selects customary law to regulate it, in which each party wishes to derive a half of the amount of co-ownership; 7). In KUHP is mention in article 119 since the time of marriage, then according to law happened comprehensive is a joint property between husband and wife, as far as it is not held other provisions in marriage agreement. Such joint possession during the marriage shall not be abolished or changed with the consent of a spouse; 8). Compilation of Islamic Law Article 85 mentions "the existence of joint property in Marriage does not rule out the existence of the property of each husband and wife. This Article already mentions the existence of common property in the marriage of Muslims, nevertheless does not rule out the ownership of individual property; and, 9). Compilation of Islamic Law article 86 paragraph 1 and 2 again states "Basically there is no attachment of property between husband and wife because marriage even in paragraph 2 is basically a wife's property into wife's property and fully controlled by it.

Article 86 paragraph (1) in the compilation of Islamic Law seems to contradict the provisions of the previous article. However, if analyzed it is actually article 86 Compilation of Islamic Law is informative that Islam does not recognize the term *gono gini* property which is a collection of husband property and wife property. The term *gono gini* is known from civil law or positive law in Indonesia. Thus, since the occurrence of marriage does not close the possibility of mixing between them. Or in other words, marital property is allowed as long as there is no special agreement in marriage.

The marriage agreements made by spouses and husbands are permitted by Islamic law as set in forth Article 49 paragraph 1 which prescribes the Marriage Agreement personal property may include all property, whether brought to the marriage or acquired during the marriage. The married couple is also allowed to enter into a marriage contract that is not included in the joint property is the personal property bought at the time of marriage is held as a treasure. This is stipulated in the Compilation of Islamic Law article 49, paragraph 2, without prejudice to the provisions referred to in paragraph (1) may also be promised of the mixing of personal property brought during the

## Kamarusdiana

marriage, so that this mixing does not cover personal property acquired during marriage or otherwise.<sup>8</sup>

Indeed this shared treasure is closely related to the treasured possessions during the marriage, and this is necessary because of part of the worldly needs that all spouses need.<sup>9</sup> Basically, the customary law also determines that not all property owned by husband and wife is unity of property (*gono-gini*). Which belongs to the inheritance of *gono gini* is the property acquired jointly since the occurrence of marriage. The property acquired prior to the marriage and inheritance acquired during the marriage is owned by each husband and wife. Thus, there is essentially no contradiction between Islamic law and customary law. And in general the rule of customary law throughout Indonesia is the same, that is property acquired into unity property while regarding other property such as continuation of property unity itself, in general, every region is different. For example, in Java, in general, the distribution of wealth is distributed in the aftermath of divorce, both in the case of joint property and possessions and this is of great significance. Another case when the shared property is shared because one of the couples died, then this is not too problematic.

### Miscellaneous of Common Property

The compilation of Islamic Law Article 91 states that the form of joint property, among others:

1. The joint property as mentioned in Article 85 may be tangible or intangible.
2. Together Intangible Property may include movable, immovable and other securities.
3. Intangible joint property can be either rights or obligations.
4. Collective property may be used as collateral goods by one party on the approval of another party.

---

<sup>8</sup> Abdul Gani Abdullah., *Pengantar Kompilasi Hukum Islam dalam Tata Hukum Indonesia*, (Jakarta: Gema Insani Press, 2002), p. 90, see on *Kompilasi Hukum Islam., Hukum Perkawinan, Hukum Pewarisan dan Hukum Perwakafan*. (Jakarta: Pustaka Yustisi, tt), p. 27, and Direktorat Pembinaan Bidang Peadilan Agama, *Hukum dan Peradilan*, Jakarta, 1993., p. 25.

<sup>9</sup> Soerodjo Wignyodipoero, *Pengantar dan asas-asas hukum Adat*, (Jakarta: Gung Agung, 1995), p. 45.

While in the article 92 of the Compilation of Islamic Law reads "Husband or wife without the consent of the other party is not allowed to sell or transfer the joint property". Against to this joint treasure, the husband or wife has the same responsibility and the joint property will be shared equally if the marriage has been terminated due to death or divorce and because of the court's decision. Sayuti Thalib argued that the common property is divided into 3 (three) groups, **First**, it Seen from the point of origin of husband and wife property can be classified in several groups, a). The property of each husband or wife acquired before marriage is a congenital possession or may be possessed by themselves, b). The treasures gained during the marriage run, but not from their efforts but grants, inheritance or their own treasures. **Second**, the wealth acquired throughout the marriage, whether the husband's own or his wife's own business or together is a joint treasure. Viewed from the user's point of view, the property is used for: a). Funding for other, family and school shopping for children. b). Other assets. **Third**, Viewed from the point of the relationship of property with individuals in society, the treasure will be: a). Joint Property; b). One's property but bound to the family, and c). The property of a person and the owner firmly by the person concerned.

It is about the wealth acquired during this marriage that will be shared if the marriage breaks up, either because of divorce, death or court ruling. The importance of being set up joint property in a marriage is for the control and distribution, the control of the common property in the case of marriage is still ongoing, the division of joint property is done when the marriage breaks up. These joint treasures are arranged in a balanced way, meaning the husband or wife controls the property jointly, each party acts on the property with the consent of the other party and if the marriage breaks up then according to the Compilation of Islamic Law the property will be shared equally between husband and wife.

### **Joint Sharing Processes**

The division of common property due to married couples live spouse refers to the 97 Compilation of Islamic Law that determines the widow and widower divorce each life is entitled to get half of the joint property as long as no other specified in the marriage agreement. This means that in the case of a divorce of life if there is no marriage agreement the completion of the division of joint property pursuant to the provisions of the article in this Law. For the followers of other religions, the division of community property refers to Article 128 of the Criminal Code which determines after dissolution, then the

unity of property is divided between husband and wife or between their heirs respectively, regardless of which side of the goods is obtained. Based on the article, if there is divorce, the division of property is 50 % parts each part. It can be seen that the division of *gono gini* property when the divorce is the same between the Compilation of Islamic Law and the Civil Code, each of which is given 50% parts. In the case of the divorce process, the court can determine the livelihood that the husband must bear, in addition to the court may also determine the things necessary to ensure the maintenance of goods into the rights of husband and wife or goods that the rights of them.

### Joint Treasure in *Fukaha's* View

The discussion of joint treasures in the jurisprudence books written by the jurists was not found. This is possible because the Koran and Hadis do not deal specifically with the institutionalization of common property in a marriage bond. So far only the Koran verses have been found to address the issue of property in general, among them Qs. al-Nisa '[4]: 32.<sup>10</sup> This verse is general and not addressed to the husband or wife only, but all men and women. If a person strives in his daily life then the result of his efforts is a personal property owned and controlled by each person.

In fiqh books, the discussion of home furnishings.<sup>11</sup> In the discussion, the jurist explained that if there is a dispute between husband and wife concerning ownership of household goods, whether they are divorced or not divorced, then to determine the ownership of the property is arranged as follows. According to Imam al-Shafi'i, husband and wife who fought for the property in the form of household furniture were made to swear. If one party is willing to swear and the other will not swear, then the contested property belongs to the one who will swear. If both are sworn, then the contested

---

<sup>10</sup> Q.s. an-Nisa'[4] verse 32, And covet not the thing in which Allah hath made some of you excel others. Unto men a fortune from that which they have earned, and unto women a fortune from that which they have earned. (Envy not one another) but ask Allah of His bounty. Lo! Allah is ever Knower of all things."

