



Journal Homepage: - [www.journalijar.com](http://www.journalijar.com)

## INTERNATIONAL JOURNAL OF ADVANCED RESEARCH (IJAR)

Article DOI: 10.21474/IJAR01/17242

DOI URL: <http://dx.doi.org/10.21474/IJAR01/17242>



### RESEARCH ARTICLE

#### POST-DIVORCE DISTRIBUTION OF COLLECTIVE ASSETS IN INDONESIA VIEWED FROM NATIONAL LAW (STUDY OF CIVIL COURT DECISION NUMBER 2354/PDT.G/2019/PA.PWT)

Septiani<sup>1</sup>, Rahadi Wasi Bintoro<sup>2</sup> and Sulistyandari<sup>3</sup>

1. Master Student, Faculty of Law, Jenderal Soedirman University, Indonesia.
2. Senior Lecturer, Faculty of Law, Jenderal Soedirman University, Indonesia.
3. Senior Lecturer, Faculty of Law, Jenderal Soedirman University, Indonesia.

#### Manuscript Info

##### Manuscript History

Received: 15 May 2023

Final Accepted: 19 June 2023

Published: July 2023

##### Key words:-

Divorce, Joint Assets, Limited Liability Company

#### Abstract

Marriage according to the provisions of Article 1 of Law Number 1 of 1974 concerning Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty. Sometimes in a marital relationship there are protracted and irreconcilable disputes and squabbles that end in divorce. The occurrence of divorce has legal consequences, one of which is regarding the distribution of joint property. In this study, the authors conducted research on the Purwokerto Religious Court Decision Number 2354/Pdt.G/2019/PA.Pwt regarding claims for joint property on the assets of PT Mitra Software Online. The main problems and objectives in this study are to analyze the legal considerations of judges in examining, adjudicating and deciding Case Number 2354/Pdt.G/2019/PA.Pwt and analyzing the legal status of PT Mitra Software Online's assets. Based on the results of this study, it is known that the legal considerations of judges in adjudicating, examining and deciding case Number 2354/Pdt.G/2019/PA.Pwt are based on legal facts that the objects that are claimed in the distribution of joint assets are SHGB Number: 00602 and SHGB Number: 00603 which originally belonged to Welly Bintoro and was bought by PT Software Online, so that the object became an asset owned by PT Software Online. The action of the Defendant in carrying out a sale and purchase transaction of SHGB Number: 00602 and SHGB Number: 00603 was an action for and on behalf of and representing PT Software Online because in his position as the President Director of PT Software Online. The inbreng procedure in PT so that it can be recognized as joint property in the event of a divorce is that the entry of land into the company must be carried out by way of a GMS. Inbreng can be done on movable or immovable property. Inbreng on movable objects including transactions that include non-cash assets such as land from shareholders to be used as company capital. Inbreng against immovable objects including certificates.

Copy Right, IJAR, 2023,. All rights reserved.

Corresponding Author:- Septiani

Address:- Master Student, Faculty of Law, Jenderal Soedirman University, Indonesia.

## Introduction:-

Happiness in marriage is the hope for every couple, happiness arises from the intentions and efforts of both, because in the era of technological advancement, of course there will be more and more new problems that will arise and hit the household, more and more challenges that must be faced because household needs are increasing along with the times, there are many temptations that must be passed so as not to fall into disputes, more and more problems are faced and there is no resolution, eventually a major conflict arises which results in incompatibility between the two, then leads to divorce. In carrying out every right and obligation, reciprocal relations and cooperation are needed in a balanced and harmonious manner according to each party's part between husband and wife, so that the purpose of a marriage can be achieved properly. Marriage in reality does not always achieve the expected goals, sometimes the husband or wife does not carry out their obligations or there is a dispute that endangers the marriage bond. Sometimes these conditions can still be resolved peacefully, so that the two of them can get along again. Sometimes, these disputes and disputes drag on irreconcilably and end in divorce.<sup>1</sup>

As a result of the existence of a marriage, then by itself raises various consequences. But the consequences that stand out and are important are the problems of husband and wife relations, the relationship between parents and children and property problems. The existence of marriage will have legal consequences, both for husband and wife, assets and children born in marriage. The consequences of marriage involving joint assets in marriage are regulated in Article 35 to Article 37 of Law no. 1 of 1974 concerning Marriage, which stipulates as follows:<sup>2</sup>

### Article 35

- (1) Property acquired during marriage becomes joint property.
- (2) The inherited assets of each husband and wife and the assets each received as a gift or inheritance, are under the control of each as long as the parties do not specify otherwise.

### Article 36

- (1) Regarding shared assets, husband or wife can act with the agreement of both parties.
- (2) With regard to each other's assets, husband and wife have the full right to carry out legal actions regarding their assets.

### Article 37

“If the marriage is broken up due to divorce, joint assets are regulated according to their respective laws.”

