

Juridical Study of Bank Secrets Regarding Collective Assets in the Form of Deposits post Constitutional Court Ruling Number 64/Puu-X/2012 Concerning Customer Data and Their Savings for the Purpose of Division of Gono Gini's Property in a Civil Divorce Cases



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ABSTRACT: Joint assets are assets or wealth obtained during the marriage. Even though the property was obtained from the husband's work alone, the wife still has the right to joint property. So joint property, whether the property belongs to the husband or wife, has the same rights and obligations regardless of whether it is registered in anyone's name and all legal actions regarding joint property must obtain the approval of both parties. The type of research used is normative legal research. The issues raised are regarding the juridical consequences of the exception of bank secrecy for joint assets following Constitutional Court Decision Number 64/PUU- X/2012. The result of this research is that the issuance of the Decision of the Constitutional Court of the Republic of Indonesia regarding the Judicial Review of Article 40 of the Banking Law has the juridical consequence that banks can disclose customer data for the purposes of civil cases regarding joint assets in divorce cases, so that the form between the bank and the customer contains a clause regarding prohibitions. For banks to disclose customer information, the application still has to follow the results of the Constitutional Court Decision Number 64/PUU-X/2012 because since that decision, Article 40 of the Banking Law has automatically had its contents changed according to the contents of the MKRI decision resulting from the judicial review of the banking law. Amendments to Article 40 paragraph (1) of the Banking Law as stated in Article 14 number 38 of Law Number 4 of 2023 can be submitted as guidelines for disclosing customer data for judicial purposes in civil cases including general courts and religious courts, which include for judicial purposes regarding joint assets in divorce and in order to fulfill the recovery of assets. From the explanation above, legal certainty can be obtained that after the Constitutional Court Decision Number 64/PUU- Joint assets in a divorce case can demand or reveal bank deposit data from their partner.

KEYWORDS: Divorce, Joint Property, Bank.

BACKGROUND

Humans have a natural nature that starts from birth to death, namely living together with other humans, where humans cannot live alone, apart from other human groups.¹ Apart from this, humans also have a need to live together in a marriage bond. The purpose of the marriage bond is to form a happy, harmonious and eternal family. A marriage is a legal relationship in the form of a legal relationship between a man and a woman who have fulfilled certain conditions in marriage for as long a period as possible.² The law governing marriage in Indonesia is outlined in Law Number 1 of 1974 concerning Marriage, which as several articles was amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law).

In Article 1 of the Marriage Law, a definition of marriage is given as a spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy, eternal family (household) based on the belief in the Almighty God. This article explicitly explains that marriage has the aim of forming a happy and eternal family (household). This is also stated in

¹ Chainur Arrasjid, *Dasar-Dasar Ilmu Hukum*, (Jakarta: Sinar Grafika, 2004), hlm.1

² Rien G. Kartasapoetra, *Pengantar Ilmu Hukum Lengkap*, (Jakarta, Bina Aksara, 1988), hlm. 97

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Article 3 of the Compilation of Islamic Law (hereinafter referred to as KHI) where marriage aims to build a family that is *sakinah, mawadah and rahmah*. The existence of regulations in both the Marriage Law and KHI has the aim of providing legal protection for the marriage relationship itself. Marital ties can give rise to legal consequences, so legal regulations are needed so as not to cause problems that could harm the parties in the future.

Forming a happy and harmonious family is the dream of every husband and wife, but this marriage goal cannot always be realized in every marriage. So it is not impossible that in society it is still found that there are married life where for some reason or several reasons the household situation is no longer harmonious and even gets worse to the point of hurting each other. This is the reason why every married couple decides to end their marital relationship and chooses to file for divorce.³

Divorce is the severance of a marriage relationship between husband and wife accompanied by a judge's decision regarding the demands of one of the parties based on valid reasons that have been regulated in statutory regulations.⁴ This divorce can only take place before a court as regulated in Article 39 paragraph (1) of the Marriage Law, namely that it states that a divorce can only take place before a court hearing after the court concerned has tried and failed to reconcile the two parties. The husband or wife can file a divorce suit at the local District Court or Religious Court, namely by filing for a *talak* divorce or contested divorce.⁵

A valid marriage bond can give rise to a combination of assets that exist after the marriage bond is established. This means that with a marriage between husband and wife, the assets of both parties will automatically merge into one thing known as community property or joint property.⁶ This has been regulated in Article 1 letter f KHI which reads "Wealth assets or *syirkah* are assets acquired either individually or jointly by husband and wife during the marriage bond, hereinafter referred to as joint assets, regardless of whether they are registered in anyone's name." .