<sup>11</sup> Syams al-Dîn al-Sarakhsî, *al-Mabsûth*, (Bayrut: Dâr al-Ma`rûfah, 1989), Juz 4, p. 101; Al-Imâm Sahnûn ibn Sa`îd al-Tanûkhî, *al-Mudâwanah al-Kubrâ*, (Bayrût: Dâr Sadir, 1323 H), Juz 2, p. 187; Muhammad Idrîs al-Syâfi`î, *al-Umm*,(t.tp: t.p, t.tp.), Juz 5, p. 160; Ibn Qudâmah, *al-Mughnî wa Syarh al-Kabîr*, (Bayrût: Dâr al-Fikr, 1984), Juz 12, p. 225; and, Muhammad Jawad Mughniyah, *al-Fiqh `alâ al-Madzâhib al-Khamsah*, (Bayrût: Dâr al-Jawad, t.tp.), p. 382.

property is divided into two, both in the form of household equipment that is used specifically for men, especially women, or commonly used together.<sup>12</sup>

According to Abu Hanifa and the Imamiyyah group, to determine the ownership of the contested household furniture should be investigated in advance whether the equipment is special for men, especially for women, or can be used together. If the property is contested in the form of household equipment commonly used by men, then the owner of the property is the husband, and the husband is asked to swear. Likewise, if the contested property in the form of household equipment commonly used by women, then the owner of the property his wife, and the wife is asked to swear. However, Abu Hanifa and Imamiyyah differed in their opinion about the contested property in the form of common household appliances. According to Abu Hanifah, if the property is contested in the form of common property used together then the owner is the husband.<sup>13</sup> While Imamiyyah argued that if the property is contested in the form of household equipment commonly used together, then the property is declared as belonging to parties who can show evidence. If both parties can not show evidence, then each party is asked to swear that the property is his property.<sup>14</sup> After the two of them swore, the treasure was divided in two. If one party is willing to swear while the other party will not swear, then the property is given to the sworn party. From the discussion of the jurisdiction of the ownership disputes above, it can be concluded that the wealth of husband and wife is separate. It means that there are no shared property terms. The husband has his own property and the wife also has her own property, both the property they carry at the beginning of marriage and the property they get during the marriage, whether as a result of their own work, or a grant, gift, or inheritance from others. All such property becomes the private property of a husband or wife who is fully controlled by each person.

The absence of institutionalization of joint property in a marriage bond is possible because the husband has full duty to provide for his family, wife, and children. Husbands are responsible for the provision of clothing, food, shelter, and other household necessities. A husband should not use the property of his wife, except with the approval of the wife. If the husband uses

---

<sup>12</sup> Muhammad Idrīs al-Syâfi'î, *al-Umm*, Juz 5, p. 160.

<sup>13</sup> Syams al-Dīn al-Sarakhsī, *al-Mabsūth...*, p. 101.

<sup>14</sup> Muhammad Jawad Mughniyah, *al-Fiqh 'alâ al-Madzâhib al-Khamsah*, p. 382.



his wife's property even for household expenses, then the husband is owed to the wife and the husband is obliged to return it.<sup>15</sup>

## Theory of Justice

The theory of justice is a theory that must exist in every decision produced in a judicial institution, including the decision of the Religious Courts. The symbol of justice among them can be seen in the head of the verdict that says "For Justice by the One Godhead. Justice theory must always be found in a court decision, whether in prisons or judges' decisions.

The views of experts on the theory of justice are triggered by Aristotle, John Rawls, and Hans Kelsen. **First**, Aristotle's Theory of Justice, Aristotle's view of justice can be found in his work *Nicomachean ethics, politics, and rhetoric*. Specifically, on the book *Nicomachean ethics*, it is entirely devoted to justice, which, according to Aristotle's legal philosophy, should be considered the core of his legal philosophy, "because the law can only be established in relation to justice".<sup>16</sup> In essence of this view the justice as a gift of equality but not impartiality. Aristotle distinguished his equal rights according to the proportional right. The equal rights, in the human's view, is as a unit or container of the same. It is understandable that all persons or every citizen before the law are equal. Proportional equality gives each person what is his right in accordance with the abilities and achievements that have been done.

Furthermore, justice in Aristotle's view is divided into two kinds of justice, *distributive* justice and "*commutative*" justice. Justice *distributive* is justice that gives each person a portion according to his pretensions. Justice *commutative* gives as much to everyone without discriminating his achievements in this regard relating to the role of exchange of goods and services.<sup>17</sup> From this division of justice, Aristotle gained much controversy and debate.

Distributive justice according to Aristotle focuses on distribution, honor, wealth, and other goods that can be found in society. By putting aside the mathematical "proof", it is clear that what Aristotle had in mind was the

---

<sup>15</sup> Mesraini, Konsep Harta Bersama dan Implementasinya di Pengadilan Agama, *Jurnal Ahkam*: Vol. XII No.1 January 2012, p. 63.

<sup>16</sup> Carl Joachim Friedrich, *Filsafat Hukum Perspektif Historic*, (Bandung: Nuansa dan Nusamedia, 2004), p. 24.

<sup>17</sup> L.J. Van Apeldoorn, *Pengantar Ilmu Hukum*, (Jakarta: Pradnya Paramita, 1996), p. 11-12.

distribution of wealth and other valuables based on the values prevailing among the citizens. Fair distribution may be an appropriate distribution of the value of its good, its value on society.<sup>18</sup>

**Second, John Rawls's Theory of Justice**, several concepts of justice put forward by the American Philosopher at the end of the twentieth century, John Rawls, like *A Theory of Justice, Political Liberalism, and The Law of Peoples*, have considerable influence on the discourse of values- the value of justice.<sup>19</sup> John Rawls is seen as a "liberal-egalitarian of social justice" perspective, arguing that justice is the main virtue of the presence of social institutions. However, the virtues of the whole society cannot rule out or challenge the sense of justice of everyone who has gained a sense of justice. Especially, the weak of justice seekers community.<sup>20</sup>

**Third, Hans Kelsen's Theory of Justice**, Hans Kelsen in his general theory of law and state, holds that law as a social order that can be expressed justly if it can manage human actions in a satisfactory way so as to find happiness in it. The view of this view is a positive view, the values of individual justice can be known by the rules of law that accommodate the general values, but it still the fulfillment of a sense of justice and happiness intended for each individual. Furthermore, He proposed justice as a subjective value judgment. Although a just order which assumes that an order is not the happiness of every individual, but the greatest happiness for as many individuals in the group sense, that the fulfillment of certain needs, by the ruler or the legislator, is regarded as the necessities that are to be fulfilled, such as clothing, food, and board needs. But what human needs should take precedence. This can be answered by using rational knowledge, which is a consideration of value, determined by emotional factors and hence is subjective.<sup>21</sup>

## The Theory of Legal Positivism

One of the schools in law that was present in the 18th century as an effort to walk out of things that are metaphysical is the flow of legal positivism. The epistemology of positive words is derived from the Latin *ponere-post-*

---

<sup>18</sup> Carl Joachim Friedrich, *Filsafat Hukum Perspektif Historis*, p. 25.

<sup>19</sup> Pan Mohamad Faiz, *Teori Keadilan John Rawls*, dalam *Jurnal Konstitusi*, Volue 6 Nomor 1 (April 2009), p. 135.

<sup>20</sup> Pan Mohamad Faiz, *Teori Keadilan John Rawls*, p. 139-140.