According to the provisions stipulated in Article 37 of Law no. 1 of 1974 concerning Marriage, it is stated that if a marriage is broken up due to divorce, joint assets are regulated according to their respective laws. What is meant by their respective laws are religious law, customary law and other laws.

Joint property will become an arena for disputes and it is undeniable that the judiciary will play a significant role in the dispute resolution process. The judiciary will become a medium for husband and wife who are in dispute to express all their arguments, especially in order to realize their respective parties' desire to control the property. Divorce that occurs between husband and wife generally results in shared assets acquired during the marriage being divided between the two partners. This is also clearly stipulated in Article 97 KHI, where for divorced married couples each gets half a share. An equal distribution will be a fair distribution if the husband carries out his obligations by earning a living and the wife carries out her obligations by taking care of the household. However, not a few in a household, one party does not carry out its obligations resulting in an unequal partnership between husband and wife, because not a few wives have their rights neglected so that she has to try hard to meet the needs of herself and her children because her husband does not provide a living. This means that the wife contributes more in the process of creating joint assets, while the husband is only a burden on the wife.<sup>3</sup>

Furthermore, in the case of divorce, a wife who is divorced by her husband has the right to get iddah maintenance, mut'ah maintenance, hadlanah maintenance, and also has the right to get mardiyah maintenance. In determining the provision of iddah, mut'ah, hadlanah, and also mardiyah, the panel of judges in the trial will consider the nominal

<sup>1</sup>Soemiyati, Hukum Perkawinan Islam Dan Undang-Undang Perkawinan, Liberty, Yogyakarta, 1986, hlm. 104.

<sup>2</sup>Siska Lis Sulistiani. Kedudukan Hukum Anak Hasil Perkawinan Beda Agama menurut Hukum Positif dan Hukum Islam, Refika Aditama, Bandung, 2015, hlm. 13-14.

<sup>3</sup>Ismi Syafriani Nasution, Tesis: Akibat Hukum Perceraian Terhadap Harta Bersama Berdasarkan Undang-Undang Perkawinan Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam, Magister Kenotariatan Universitas Sumatera Utara, Medan, 2009, hlm. 5.

amount based on merit and decency. Capability is based on the husband's income and propriety is measured from the needs of the wife and children. It can also be measured from what the husband gave to his wife while still living in harmony. Such a standard is in accordance with the Supreme Court Circular Number 3 of 2018 concerning the Enforcement of the Formulation of the Results of the 2018 Supreme Court Chamber Plenary Meeting as Guidelines for Implementation of Duties for the Judiciary which emphasizes that in determining iddah, mut'ah, hadlanah, and also mardiyah maintenance, judges must consider a sense of justice and decency by exploring the facts of the husband's economic capacity and the facts of the basic needs of the wife and children.

Based on the above, the author in terms of discussing joint assets in this study uses secondary data sources as research material, namely the Decision of the Purwokerto Religious Court Number: 2354/Pdt.G/2019/PA.Pwt.

Purwokerto Religious Court Decision Number 2354/Pdt.G/2019/PA.Pwt, the case began when Mrs NS (Plaintiff) married Mr S (Defendant) on October 15 2009 but on October 25 2017 Mrs NS and Mr S were officially divorced at the Purwokerto Religious Court with decision No.0451/Pdt.G/2015/PA.Pwt., Mrs. NS sued Mr. S for a joint property lawsuit where the object of the dispute was two plots of land and buildings located in the Karangpucung sub-district, Purwokerto Selatan District , if it is estimated to be worth Rp. 4,000,000,000.00 (four billion rupiah). However, the lawsuit by Mrs. NS (Plaintiff) regarding shared assets turned out to have sued the company assets of PT. MSO, namely the Building Use Right Certificate Number 602 and the Building Use Right Certificate Number 603. Mrs. NS demanded that the joint property be divided in half between Mrs. NS and Mr. S to receive ½ (half) a share. However, the plaintiff lost the lawsuit in court with the panel of judges giving a decision rejecting the plaintiff's claim in its entirety. One of the judge's considerations that became the basis for the decision was, "That the SHGB Numbers: 00602 and 00603 were sold by Welly Bintoro in 2015 to PT MSO (Mitra Software Online) represented by its Main Director, namely Sobirin, SE., so that the object the dispute between the Plaintiff and the Defendant now belongs to PT. MSO (Mitra Software Online) and not owned by the Defendant". entry into the company (Inbreng) is a transaction that includes non-cash assets such as land from shareholders to be used as company capital. The provisions governing the deposit of share capital in the form of Inbreng are Law Number 40 of 2007 concerning Limited Liability Companies.

Starting from this, the researcher is interested in studying further the topic and title of the discussion in this study, namely "POST-DIVORCE DISTRIBUTION OF COLLECTIVE ASSETS IN INDONESIA VIEWED FROM NATIONAL LAW (Study of Civil Court Decision Number 2354/Pdt.G/2019/PA.Pwt).

