

**TESIS**

**ANALISIS PERTIMBANGAN HAKIM TERKAIT PEMBAGIAN HARTA  
BERSAMA AKIBAT PERCERAIAN DI PENGADILAN AGAMA PADANG  
(STUDI PUTUSAN NOMOR: 1290/PDT.G/2021/PA.PDG)**

**Diajukan Sebagai Salah Satu Syarat Untuk Memenuhi Gelar Magister Ilmu Hukum Di  
Fakultas Hukum Universitas Andalas**



- 1. Prof. Dr. Yulia Mirwati, S.H., C.N., M.H.**
- 2. Dr. Wetria Fauzi, S.H., M.Hum**

**PROGRAM MAGISTER ILMU HUKUM**

**UNIVERSITAS ANDALAS**

**PADANG**

**2023**

**ANALISIS PERTIMBANGAN HAKIM TERKAIT PEMBAGIAN HARTA  
BERSAMA AKIBAT PERCERAIAN DI PENGADILAN AGAMA PADANG  
(STUDI PUTUSAN NOMOR: 1290/PDT.G/2021/PA.PDG)**

(Nia Wino Marisyah, S.H., NIM 1920112043, Program Pasca Sarjana, Magister Ilmu Hukum,  
Fakultas Hukum, Universitas Andalas, halaman 100, Tahun 2023)

**ABSTRAK**

Perceraian adalah jalan yang disediakan oleh agama dan negara bagi pasangan suami istri yang rumah tangganya sudah tidak bisa dipertahankan dan tidak ada keinginan untuk hidup bersama. Pasal 126 KUHPdata yaitu perceraian mengakibatkan bubarnya harta bersama sehingga harta bersama tersebut harus dibagi diantara pasangan suami istri. Pembagian harta bersama juga diatur dalam Pasal 97 Kompilasi Hukum Islam yakni masing-masing suami istri mendapatkan setengah bagian dari harta bersama. Akan tetapi dalam putusan pembagian harta bersama ternyata ada yang menyimpang dari Pasal 97 Kompilasi Hukum Islam tersebut. Seperti pada perkara yang diputus di Pengadilan Agama Padang Nomor: 1290/Pdt.G/2021/Pa.Pdg, majelis hakim memutuskan sengketa harta bersama bukan setengah bagian sama antara mantan suami dan istri, akan tetapi majelis hakim memutuskan bagian suami lebih sedikit dari bagian istri. Dari uraian masalah tersebut, penulis tertarik menganalisis putusan Pengadilan Agama Padang, yaitu: (1) pertimbangan hukum majelis hakim dalam menyelesaikan sengketa harta bersama pada putusan nomor: 1290/Pdt.G/2021/PA.Pdg? (2) bagaimana penerapan hak *ex officio* hakim dalam perkara pembagian harta bersama di pengadilan agama padang? Untuk menjawab pertanyaan tersebut metode penelitian yang digunakan yaitu metode penelitian yuridis normatif. Dari hasil penelitian ini terbukti bahwa: (1) majelis hakim tidak hanya bersifat menjalankan perintah undang-undang, akan tetapi hakim wajib menggali, mengikuti, dan memahami nilai-nilai hukum dan rasa keadilan yang tumbuh dalam masyarakat. Majelis hakim dalam pertimbangannya menyimpangi aturan Kompilasi Hukum Islam dan menjatuhkan putusan bagian istri lebih besar. (2) Penerapan Hak *Ex Officio* dalam memutuskan perkara harta bersama menunjukkan bahwa majelis hakim Pengadilan Agama Padang telah menerapkan hukum progresif, yakni hukum digunakan untuk melindungi hak-hak manusia.

Kata Kunci: pertimbangan hakim, harta bersama dan pengadilan agama padang

ANALYSIS OF JUDGES' CONSIDERATIONS RELATED TO THE DIVISION OF  
JOINT PROPERTY DUE TO DIVORCE IN THE PADANG RELIGIOUS COURT  
(STUDY OF DECISION NUMBER: 1290/PDT.G/2021/PA.PDG)

(Nia Wino Marisyah, S.H., NIM 1920112043, Master of Law, Postgraduate Program,  
Faculty of Law, Andalas University, 100 Pages, Year 2023)

ABSTRACT

Divorce is a way provided by religion and the state for married couples whose households cannot be maintained and there is no desire to live together. Article 126 of the Civil Code, namely divorce results in the dissolution of joint property so that the joint property must be divided between husband and wife. The division of joint property is also regulated in Article 97 of the Compilation of Islamic Law, namely each husband and wife get half of the joint property. However, in the decision to divide the joint property, it turns out that there are deviations from Article 97 of the Compilation of Islamic Law. As in the case decided in the Padang Religious Court Number: 1290/Pdt.G/2021/Pa.Pdg, the panel of judges decided that the dispute over joint property was not half the same share between the former husband and wife, but the panel of judges decided that the husband's share was less than the wife's share. From the description of the problem, the author is interested in analyzing the decision of the Padang Religious Court, namely: (1) legal considerations of the panel of judges in resolving joint property disputes in decision number: 1290/Pdt.G/2021/PA.Pdg? (2) how is the application of the judge's ex officio right in cases of division of joint property in the Padang religious court? To answer these questions, the research method used is the normative juridical research method. From the results of this study it is evident that: (1) the panel of judges is not only to carry out the orders of the law, but judges are obliged to explore, follow, and understand the legal values and sense of justice that grow in society. The panel of judges in their considerations deviated from the rules of the Compilation of Islamic Law and ruled that the wife's share was greater. (2) The application of Ex Officio Rights in deciding joint property cases shows that the judges of the Padang Religious Court have applied progressive law, namely the law is used to protect human rights.

Key word: judges' considerations, joint property, and padang religious court