The problem of dividing joint assets is a very crucial matter as a legal consequence of a divorce. This is because joint property is wealth obtained during the marriage and is under the control and rights of the husband and wife together in proportion so that its use must be carried out with the consent of both parties.

In Article 37 of the Marriage Law, it regulates joint property in the event of a divorce, it says that "if the marriage breaks up due to divorce, joint property is regulated according to respective laws". In the explanation of this article, what is meant by the respective laws are according to religious law, customary law and other laws. Based on this article, it can also be seen that the Marriage Law provides leeway by handing over to the divorced husband and wife which law will be used to resolve disputes over the division of joint property and if it turns out there is no agreement between the two parties, then the panel of judges can consider based on a sense of justice. which is appropriate.⁷

Banks as financial institutions entrusted with the responsibility to store money from the public are obliged to safeguard information regarding customers and the money they deposit. This is really needed by the public because as an institution that collects and stores funds from the public, it will be well protected if all information regarding customers can be kept confidential by the bank. The main topic of discussion in this research is related to bank obligations in accordance with article 40 paragraph 1 of Law Number 10 of 1998 concerning Banking (hereinafter referred to as the Banking Law), namely that banks must keep confidential information regarding customers in their safekeeping and deposits except as contained in article 41 concerning taxation, article 41A concerning bank receivables, article 42 concerning criminal justice, article 43 concerning civil judicial examinations, article 44 concerning the exchange of information between banks and article 44A concerning other parties appointed by the customer and settlement of inheritance, while in the Marriage Law article 35 states that:

1. Property acquired during marriage becomes joint property;
2. The inherited assets of each husband and wife - assets obtained by each as a gift or inheritance are under their respective control as long as both parties do not determine otherwise.

Joint assets are assets or wealth obtained during the marriage. Even though the property was obtained from the husband's work alone, the wife still has the right to joint property. So joint property, whether the property belongs to the husband or wife, has the same rights and obligations regardless of whether it is registered in anyone's name and all legal actions regarding joint property must obtain the approval of both parties.

³ M.Djamil Latif, *Aneka Hukum Perceraian di Indonesia*, (Jakarta: Ghalia Indonesia, 1982), hlm. 29

⁴ *Ibid*

⁵ K. Wantjik Saleh, *Hukum Perkawinan Indonesia*, (Jakarta: Ghalia Indonesia, 1980), hlm. 38

⁶ J Satrio, *Hukum Harta Perkawinan*, (Bandung: Citra Aditya Bakti, 1991), hlm. 38

⁷ Hilman Hadikusuma, *Hukum Perkawinan Indonesia*, (Bandung: Mandar Maju, 1990), hlm. 189

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In the banking law there is a discrepancy because in the Marriage Law the wife or husband has the same rights to joint property, whereas in the banking Law banks are obliged to keep all information regarding their customers confidential. In Article 40 paragraph (1) of the Banking Law, it is explained that whether the husband's savings or the wife's savings are in the bank, the bank is obliged to keep information regarding the savings confidential, but there is an exception for banks to keep the wife's and husband's savings and savings in the bank confidential, namely article 41 concerning piracy, article 41 A concerning receivables, article 42 concerning criminal justice, article 43 concerning civil court examinations, article 44 concerning exchange of information between banks and article 44A concerning other parties appointed by the customer and inheritance.

Joint assets in a marriage do not only take the form of objects but can take the form of valuable assets such as savings and/or deposits which are one of the banking products. However, the problem that often occurs regarding joint assets in the form of valuable banking product assets is in terms of proving these joint assets. This is because there are bank secrecy provisions that protect banking information. Bank secrecy means that one party, both husband and wife, who are bank customers, can control joint assets and can transfer joint assets without the knowledge of the other party, thereby causing material losses for one of the parties.