<sup>21</sup> Hans Kelsen, *General Theory of Law and State*, diterjemahkan oleh Rasisul Muttaqien, (Bandung: Nusa Media, 2011), p. 7.

*positions* which means laying. The word laid showed that in positivism is something that has been presented (given). In the field of law, something that is presented is a source of positive law, which has been laid by the political rulers.<sup>22</sup>

John Austin (1790-1861) a follower of legal positivism and an English jurist famous for analytical jurisprudence teachings, stated that the only source of law is the supreme power in a country. While the other sources are only as a lower source. The source of the law is the direct author, the sovereign or the supreme legislature within a state, and all laws are passed from the same source. The law that comes from it must be obeyed unconditionally, even if it is clearly felt unfair. According to Austin, the law is out of the question of justice and apart from a bad good question. Karen's legal science task is to analyze the elements that actually exist in the modern legal system. Legal science deals only with the positive law, that is, the law accepted without regard to the good or bad. Law is the command of sovereign political power within a country.<sup>23</sup>

Positivism only recognizes as one type of law, namely positive law. According to the flow of positivism, the law is only examined from its outward aspects, what arises for the reality of social life, regardless of values and norms such as justice, truth, wisdom, etc. that underpin the rules of law, this value cannot be captured by the five senses. Therefore, ignoring what lies behind the law, which is the truth, welfare, and justice values that should be in the law, positivism holds only to the following principles: (1) Law is the commandments of man. (2) There is no need for a relationship between law and morals, between the existing law (*das Sein*) and the supposed law (*das Swolen*). (3) The analysis of legal concepts that are worth continuing and must be distinguished from historical studies of the causes or origins of the law, as well as different from a critical judgment. (4) Decisions (laws) can be logically deduced from pre-existing rules, without necessarily referring to social goals, wisdom, and morality. (5) Moral judgment cannot be upheld and defended by rational reasoning, verification, or testing.<sup>24</sup>

The flow of legal positivism has reinforced the theory of logic, a theory that says there is no law outside the law, it becomes the sole source of law. According to the logic flow the law is considered to be complete and clear in regulating all legal issues. So the judge should not do anything other than

---

<sup>22</sup> Abdul Gani Abdullah, *Dialog Antar Paradigma*, (Jakarta: t.p, 2016), p. 5.

<sup>23</sup> Mhd. Shiddiq Tgk Armia, *Perkembangan Pemikiran dalam Ilmu Hukum*, (Jakarta: Pradya Paramita, 2002), p. 5-6.

<sup>24</sup> Abdul Gani Abdullah, *Dialog Antar Paradigma*, (Jakarta: t.p, 2016), p. 3-4.

strictly enforcing the law as it is. So the judge is merely the mouthpiece or the trumpet of the Law (*La bouche de la Loi*). Thus according to this flow, laws, and laws are considered identical and the more important is in order to ensure legal certainty. The judge is only as *subsume automata*, ie the position of the judge is under the law or only as the implementer of the law, so the judge is not authorized to change the contents of the law. Judges are only authorized to apply the rule of law to concrete events with the aid of interpretive methods, especially grammatical interpretation, ie interpretation according to language in which the meaning of the provisions of the law is explained in accordance with the common language of everyday life.<sup>25</sup>

From the explanation above it can be concluded that the theory of legal positivism has advantages and weaknesses. The advantage is that there is a guarantee of legal certainty and the community can easily know what is and what not to do. The state or government will act decisively in accordance with what has been stipulated in the Act, so the task of a judge is relatively easier, since it does not need to consider the values of justice and truth, but simply apply the provisions of the law against concrete cases.

The weaknesses are: (1) Law is often used as a tool for the ruler, to reinforce and perpetuate his power. Therefore, it is not uncommon for laws that should guarantee the protection of the people, even oppressing the masses. (2) The law is rigid against the times. As we known, the development of a society that runs fast enough and sometimes unpredictable before. Therefore, laws are often unable to keep up with these rapid developments. (3) The law as a written law is incapable of accommodating all community matters. Because, it is impossible for the Law to list all political, cultural, economic, social and other issues.<sup>26</sup>

In Indonesia, this theory is closely related to the legal theory of development Muchtar Kusumaatmadja. The theory of the law of development gives two definitions of law, first, the law not only covers the principles and rules that govern human life in society but also includes institutions and processes in realizing the rule in society.<sup>27</sup> Second, the law is the whole of the principles and principles governing human life in society, including institutions and processes in realizing the law in society.

---

<sup>25</sup> Bambang Sutyoso, *Metode Penemuan Hukum*, (Yogyakarta: UII Press, 2012), p. 81-82.

<sup>26</sup> Johni Najwan, *Implikasi Aliran Positivisme Terhadap Pemikiran Hukum*, Artikel, 2010.

<sup>27</sup> Mochtar Kusumaatmadja, *Pembinaan Hukum dalam Rangka Pembangunan Nasional*, (Bandung, Bina Cipta, 1986), p. 33.

Regarding the discussion of law as a regulator toward human activity, Lawrence Meier Friedman put forward the theory of three elements of the legal system (*three elements law system*). The term of the system when associated with the law, the so-called legal system is a unified whole of the arrangements consisting of parts between each other related and hooks tightly linked. A system is considered a subset and interrelated and form a complex and complex whole but is a unity that refers to the existence of the requirements of the structure.<sup>28</sup>

Friedman reveals the three elements of the legal system, namely legal structure, a legal substance, and legal culture. Legal Structure is a framework or part that gives form and boundaries in a system, or other terms is institutional arrangement and institutional performance. According to Friedman, what is meant by the legal structure "the structure of the system is its *sketel* framework; it is the permanent shape, the institutional body of the system, the though, the rigid bones that keep the process flowing within bounds.<sup>29</sup> The structure is the framework or framework of the surviving part, the part that gives a kind of shape and restriction to the whole.

The legal substance according to Friedman is the substance is composed of substantive rules and rules about how the institution should have. "So what it meant by substance according to Friedman, It is the rules, norms, and patterns of real human behavior residing in the legal system. The legal substance also includes living law (living law), and not just those in the rules of the law or law in books. In essence legal substance is to include legal rules, both written and unwritten, including court decisions. Precisely is a law in the form of concrete or individual legal rules, as well as laws in abstracto or general law rules.

Legal culture is a legal culture, namely the attitude of man to the law. The core of this legal culture includes opinions, habits, ways of thinking and how to act, both from law enforcers and from citizens.<sup>30</sup> The legal system of the country is strong also related to legal culture is the system of their benefits, values, ideas, and expectations. So the legal law according to Friedman is the attitude of man to the law and the legal system of beliefs, values, thoughts, and expectations. In other words, legal culture is the social mood and social forces

---

<sup>28</sup>E Laszlo, *Introduction to system Philosophy*, (London: Gordon & Breach: 1972), h 101

<sup>29</sup> Lawrence Meier Friedman, *American La; Introduction*, (Second edition, New York; WW Norton & company, 1998), p. 21-23. See also: Nur Rohim Yunus, *Restorasi Budaya Hukum Masyarakat Indonesia*, (Bogor: Jurisprudence Press, 2012), p.55.

<sup>30</sup> Lawrence Meier Friedman, *American Law; Introduction*, p. 21-23.

that determine how laws are used, avoided or abused, without legal culture the legal system itself is powerless.

