

ABSTRAK

Penelitian ini bertujuan untuk mengetahui dan menganalisis pertimbangan hakim dalam memutus pembagian harta bersama pada Putusan Nomor 563/Pdt.G/2023/PA. Jmb serta menganalisis apakah pertimbangan yang digunakan oleh hakim tersebut telah sesuai dengan prinsip keadilan. Penelitian ini menggunakan metode penelitian yuridis normatif dengan pendekatan perundang-undangan (*statute approach*), pendekatan kasus (*case approach*), dan pendekatan konseptual (*conceptual approach*). Pendekatan perundang-undangan digunakan untuk mengkaji aturan hukum yang relevan terkait pembagian harta bersama, pendekatan kasus diterapkan untuk menganalisis putusan yang menjadi objek penelitian, sedangkan pendekatan konseptual digunakan untuk menilai kesesuaian antara pertimbangan hakim dengan prinsip keadilan. Hasil penelitian menunjukkan bahwa pertimbangan majelis hakim dalam memberikan porsi 2/3 kepada mantan istri dan 1/3 kepada mantan suami didasarkan pada fakta bahwa Penggugat (mantan suami) telah mengabaikan kewajibannya dalam memberikan nafkah kepada anak-anak setelah perceraian. Selama ini, Tergugat yang sepenuhnya menanggung biaya hidup dan pertumbuhan anak-anak hingga dewasa, sementara Penggugat tidak berkontribusi sama sekali. Oleh karena itu, Pasal 97 KHI yang mengatur pembagian harta bersama secara merata (50:50) tidak dapat diterapkan karena tidak memenuhi asas keadilan. Putusan ini mencerminkan prinsip keadilan moral (*moral justice*), keadilan sosial (*social justice*), dan keadilan distributif, di mana hakim lebih mengutamakan keadilan dibandingkan dengan kepastian hukum. Dengan mempertimbangkan kontribusi dan peran masing-masing pihak serta fakta-fakta yang terungkap di persidangan, hakim berusaha mencapai tujuan hukum yang utama, yaitu terwujudnya keadilan substantif.

Kata Kunci : Harta Bersama, Pertimbangan Hakim, Keadilan

ABSTRACT

This research aims to identify and analyze the judge's consideration in deciding the division of joint property in Decision Number 563/Pdt.G/2023/PA. Jmb and analyze whether the considerations used by the judge are in accordance with the principles of justice. This research uses a normative juridical research method with a statute approach, case approach, and conceptual approach. The statutory approach is used to examine relevant legal rules related to the division of joint property, the case approach is applied to analyze the decision that is the object of research, while the conceptual approach is used to assess the suitability of the judge's consideration with the principles of justice. The results showed that the consideration of the panel of judges in giving a portion of 2/3 to the former wife and 1/3 to the former husband was based on the fact that the Plaintiff (former husband) had neglected his obligation to provide for the children after the divorce. During this time, it was the Defendant who fully covered the children's living expenses and growth to adulthood, while the Plaintiff did not contribute at all. Therefore, Article 97 KHI which regulates the division of joint property equally (50:50) cannot be applied because it does not fulfill the principle of justice. This decision reflects the principles of moral justice, social justice, and distributive justice, where the judge prioritizes justice over legal certainty. By considering the contribution and role of each party as well as the facts revealed at trial, the judge tried to achieve the main objective of law, namely the realization of substantive justice.

Keywords: Joint Property, Judges' Consideration, Justice