The Constitutional Court issued Decision Number 64/PUU- There has been a dispute regarding the division of joint assets in a divorce case where the wife experienced difficulty in proving joint assets for savings and deposits held in the husband's name at several banks in Banda Aceh City and Aceh Besar Regency Bank, Aceh Province because of the principle of bank secrecy. the. With this happening, the wife considers that her constitutional rights and/or authority have been harmed by the regulations regarding bank secrecy. For this reason, the wife submitted a judicial review to the Constitutional Court regarding the rules or principles of bank secrecy as regulated in Article 40 paragraphs (1) and (2) of the Banking Law which were deemed to be contrary to the 1945 Constitution of the Republic of Indonesia.

METHOD

This research is juridical-normative legal research. Data collection techniques in this research used library and document or archive studies, namely by collecting data related to the research needs to be studied, in addition to various books and other supporting legal materials. The data analysis technique used is qualitative descriptive.

DISCUSSION

1. Juridical Consequences of Bank Secret Exceptions for Joint Assets Following Constitutional Court Decision Number 64/PUU-X/2012.

The relationship between banks and customers begins with an agreement and ends with a generally applicable agreement. In this case, the bank and the customer each have the same rights and obligations. Therefore, each party has an obligation to comply with and carry out their respective rights and obligations which are confirmed in the agreement, one of which is the obligation to maintain confidentiality as regulated in Article 40 of the Banking Law.

Justice is generally understood as a condition of morally ideal truth regarding a matter, whether it concerns objects or people.⁸ As for the obligations related to the confidentiality of data regarding customers as intended in Article 40 of the Banking Law, it is felt that it does not fulfill a sense of justice for someone who wants to claim their rights to assets that arise during their marriage (joint assets). It is felt that the law only protects the customer because for A person who wants to claim his rights to assets that arose during his marriage (joint assets) experiences difficulties in obtaining information regarding joint assets that he wants to claim for division due to divorce, so the MKRI in its decision Number: 64/PUU-X/2012 regarding the material review of Article 40 paragraph (1) Law Number 10 of 1998 concerning Banking states:

a. Granting the applicant's request for a judicial review of Article 40 paragraph (1) of Law Number 10 of 1998 concerning Banking;

b. In Article 40 paragraph (1) the Banking Law is contrary to the 1945 Constitution of the Republic of Indonesia as long as it is not interpreted as including for judicial purposes regarding joint assets in civil divorce cases;

c. Article 40 paragraph (1) of the Banking Law does not have binding legal force as long as it is not interpreted as including for judicial purposes regarding joint assets in divorce cases.

⁸Umar Sholehuddin, *Hukum dan Keadilan Masyarakat: Perspektif Kajian Sosiologi Hukum*, (Malang: Setara Pers, 2011), hlm.41

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A judge's decision must be able to accommodate 3 (three) main elements, namely justice, expediency and legal certainty.⁹

The legal basis for the Constitutional Court's decision is that Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that every person has the right to protect himself, his family, honor, dignity and property under his control, and have the right to a sense of security and protection from the threat of fear of doing or not doing something which constitutes a human right, and Article 28H paragraph (4) of the 1945 Constitution of the Republic of Indonesia states, every person has the right to have private property rights and these rights may not be taken away arbitrarily transferred by any party.

In the provisions of the law above, it can be understood that every person has the right to the protection of property under his or her control and every person has personal property rights which cannot be taken over arbitrarily by anyone. Then the provisions of Article 1 letter f of the Compilation of Islamic Law (KHI) which apply based on Presidential Instruction (Inpres) Number 1 of 1991 also stipulate that, "wealth assets (joint assets) are assets obtained either individually or jointly by husband and wife. as long as you are married, regardless of whether it is registered in anyone's name." Therefore, by referring to Law Number 1 of 1974 concerning Marriage, especially Article 35 paragraph (1), Article 36 paragraph (1), Article 37 as well as Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law in Article 1 letter f, then all savings, deposits, and assets and other banking products owned and kept in the bank by husband and/or wife, these assets have the status of joint assets owned jointly by the husband and/or wife, so that these assets have the status of joint assets owned jointly by husband or wife.

The consideration of the Constitutional Court also states that joint assets obtained during marriage also include assets kept by the husband and/or wife in financial institutions or in this case banks, whether in the form of savings, current accounts, time deposits or other banking products, which are joint assets. husband and wife who are protected by law. That every customer also deserves to have their data confidentially protected by the bank as stated in Article 40 of the Banking Law, however, this article also provides exceptions that customer data can be accessed for tax purposes, settlement of bank receivables that have been submitted to the State Receivables and Auctions Agency/Committee State Receivables Affairs, judicial interests in criminal cases, civil cases between banks and their customers, interests in exchanging information between banks, upon request, approval or authorization from deposit customers made in writing, from these exceptions, there are norms that allow customer data opened by court order, namely for criminal cases and civil cases between banks and their customers.