### **The Theory of Legal Relativism**

Etymologically, relativism in English is relative to the Latin *relatives (in relation to)*. The relativism embraces the notion that it is relative and not absolute.<sup>31</sup> While the terminology, the meaning of relativism as contained in Encyclopedia Britannica is the doctrine that science, truth, and morality of existence in relation to culture, society and historical context, and all things are not absolute. Furthermore, this encyclopedia explains that in relativism what is said right or wrong, good or bad is not absolute, but always changing and relative depends on the individual, the environment, and social conditions.<sup>32</sup>

This flow can also be said to belong to the school of legal realism, that is, the idea that seeks to see things as they are without idealization, speculation, or idolization. He seeks to accept the facts as they are, however unpleasant they may be. Which, when associated with law, legal realism is meaningful as a view which seeks to see the law as it is without the idealization, speculation or working and prevailing law. The view that seeks to accept the facts as it is about the law.<sup>33</sup> So it is not always tied to the source of positive law that has been established by the state.

### **Positivism Theory**

The flow of Positivism (*Positive Law*) stance equates law with the law, there is no law outside the Law, so it must be admitted that the only source of law is the Law (legalism). According to Hart, that the characteristics of positivism contained in the law today, namely: a) law is the command of man (sovereign ruler); b) there is no absolute relation between law and morals or applicable law (*sein/ius constitutum*) with the supposed law (*ideals/sollen/ius constituendum*); c) law as a closed system of logic and does not pay attention to social, political and moral measures; d) elements outside of non-law are ruled out because they cannot be proven on the basis of logical argument (*ratio*).

---

<sup>31</sup> Lorens Bagus, *Kamus Filsafat*, (Jakarta: Gramedia Pustaka Utama, 2005), p. 949.

<sup>32</sup> Kaliba Akbar, *Paham Relativisme: Pengertian, Aliran dan Kritik*, retrieved from <http://www.kaliakbar.com/2014/12/paham-relativisme-pengertian-aliran-dan.html>

<sup>33</sup> Antonius Cahyadi dan E. Fernando M. Manulang, *Pengantar ke Filsafat Hukum*, (Jakarta: Kencana, 2007), p. 154.

Positivism believes if the problems that occur in society can only be regulated by the Act so that if there is a new problem that occurs in the community immediately must be responded to be made the Act. In this case, it means that the reactive law is responsive and will always be defeated with the problems in the community, although in the legislation (Act) should be able to anticipate as much as possible the phenomenon of the future, but still not covered.<sup>34</sup> In harmony with positivism the flow of legalism is a view of what it is, in line with the textual understanding of the Nasiriyah model in Islamic law that is the flow not only prioritizing what is written but more than that which is only in accordance with what is written, thus ignoring the situation of one's condition or environment. This means that the Law is the same as the Law. If you look at the history of legal thinking this legalism mental due to anti-thesis against the pattern of thought of absolute rationality is relative.<sup>35</sup>

In the current legal practice the pattern of legal discovery with the *Positivistic Legis* approach will obviously encounter obstacles, once in positivism also sees if the customary law, customary is also seen as a source of law, thus allowing legalistic Positivism. The absolute legislative view of the law is deservedly abandoned, because it can collide with the sense of justice, it could be an act that is actually harmful to the interests of the community but still safe because there is no law that regulates it, if indeed Legism first emerged because the more absence legal certainty, then with the weakness of this view it also creates legal uncertainty as well, even endangering the interests of society and community justice especially if it is realized that there are two main factors that affect the law that is internal and external, within the scope of the state means national factors and international factors.<sup>36</sup> Because the middle path is positivism. Law must be viewed as an effort to rule of law by using the authoritative power tool to be binding. Not only is it sourced from the laws written in the Law, but also uses customary norms, customs that develop in society as a source of law.

Thus, the legal certainty is obtained because of the need for formal legal ties, but all aspects of the Law residing in society can still be accommodated proportionally, so as soon as any growth rate of civilization Law can still be balanced by the Law. The concept of *masalahatul mursalah, al adatu muhakkamah,*

---

<sup>34</sup> Agussalim Andi Gadjong, *Dialektika Hukum Alam, Positivisme Hukum dalam Prespektif Hukum Progresif*, Jakarta, Sinar Grafika, 2011, p. 28-29.

<sup>35</sup> Ahmad Rifai, *Penemuan Hukum oleh Hakim dalam prespektif Hukum Progresif*, (Sinar Grafika: Jakarta, 2011), p. 28-29.

<sup>36</sup> A Ghani Abdullah, *Dialog antar paradigma*, (Jakarta: Sinar Grafika, 2014) p. 15.

*Qiyas*, in *istinbath* methodology in Islamic law, at least can be a sign that the absence of the Act does not mean the absence of law as well.

Imagine how many problems in society that have not been regulated by the Act, not even regulated by the lower regulations, the concept of the rule of *al ashlu fi kulli muamalah ibahah hatta yadullu dalilu li tahrimiha*,<sup>37</sup> that the origin of everything in the problem of social community association may except the reasons that prohibit it, then the reasons or the argument, are: **First**, written law or *nahsh* in law can describe. **Second**, if textually it is not conceived contextually, for example by permitting the resource of law, for as analogue basis (*Qiyas*) a new case with those in the logical logic of Major (*al ashlu*) and Minor (*al far u*); **Third**, if it is not contained in the text and there is also the same resource, (*mashlahah al mursalah*) then a case in law with seeing *the maqashidu syar iyyah*. the meaning of *maqashid shariah* by Imam al-Syatibi. The equation is as it is written in his book *al-Muwafaqat*: "Shariah actions are not an end in itself. But there are other problems (*umurun*) who intend on it (*shari'ah*) ie the purposes (*ma'aniha*). From it this is answered although Imam Syatibi does not explain the *maqashid of shariah* in the form of definition but essentially has the same essence with the definition of Ibn 'Ashur.<sup>38</sup> The discussed *maqashid shari'a* as has been explained by experts *Fiqh* which is divided in *Dharuriyat*, *Hajiyat*, and *Tahsiniyat*. First keeping *al-dharuriyat* (primer = inevitability) can be subsequently classic fi ed as follows: (1). Keeping Religions (2). Keeping Souls, (3) Maintaining Reason (4) Keeping offspring (5) Keeping Treasure, second. Keep *al-Hajjiyat* (Secondary = needs), and third keep *al-Tahsiniyat* (Tertiary = customary).<sup>39</sup> The core of the concept of *maqasid al-shariah* is to realize the good and avoid the bad or benefit and reject harm, the term is commensurate with the core of the *maqasid al-syari'ah is maslahat*, because the establishment of the law in Islam must lead to *maslahat*. Fourth, even if the text in one condition is considered contrary to *maqashidu syar iyyah*, some *fuqaha* allow *istihsan* method. That is the method of migration of a *mujtahid* from the matter of law-setting on

---

<sup>37</sup> Syarif Hidayatullah, *Qawaidul Fiqhiyyah dan Penerapannya Dalam transaksi Keuangan Transaksi Kontemporer*, (Jakarta: Granata, 2012) p. 8.

<sup>38</sup> Nurizal Ismail, *Maqashid Syariah dalam Ekonomi Islam*, (Yogyakarta: Smart WR, 2014), p. 4-5. See also: Ahmad Mukri Aji, *Urgensi Maslahat Mursalah Dalam Dialektika Pemikiran Hukum Islam*, (Bogor: Pustaka Pena Ilahi, 2012), p.88.