Based on the considerations above, the Constitutional Court considers that it will fulfill the sense of justice for the community if the provisions regarding confidentiality of customer data are added with the provision that customer secrets can be disclosed for the purposes of civil justice regarding joint assets in divorce cases, because joint assets are joint property of husband and wife. , so that the husband and/or wife must receive protection for their rights and must not be taken over arbitrarily by either party.

This is also guaranteed by Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution of the Republic of Indonesia. Like judicial decisions in general, constitutional court decisions in the MKRI also have legal consequences. For judicial review decisions, the form of decision is declarator constitutief. This means that the MKRI decision can create a new legal situation or eliminate a legal condition because the MKRI decision immediately obtains permanent legal force from the moment it is pronounced and no legal action can be taken. The final nature of the Constitutional Court's decision in the MKRI Law also includes binding legal force (final and binding).

Theoretically, final means that the MKRI's decision has permanent legal force after it has been pronounced in a trial that is open to the public and no legal action can be taken against the decision. The binding nature means that the MKRI decision does not only apply to the parties but to all Indonesian society. So based on this, with the MKRI decision Number: 64/PUU-X/2012, the application of banking secrecy changed, namely that in banking law before the Constitutional Court decision, banks could not disclose information about customers and their deposits with the bank before a court in disputes. division of joint assets, but after the MKRI decision Number: 64/PUU-X/2012 the exceptions as intended in Article 41, Article 41A, Article 42, Article 43, Article 44, Article 44A of Law Number 10 of 1998 concerning Banking were increased namely for judicial purposes regarding joint assets.

In the contractual relationship between banks and customers, the implementation also changed after the MKRI decision Number: 64/PUU-X/2012, even though the form contained a standard agreement with a clause prohibiting banks from disclosing information about customers, banks were unable to comply with this clause regarding disputes. joint property, even though in the principle of freedom of contract each person is free to make any agreement, this freedom does not violate the law where the legal conditions for an agreement or contract in Article 1320 of the Civil Code determine four conditions contained in each agreement or contract, with the fulfillment of these conditions then an agreement can be valid. The four conditions are:

a.They agreed to bind themselves;

⁹ Sudikno Mertokusumo, *Teori Hukum*, (Yogyakarta: Cahya Atma Pustaka, 2012), hlm. 23

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b.Ability to create an engagement;

c.A certain thing;

d.A legitimate cause.

The terms of the agreement as mentioned above include subjective terms and objective terms. If the agreement does not comply with the subjective requirements in numbers 1 and 2, then the agreement can be cancelled. And if the agreement does not comply with the objective requirements in numbers 3 and 4, then the agreement is null and void. The meaning of a halal cause in point 4 is that the agreement must not conflict with the law. If an agreement conflicts with the law, the result is that the agreement must be null and void.

So the contractual relationship between the bank and the customer in the form containing a standard agreement with a clause prohibiting the bank from disclosing information about the customer, its implementation must also be in accordance with the contents of the MKRI Decision Number: 64/PUU-X/2012 because since that decision, Article 40 of the Banking Law has the contents automatically change according to the contents of the MKRI decision resulting from the judicial review of the banking law.

2. Legal certainty regarding bank secrecy regarding bank deposits including joint assets following the Constitutional Court Decision Number 64/PUU-X/2012.

A bank is a financial institution that is a place for individuals, business entities, both private and state-owned, and even government institutions also store their funds.¹⁰ One form of savings is a savings account. A savings account can be interpreted as a third party deposit at a bank from which withdrawals can be made under certain conditions.¹¹ Savings in the form of a savings account can also come from personal assets or from joint assets acquired during marriage.

However, provisions regarding bank secrecy in the form of savings accounts or other forms of savings which are joint assets, are not included in the exceptions to the written bank secrecy article. Banks as financial institutions are obliged to maintain and uphold the confidentiality of customer data to maintain public trust in banking institutions. Therefore, the bank must continue to follow the procedures written in the applicable laws and regulations. However, on the other hand, with regard to procedures written in statutory regulations, banks must still comply with them, so banks as financial institutions must also have SOPs (standard operational procedures) in order to be able to address problems related to bank deposits.