<sup>39</sup> Yusuf Muhammad al-Badawiy, *Maqashid al-Syariah 'Inda Ibn Taimiyah*, (Yordania: Dar al-Nafais, t.th), p. 63-66.



a matter which is substantially similar to that which has been established because of the existence of a stronger reason for wanting the displacement ."<sup>40</sup>

### **The case of Joint Treasure Case Number 981/Pdt.G/2013/PA.JS**

This case occurred between Prayitno and Roeasnastiti in 2013 at the first level of the South Jakarta religious court. In 1968 the two couples were married and on February 14, 2013 divorced and had acquired 60 M2 of land in Mekarsari village, 90 M2 of land in Mekarsari subdistrict, 2.164 m2 in Kelurahan village, 1,800 m2 of land in the village Gendoang, a land area of 1000m2 in the village of Gendoang, a land area of 548 2 in Joglo, a land area of 315 m2 in Pekalongan urban village, land area of 246 m2 in Kelurahan Benda, land area of 1200 m2 on Karbela Rayaa Road Karet Kuningan. The Plaintiff argued the above claim of property as a joint property since it is collected together in the marriage period between the plaintiff and the defendant. For that reason, the Plaintiff requests the court to designate the property as joint property in which each party shall be entitled to half of the shares.

The defendant responded to the argument of the plaintiff denied explicitly that the above property was a common property, but the plaintiff remained in his proposition. In the end each party in an effort to convince each judge to file evidence in the form of letters and statements of witnesses. The judge in his consideration based on the provisions of article 1865 BW that whoever filed the events on which he based a right, was required to prove those events, on the contrary, whoever filed the events to deny the rights of others, was also required to prove the event.

At the first stage of the hearing, the panel of judges decided to assign their joint property to the plaintiffs 30 parts or 1/3 and the Defendant 70 parts or 2/3, so that finally, the Defendant filed an appeal law which the judge appellate judgment dropped the share of joint property between Plaintiff and defendant 50 % for plaintiff and 50 for defendant. Or each has a half part and punish the defendant to hand over a half part to the plaintiff. The basis of judges' consideration is that the contested property is a common property because it is acquired during the marriage. In the end Roesnastiti filed an appeal to the Supreme Court on the grounds that the defendant had unilaterally controlled

---

<sup>40</sup> al-Sarakhsi, *Ushul al-Sarakhsi*, (Beirut: Dar al-Ma'rifah, 1993), Jilid. II, p. 200. Juga Abdul Aziz al-Bukhari, *Kasyf al-Asrar fi Ushul al-Bazdawi*, (Beirut: Dar al-Fikr, 1982), Jilid. II, p. 223., dan al-Sarakhsi, *Ushul al-Sarakhsi*, (Beirut: Dar al-Ma'rifah, 1993), Jilid. II, p. 200

and closed the plaintiff's claim against the joint property and the letters that had harmed the interests of the appellant, so that the cassation applicant submitted the *descent* to guarantee the truth, clarity, certainty, and accuracy of existence the objects of such joint property. Supreme Court Justices on appeal decided the same thing against the case of seizing the joint treasure that is dividing a half part of each.

## Conclusion

The case of joint property is the continuation of cases in the family law dispute post-divorce, this process is taken by the parties because each has changed the status of widow and widower so that, when there is property acquired during the marriage then the property is claimed by each party as joint property and each is entitled to obtain the property of the relic. If based on the concept of legislation or law applicable in Indonesia then in accordance with the provisions of Article 35 of Law Number 1 of 1974 the judge will decide on the status of joint property if the property is obtained throughout the marriage, and not the luggage of each husband and wife, and each received 50 sections in accordance with the provisions of article 97 of the Compilation of Islamic Law. The concept of common property itself is not known in *Fiqh* unless people are familiar with the term of *Musharaka*. Namely, the wealth acquired in marriage is the result of a union between a husband and wife. So in the *musharaka* concept, each party strengthens each other and supports one another, and there is no success of a husband because of himself unless supported by his wife and children or vice versa. Nonetheless, Islam still teaches that the livelihood responsibility is on the husband's side rather than the wife.

Therefore, if the husband earns a living during the marriage then it is his duty as head of the household and the resulting wealth to be a joint wealth between husband and wife, but otherwise, if the working wife is not a duty, only secondary to sustain the family economy or channel their expertise. In the case, of a joint property dispute in the Religious Courts in Jakarta, especially the case No. Case No. 696/Pdt.G/2010/PAJP This case of seizing the joint property takes place in the central Jakarta religious court. Married couples who were married on January 21, 1991, in KUA District Cempaka Putih. And divorced on September 15, 2009, with the determination of religious court No. 0665/AC/2009/PAJP. During the marriage, the defendant has his own house and on that basis, the judge finally dismisses the claim of the inheritance of the Plaintiff, because the disjointed property is obtained before the marriage takes place. This can be understood when a judge examines and adjudges and even

decides a first basic case which becomes legal consideration is article 35 of Law No. 1 of 1974 in which the judge will decide on the status of joint property if the property is acquired throughout the marriage, so that when proven property adhered to a house that could be proven that the house was bought by a defendant in 1987 while a new marriage took place in 2001, so the basis was made the case rejected by the judges of the Central Jakarta religious court even though the defendants did not provide for their children even leaving a lot of debt, but the judge still based the decision in the year the acquisition of the property so that the lawsuit was rejected. In the case of Number 981/Pdt.G/2013/PA.JS, the judges make the verdict of each part of the wife is 70 parts while the husband is given 30 parts. The basis of the judge's consideration is referring to Article 35 of Law Number 1974, namely the acquired property at the time of marriage is already running, however, according to the Compilation of Islamic Law Article 79, the husband is the head of the household while the wife is the housewife. Even in chapter 80, husbands must provide everything that is related to household needs, both primary and secondary, such as clothing and food. And continued on the obligation of the husband to wife is to bear the livelihood of dress, and the residence of the wife, household expenses, medical expenses and tuition fees.

This reason makes the judge in the Religious Court of South Jakarta to decide the husband part less than the wife because legally the husband has violated the rules that is precisely the working wife and more produce wealth during marriage run. The views of the judges of the South Jakarta religious courts are indeed out of the corridor section 97 of the Compilation of Islamic law, which determines the marriage of 50 shares for husbands and 50 for wives. From the standpoint of legal theory, the judges' judgment at the first level is more concerned with the question of who has the most energy and energy to acquire the joint treasure into a new legal breakthrough, because if based on the legal positivism theory, the judge will divide each of the 50 between husband and wife when there is a dispute over common property.

The judge at the first level has adjudicated the joint treasure case by giving a larger portion of the wife than the husband, in this perspective, the judge can be categorized as a legal realism, ie the view or understanding seeking to accept the facts about the law. So it is not always tied to the source of positive law that has been established by the state.

However, at the appellate level of the judge in the High Court of Religion, this decision was annulled and the high judge returned to divide each of the 50 sections between his wife and husband, as it was based on Article 97 of

the Compilation of Islamic Law. The abrogation of the judge's decision at the first level which divides 30 parts of the husband and the wife's 70 sections can, of course, be seen as more high judges making the legislation the primary source. It can be interpreted that the high judge is more adherent to the flow of Positivism (Positive Law) which the decision is taken based on the rule of law first, because for the positivism movement there is no law outside the law, so it must be admitted that the only source law is the law (*legalism*).

Positivism understands if the problems that occur in society can only be regulated by the Act so that if there is a new problem occurs in the community immediately must be responded to be made the Act. In the case of joint property, the husband as the head of the household has the obligation as a breadwinner but it does not do so, it must be made law first, and this will be an obstacle in obtaining legal certainty, because the life of the community more dynamic, and the judge shall make the effort of *ijtihad* to be as accurate and as detailed as determining the case of this law, even though it has not been regulated in the Act.

The judge's decision was stronger because at the appellate level the supreme justice also decided the joint treasury case with the same share of 50% parts between husband and wife because the judge postulated that the treasure was obtained, and the positivism flows of the appellate and cassation levels could be summed up in common. Although for a wife this decision is felt does not meet the element of justice.

## References:

- Abdullah, Abdul Gani, *Dialog Antar Paradigma*, Jakarta: t.p, 2016.
- Abdullah, Abdul Gani, *Pengantar Kompilasi Hukum Islam dalam Tata Hukum Indonesia*, Jakarta Gema Insani Press, 2002.
- Aji, Ahmad Mukri, *Urgensi Maslahat Mursalah Dalam Dialektika Pemikiran Hukum Islam*, Bogor: Pustaka Pena Ilahi, 2012.
- Akbar, Kaliba, *Paham Relativisme: Pengertian, Aliran dan Kritik*, di akses dari <http://www.kaliakbar.com/2014/12/paham-relativisme-pengertian-aliran-dan.html>.
- Al-Badawiy, Yusuf Muhammad, *Maqashid al-Syariah 'Inda Ibn Taimiyah*, Yordania: Dar al-Nafais, t.th.

## Kamarusdiana

- Al-Bukhari, Abdul Aziz, *Kasyf al-Asrar fi Ushul al-Bazdawî*, Beirut: Dar al-Fikr, 1982.
- Ali, Achamad, *Menguk Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*, Jakarta, Chandra Pratama, 1996.
- Al-Imâm Sahnûn ibn Sa`îd al-Tanûkhî, *al-Mudâwanah al-Kubrâ*, Bayrût: Dâr Sadir, 1323 H.
- Al-Sarakhsi, *Ushul al-Sarakhsi*, Beirut: Dar al-Ma`rifah, 1993.
- Apeldoorn, L.J. Van, *Pengantar Ilmu Hukum*, Jakarta: Pradnya Paramita, 1996
- Armia, Mhd. Shiddiq Tgk, *Perkembangan Pemikiran dalam Ilmu Hukum*, Jakarta: Pradya Paramita, 2002.
- Bagus, Lorens, *Kamus Filsafat*, Jakarta: Gramedia Pustaka Utama, 2000.
- Bearman, Peri, Bernard G. Weiss Wolfhar *The Law Applied: Contextualizing the Islamic Shari'a*.
- Cahyadi, Antonius dan E. Fernando M. Manulang, *Pengantar ke Filsafat Hukum*, Jakarta: Kencana, 2007.
- Darmodiharjo, Darji dan Sidharta, *Pokok pokok Filsafat Hukum, Apa dan Bagaimana Filsafat Hukum Indonesia*, Jakarta, Gramedia Pustaka Utama, 2002.
- Direktorat Pembinaan Bidang Peadilan Agama, *Hukum dan Peradilan*, Jakarta, 1993.
- E Laszlo, *Introduction to system Phylosophy*, London: Gordon & Breach, 1972.
- Faiz, Pan Mohamad, *Teori Keadilan John Rawls*, dalam *Jurnal Konstitusi*, Volue 6 Nomor 1 April 2009.
- Friedman, Lawrence Meier, *American Law ; Introduction*, Second edition, New York; WW Norton & company, 1998.
- Friedrich, Carl Joachim, *Filsafat Hukum Perspektif Historis*, Bandung: Nuansa dan Nusamedia, 2004.
- Gadjong, Agussalim Andi, *Dialektika Hukum Alam, Positivisme Hukum dalam Prespektif Hukum Progresif*, Jakarta, Sinar Grafika, 2011.
- Hadikusuma, Hilman, *Antropologi Hukum Indonesia*, Bandung, Alumni., 1986.
- Hidayatullah, Syarif, *Qawaidul Fiqhiyyah dan Penerapannya Dalam transaksi Keuangan Transaksi Kontemporer*, Jakarta : Granata 2012.

- Hutagalung, Thoga H., *Hukum dan Keadilan Dalam Pemahaman Filsafat Pancasila dan UUD 1945*, Disertasi, Program Pascasarjana Universitas Padjadjaran, Bandung, 1996.
- Ismail, Nurizal, *Maqashid Syariah dalam Ekonomi Islam*, Yogyakarta: Smart WR, 2014.
- Kelsen, Hans, *General Theory of Law and State*, diterjemahkan oleh Rasisul Muttaqien, Bandung: Nusa Media, 2011.
- Kompilasi Hukum Islam., Hukum Perkawinan, Hukum Pewarisan dan Hukum Perwakafan.*Jakarta, Pustaka Yustisia
- Kusumaatmadja, Mochtar, *Fungsi dan Perkembangan Hukum Dalam Pembangunan Nasional*, Bandung, Bina Cipta, 1970.
- Kusumaatmadja, Mochtar, *Hukum, Masyarakat dan Pembinaan Hukum Nasional*, Bandung, Bina Cipta, 1976.
- Kusumaatmadja, Mochtar, *Pembinaan Hukum dalam Rangka Pembangunan Nasional*, Bandung, Bina Cipta, 1986.
- Mesraini, Konsep Harta Bersama dan Implementasinya di Pengadilan Agama, *Jurnal Ahkam*: Vol. XII No.1 Januari 2012.
- Muhammad Idrîs al-Syâfi'î, *al-Umm*,(t.tp: t.p, t.th.), Juz 5, h. 160; Ibn Qudâmah, *al-Mughnî wa Syarh al-Kabîr*, Bayrût: Dâr al-Fikr, 1984.
- Muhammad Jawad Mughniyah, *al-Fiqh `alâ al-Madzâhib al-Khamsah*, Bayrût: Dâr al-Jawad, t.th.
- Najwan, Johni *Implikasi Aliran Positivisme Terhadap Pemikiran Hukum*, Artikel, 2010.
- Rifai, Ahmad, *Penemuan Hukum oleh Hakim dalam prespektif Hukum Progresif*, Sinar Grafika : Jakarta 2011.
- Soemadiningrat, R. Otje Salman, *Ikhtisar Filsafat Hukum*, Bandung, Armico, 1992,
- Soemadiningrat, R. Otje Salman, *Konsep-Konsep Hukum Dalam Pembangunan..* Bandung, Alumni, 2003.
- Susanti, Hapy. *Pembagian harta Gono Gini Saat Terjadi Perceraian, pentingnya Perjanjian Perkawinan untuk Mengantisipasi Masalah Harta Gono Gini.*, Jakarta, Visi Media, 2008.
- Sutiyoso, Bambang, *Metode Penemuan Hukum*, Yogyakarta: UII Press, 2012.

**Kamarusdiana**

Syams al-Dîn al-Sarakhsî, *al-Mabsûth*, Bayrut: Dâr al-Ma`rûfah, 1989.

Wignyodipoero, Soerodjo, *Pengantar dan asas-asas hukum Adat*, Jakarta, Gung Agung, 1999.

Yunus, Nur Rohim, *Restorasi Budaya Hukum Masyarakat Indonesia*, Bogor: Juriprudence Press, 2012.