In fact, it goes on to state that bank secrecy is not just a necessity, but is an obligation in accordance with Article 40 paragraph 1 of Law Number 10 of 1998 concerning Banking and also Article 2 paragraph 1 of PBI Number 2/19/PBI/2000, namely: Banks are obliged to keep information confidential. regarding saving customers and their savings except in cases as intended in Article 41, Article 41A, Article 42, Article 43, Article 44 and Article 44A. The above norms are in accordance with Article 28G paragraph 1 of the 1945 Constitution of the Republic of Indonesia, namely: Every person has the right to personal protection, family, honor, dignity and property under his control, and has the right to a sense of security and protection from the threat of fear of doing anything. or not doing something that is a human right." In Article 28H paragraph 4 of the 1945 Constitution of the Republic of Indonesia it is stated that: "Every person has the right to have private property rights and these property rights may not be taken over arbitrarily by anyone."

The existence of bank secrecy is considered an obstacle to the distribution of joint assets which should be accessible fairly by the parties (divorced husband and wife). This situation is what causes legal breakthroughs to be made and attempted to access joint assets in the form of deposits in banks. In substance, bank secrecy regulations contained in Law Number 10 of 1998 concerning Banking only regulate bank secrecy relating to banking interests (internal regulations) and taxation (external regulations).

However, there was a breakthrough in the Constitutional Court's decision Number 64/PUU-X/2012 regarding Material Review of Article 40 paragraph (1) and Article 40 paragraph (2) of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking is a legal progress that must be applied as material for legal reform in accordance with the development of society and therefore, it is necessary to effectively implement the Constitutional Court's decision in sharia banking as well as make changes to Article 40 paragraph (1) and Article 40 paragraph (2) so that exceptions are made. Bank secrecy can be applied to cases of joint assets in the form of deposits in banking.

Sudikno Mertokusumo once said that legal certainty is a guarantee that the law is implemented, that those entitled to it according to the law can obtain their rights and that decisions can be implemented. Although legal certainty is closely related to justice, law

¹⁰ Yunus Husein, *Rahasia Bank dan Penegakan Hukum*, (Jakarta: Pustaka Lima Juanda, 2010), hlm. 29

¹¹ Hermansyah, *Hukum Perbankan Nasional Indonesia*, (Jakarta: Kencana, 2005), hlm.7

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is not identical with justice.¹² Law is general, binding on everyone, generalizing, while justice is subjective, individualistic and does not generalize. Legal certainty is the implementation of the law according to its letter so that society can ensure that the law is implemented.

The function of law is to protect people from dangers and actions that can harm and cause harm to their lives from other people, society and authorities. Apart from that, it also functions to provide justice and is a means of realizing prosperity for all people. In formulating the principles of legal protection in Indonesia, the basis is Pancasila as well as the ideology and philosophy of the State.

CONCLUSION

1. The issuance of the Decision of the Constitutional Court of the Republic of Indonesia regarding the Judicial Review of Article 40 of the Banking Law has the juridical consequence that banks can disclose customer data for the purposes of civil cases regarding joint assets in divorce cases, so that in the form between the bank and the customer there is a clause prohibiting the bank from disclosing its customer information, the application still has to follow the results of the Constitutional Court Decision Number 64/PUU-X/2012 because since the decision was made, Article 40 of the Banking Law has automatically had its contents changed according to the contents of the MKRI decision resulting from the judicial review of the banking law.

2. Amendments to Article 40 paragraph (1) of the Banking Law as stated in Article 14 number 38 of Law Number 4 of 2023 can be proposed as guidelines for disclosing customer data for judicial purposes in civil cases including general courts and religious courts, which are included in It is for the purposes of justice regarding joint assets in divorce and in order to fulfill the recovery of assets. From the explanation above, legal certainty can be obtained that after the Constitutional Court Decision Number 64/PUU- Joint assets in a divorce case can demand or reveal bank deposit data from their partner.

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¹² Sudikno Mertokusumo, *Teori Hukum*, (Yogyakarta: Cahya Atma Pustaka, 2014), hlm. 34-35

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