# JURNAL

# CITA HUKUM

## INDONESIAN LAW JOURNAL

---

### TECHNICAL GUIDANCE FOR AUTHORS OF CITA HUKUM JOURNAL

1. Article must be original, not plagiarism, unpublished, and not under review for possible publication in other journals.
2. Article should be concept, research-based, and thoughts;
3. Article should be written in Bahasa Indonesia or English
4. Article must contain of Law Science
5. Writing Guidance as follows:
  - a. Title is written by Capital maximum 12 words in the center
  - b. Name of authors are written completely, no degree, institutional affiliation, address, and email.
  - c. Abstract is written in Bahasa Indonesia or English maximum 120 words.
  - d. Systematycs of article:
    - 1) Title
    - 2) Name of authors (no title), name of affiliation, email
    - 3) Abstract
    - 4) Keywords, between 2-5 words
    - 5) Introduction
    - 6) Sub title (if need it)
    - 7) Closing
    - 8) Bibliography (The bibliography list contains all references in text originating from sources that are relevant and at least up to date (last 10 years).
  - e. Paper Sizes are 17,5 X24 cm, up 2,5 cm, down, 2,5 cm, right 2,5 cm, and left 2,5 cm
  - f. Length of article is between 18 – 20 pages with 1.0 line spacing , Palatyno Fond Style with 10 size.
  - g. Rule of citation. Direct citation if word is more than 4 lines separated from the text with 1.0 spacing with 9 font. However if citation less than 4 lines, it should be integrated in the text with double apostrof both in the first and in the end. Every citation is given number. Citation system is footnote not body note or endnote and use turabia system. Every article, book, and other source should be cited on the reference.
  - h. Citation for Quran and Hadist. For verse citation contains name of surah, number of surah and number of verse example: (Qs. Al Mumin [40]: 43). For Hadis citation, mention name of Perawi/Author, example (H. R al-Bukhari and Muslim) and printed hadist version. Hadist must be from standar hadist books (Kutub at-Tisah).
  - i. Footnote is written by Palatino Linotype style, size 8, for any sources as follows:
    - 1) Book: Author's name (without title), title of book (place publised: publisher, year of published), Version, Volume, Batch, Page. Example: Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum*, (Jakarta: Rajawali Press, 1986), p. 10.



## Technical Guidance for Authors of CITA HUKUM JOURNAL

- 2) Translated Book. Example: Roscoe Pound, *Pengantar Filsafat Hukum: Book III*, translated by Moh. Radjab, (Jakarta: Bharata, 1963), p.15.
  - 3) Journal, example: Nur Rohim Yunus, "Kontroversi Pembentukan Perppu No. 1 Tahun 2013 tentang Mahkamah Konstitusi Dalam Ranah Kegentingan Yang Memaksa", *Jurnal Cita Hukum*, Volume 1 Number 1 (2014), p.157.
  - 4) Article as a part of book (antology). Contoh: Hikmahanto Juwana, "Penegakan Hukum dalam *Kajian Law and Development: Problem dan Fundamen bagi Solusi Indonesia*", in Muhammad Tahir Azhary, *Beberapa Aspek Hukum Tata Negara, Hukum Pidana, dan Hukum Islam*, (Jakarta: Kencana Prenada Media Group, 2012), p.127.
  - 5) Article from internet, example: Ahmad Tholabie Kharlie, "Problem Yuridis RUU Syariah" in <http://ahmadtholabi.com/2008/03/03problem-yuridis-ruu-syariah>, downloaded on March 20, 2012.
  - 6) Article from magazine, example: Susilaningtias, "Potret Hukum Adat pada Masa Kolonial", in *Forum Keadilan*, No. 17, August 20, 2017.
  - 7) Article in Seminar, example: Jimly Asshidiqqie, "Kedudukan Mahkamah Konstitusi dalam Struktur Ketatanegaraan Indonesia", paper presented on public lecture at faculty of law Universty Sebelas Maret, Surakarta on March 2, 2014.
- j. Bibliography. Bibliography is written alphabetically, last author's name is in the first of name, example:
- 1) Book: Soekanto, Soerjono, *Pokok-Pokok Sosiologi Hukum*, Jakarta: Rajawali Press, 1986.
  - 2) Translated Book. Example: Pound, Roscoe, *Pengantar Filsafat Hukum: Book III*, translated by Moh. Radjab, Jakarta: Bharata, 1963.
  - 3) Journal, example: Rohim, Nur, "Kontroversi Pembentukan Perppu No. 1 Tahun 2013 tentang mahkamah konstitusi dalam ranah kegentingan yang memaksa", *Jurnal Cita Hukum*, Volume 1 Number 1 (2014).
  - 4) Article as a part of book (antology). example: Juwana, Hikmahanto, "Penegakan Hukum dalam *Kajian Law and Development: Problem dan Fundamen bagi Solusi Indonesia*", in Muhammad Tahir Azhary, *Beberapa Aspek Hukum Tata Negara, Hukum Pidana, dan Hukum Islam*, Jakarta: Kencana Prenada Media Group, 2012.
  - 5) Article from internet, example: Kharlie, Ahmad Tholabie, "Problem Yuridis RUU Syariah" in <http://ahmadtholabi.com/2008/03/03problem-yuridis-ruu-syariah>, downloaded on March 20, 2012.
  - 6) Article from magazine, example: Susilaningtias, "Potret Hukum Adat pada Masa Kolonial", in *Forum Keadilan*, No. 17, August 20, 2016.
  - 7) Article in Seminar, example: Asshidiqqie, Jimly, "Kedudukan Mahkamah Konstitusi dalam Struktur Ketatanegaraan Indonesia", paper presented on public lecture at faculty of law Universty Sebelas Maret, Surakarta on March 2, 2014.
- k. Closing, article is closed by conclusion;
- l. Short biography: author's biography contains full name, title, institution, education and other academic experts.
6. Every article that doesnt fulfill all requirements to this guidance will give it back to the author for revision.
7. Article must be submitted to editors at least 3 months before publishing (June and December) with uploading via OJS to <http://journal.uinjkt.ac.id/index.php/citahukum> or e-mail to [jurnal.citahukum@uinjkt.ac.id](mailto:jurnal.citahukum@uinjkt.ac.id).]

## PEDOMAN TEKNIS PENULISAN BERKALA ILMIAH JURNAL CITA HUKUM

1. Artikel adalah benar-benar karya asli penulis, tidak mengandung unsur plagiasi, dan belum pernah dipublikasikan dan/atau sedang dalam proses publikasi pada media lain yang dinyatakan dengan surat pernyataan yang ditandatangani di atas meterai Rp 6000;
2. Naskah dapat berupa konseptual, resume hasil penelitian, atau pemikiran tokoh;
3. Naskah dapat berbahasa Indonesia atau Inggris;
4. Naskah harus memuat informasi keilmuan dalam ranah ilmu hukum Positif;
5. Aturan penulisan adalah sebagai berikut:
  - a. Judul. Ditulis dengan huruf kapital, maksimum 12 kata diposisikan di tengah (*centered*);
  - b. Nama penulis. Ditulis utuh, tanpa gelar, disertai afiliasi kelembagaan dengan alamat lengkap, dan alamat e-mail;
  - c. Abstrak. Ditulis dalam bahasa Indonesia dan bahasa Inggris masing-masing hanya 120 kata saja;
  - d. Sistematika penulisan naskah adalah sebagai berikut:
    - 1) Judul;
    - 2) Nama penulis (tanpa gelar akademik), nama dan alamat afiliasi penulis, dan e-mail;
    - 3) Abstrak;
    - 4) Kata-kata kunci, antara 2-5 konsep yang mencerminkan substansi artikel;
    - 5) Pendahuluan;
    - 6) Sub judul (sesuai dengan keperluan pembahasan);
    - 7) Penutup; dan
    - 8) Pustaka Acuan (hanya memuat sumber-sumber yang dirujuk dan sedapat mungkin terbitan 10 tahun terakhir).
  - e. Ukuran kertas yang digunakan ukuran 17,5 X 24 cm, margin: atas 2,5 cm, bawah 2.5 cm, kiri 2,5 cm, dan kanan 2,5 cm;
  - f. Panjang Naskah antara 18 s.d. 20 halaman, spasi 1, huruf **Palatino Linotype**, ukuran 10;
  - g. Pengutipan kalimat. Kutipan kalimat ditulis secara langsung apabila lebih dari empat baris dipisahkan dari teks dengan jarak satu spasi dengan ukuran huruf 9 point. Sedangkan kutipan kurang dari empat baris diintegrasikan dalam teks, dengan tanda apostrof ganda di awal dan di akhir kutipan. Setiap kutipan diberi nomor. Sistem pengutipan adalah *footnote* (bukan *bodynote* atau *endnote*). Penulisan *footnote* menggunakan sistem turabian. Setiap artikel, buku, dan sumber lainnya yang dikutip harus tercantum dalam pustaka acuan;
  - h. Pengutipan Ayat Alquran dan Hadis. Ayat yang dikutip menyertakan keterangan ayat dalam kurung, dengan menyebut nama surah, nomor surah, dan nomor ayat, seperti (Q.s. al-Mu'min [40]: 43). Pengutipan Hadis menyebutkan nama perawi (H.r. al-Bukhārī dan Muslim) ditambah referensi versi cetak kitab Hadis yang dikutip. Hadis harus dikutip dari kitab-kitab Hadis standar (*Kutub al-Tis'ah*);
  - i. Cara pembuatan *footnote*. *Footnote* ditulis dengan font *Palatino Linotype*, Size 8, untuk pelbagai sumber, antara lain:
    - 1) Buku: nama utuh penulis (tanpa gelar), *judul buku* (tempat terbit: penerbit, tahun terbit), cetakan, volume, juz, halaman. Contoh: Soerjono Soekanto, *Pokok-pokok Sosiologi Hukum*, (Jakarta: Rajawali Pers, 1986), h. 10.
    - 2) Buku terjemahan, contoh: Roscoe Pound, *Pengantar Filsafat Hukum: Buku III*, diterjemahkan oleh Moh. Radjab, (Jakarta: Bharata, 1963), h. 15;
    - 1) Jurnal, contoh: Nur Rohim Yunus, "Kontroversi Pembentukan Perppu No. 1 Tahun 2013 tentang mahkamah konstitusi dalam ranah kepentingan yang memaksa", dalam *Jurnal Cita Hukum*, Vol. I, No. 1, Juni 2014, h. 157.

- 2) Artikel sebagai bagian dari buku (antologi), contoh: Hikmahanto Juwana, "Penegakan Hukum dalam Kajian *Law and Development*: Problem dan Fundamen bagi Solusi Indonesia", dalam Muhammad Tahir Azhary, *Beberapa Aspek Hukum Tata Negara, Hukum Pidana, dan Hukum Islam*, (Jakarta: Kencana Prenada Media Gorup, 2012), h.127.
  - 3) Artikel dari internet, contoh: Ahmad Tholabi Kharlie, "Problem Yuridis RUU Syariah" dalam <http://ahmadtholabi.com/2008/03/03/problem-yuridis-ruu-syariah>, diunduh pada 20 Maret 2012.
  - 4) Artikel dari majalah, contoh: Susilaningtias, "Potret Hukum Adat pada Masa Kolonial", dalam *Forum Keadilan*, No. 17, 20 Agustus 2006.
  - 5) Makalah dalam seminar, contoh: Jimly Asshiddiqie, "Kedudukan Mahkamah Konstitusi dalam Struktur Ketatanegaraan Indonesia", Makalah disampaikan dalam Kuliah Umum Fakultas Hukum Universitas Sebelas Maret, Surakarta, pada 2 Maret 2004.
- j. Pustaka Acuan: daftar pustaka acuan ditulis sesuai urutan abjad, nama akhir penulis diletakkan di depan. Contoh:
- 1) Buku, contoh: Soekanto, Soerjono, *Pokok-pokok Sosiologi Hukum*, Jakarta: Rajawali Pers, 1986.
  - 2) Buku terjemahan, contoh: Pound, Roscoe, *Pengantar Filsafat Hukum: Buku III*, diterjemahkan oleh Moh. Radjab, Jakarta: Bharata, 1963.
  - 3) Jurnal, contoh: Rohim, Nur, "Kontroversi Pembentukan Perppu No. 1 Tahun 2013 tentang mahkamah konstitusi dalam ranah kegentingan yang memaksa", dalam *Jurnal Cita Hukum*, Vol. I, No. 1, Juni 2014.
  - 4) Artikel sebagai bagian dari buku, contoh: Juwana, Hikmahanto, "Penegakan Hukum dalam Kajian *Law and Development*: Problem dan Fundamen bagi Solusi Indonesia", dalam Muhammad Tahir Azhary, *Beberapa Aspek Hukum Tata Negara, Hukum Pidana, dan Hukum Islam*, Jakarta: Kencana Prenada Media Gorup, 2012.
  - 5) Artikel yang dikutip dari internet, contoh: Kharlie, Ahmad Tholabi, "Problem Yuridis RUU Syariah" dalam <http://ahmadtholabi.com/2008/03/03/problem-yuridis-ruu-syariah>, diunduh pada 20 Maret 2012.
  - 6) Majalah, contoh: Susilaningtias, "Potret Hukum Adat pada Masa Kolonial", dalam *Forum Keadilan*, No. 17, 20 Agustus 2006.
  - 7) Makalah dalam seminar, contoh: Asshiddiqie, Jimly, "Kedudukan Mahkamah Konstitusi dalam Struktur Ketatanegaraan Indonesia", Makalah disampaikan dalam Kuliah Umum Fakultas Hukum Universitas Sebelas Maret, Surakarta, pada 2 Maret 2004.
- k. Penutup: artikel ditutup dengan kesimpulan;
- l. Biografi singkat: biografi penulis mengandung unsur nama (lengkap dengan gelar akademik), tempat tugas, riwayat pendidikan formal (S1, S2, S3), dan bidang keahlian akademik;
6. Setiap naskah yang tidak mengindahkan pedoman penulisan ini akan dikembalikan kepada penulisnya untuk diperbaiki.
7. Naskah sudah diserahkan kepada penyunting, selambat-lambatnya tiga bulan sebelum waktu penerbitan (Juni dan Desember) dengan mengupload langsung via OJS ke alamat: <http://journal.uinjkt.ac.id/index.php/citahukum> atau via e-mail ke: [jurnal.citahukum@uinjkt.ac.id](mailto:jurnal.citahukum@uinjkt.ac.id).[]

in Collaboration with :



Indexed by :



Universiteit  
Leiden



HARVARD  
LIBRARY



JURNAL CITA HUKUM is a peer-reviewed journal on Indonesian Law Studies published bi-annual (June & December) by Faculty of Sharia and Law Universitas Islam Negeri Syarif Hidayatullah Jakarta in cooperation with Center for the Study of Constitution and National Legislation (POSKO-LEGNAS). JURNAL CITA HUKUM aims primarily to facilitate scholarly and professional discussions over current developments on legal issues in Indonesia as well as to publish innovative legal researches concerning Indonesian laws.