### **ResearchMethod:-**

The type of research used is normative legal research or it can also be called doctrinal legal research. approach in normative legal research. The research specifications used in this study are prescriptive in nature. The analysis used in this research is normative-qualitative. According to Jonny Ibrahim, the qualitative normative data analysis method is a discussion and elaboration that is arranged logically on the results of research on norms, rules, and legal theories that are relevant to the subject matter.

### **Method deep data collection writing This are:-**

Studies document, that is method get data about something problem with browse and learn regulation legislation, books, literature , journals , articles Good print as well as online as well other related ingredients with research .

### **ResultsandDiscussion:-**

#### **Judge's Legal Considerations for Joint Assets**

The judge's consideration is a stage where the panel of judges considers the facts revealed during the trial process. The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision which contains justice and contains legal certainty, besides that it also contains benefits for the parties concerned so that this judge's consideration must be addressed carefully, properly and carefully.<sup>4</sup>

The judge in examining a case also requires evidence, where the results of the evidence can be used as material for consideration by the judge in deciding the case. Proof is the most important stage in the examination during trial.

<sup>4</sup>MuktiArto, PraktekPerkaraPerdatapadaPengadilanAgama, cet V (Yogyakarta:PustakaPelajar, 2004), hal 140

Proof aims to obtain certainty that an event/fact that has been proposed actually occurred, in order to obtain a correct and fair judge's decision. The judge cannot pass a decision before it becomes clear to him that the event/fact has actually happened, that is, the truth can be proven, so that there appears to be a legal relationship between the parties.

The judge's considerations will be contained in the decision, a good decision is a decision that fulfills the 3 elements of aspects in a balanced manner, namely as follows:

- a. Legal certainty In this case, legal certainty requires that the law must be implemented and strictly enforced for every concrete event and there should be no irregularities. Legal certainty provides protection to the public from arbitrary actions by other parties, and this is related to efforts to maintain order in society.
- b. Justice Society always hopes that in implementing or enforcing the law, pay attention to the values of justice. The law is binding on everyone, and is generalizing or does not compare status or actions committed by humans.
- c. The benefits of the law exist for humans, so that people expect benefits from implementing or enforcing the law. Do not let it happen that in the implementation or enforcement of the law there will be unrest in social life.

The basis for judges in passing court decisions needs to be based on theory and research results that are optimal and balanced at the level of theory and practice. One of the efforts to achieve judicial legal certainty, where judges are law enforcement officers through their decisions can be a benchmark for achieving legal certainty.

According to the Big Indonesian Dictionary, shared assets are assets that can mean goods (money and so on) that are valuable tangible and intangible assets. Joint property means property that is used (used) together. Meanwhile, the term gono-gini property is a legal term that is already popular in the community. The term regarding joint property is termed in various ways in customary law in each region, such as in Aceh it is known as hareutasiareukat, in Minangkabau it is known as suarang property, in Kalimantan it is called abstinence goods, in Bali it is called druwegabro, while in Sundanese land is known as a treasure for rich.<sup>5</sup> In the Big Indonesian Dictionary, the term used is gono-gini, which legally means assets that have been accumulated during a household so that they become the rights of both husband and wife.

Legal experts in Indonesia have explained that what is meant by joint property is all assets acquired during the marriage, regardless of which husband and wife seek it and also without questioning in whose name the assets are registered.<sup>6</sup> In Law No. 1 of 1974 concerning Marriage, it is explained that joint property is property acquired during the marriage period. This shows that the formation of joint assets is from the date of the marriage contract until the termination of the marriage due to divorce, both in the case of divorce or divorce. In contrast to the inherited assets of each husband or wife and the assets obtained by each as a gift or inheritance, it is called personal property which is personal property which is fully under the control of each party, as long as the parties do not specify otherwise.<sup>7</sup>

Family assets acquired during marriage can become joint property when the husband and wife break up due to divorce. According to Agus Pandoman, assets are all objects, both tangible and intangible, movable or immovable objects that have economic and aesthetic value, which are recognized and protected by law and can be transferred to other people. The right to use this joint property belongs to both husband and wife, each of whom can do something about the joint property with the consent of both parties. Because all assets acquired by husband and wife during the marriage period, whether obtained individually or jointly, are joint assets. The same goes for assets or anything purchased during their marriage.

The legal basis for joint assets is contained in Law Number 1 of 1974 concerning marriage, articles 35 to 37, which reads:

Article 35 paragraph (1) Declares that property acquired during marriage becomes joint property, paragraph (2) Inheritance of each husband and wife and property each obtains as a gift or inheritance, is under the control of each as long as the parties do not specify otherwise.

---

<sup>5</sup>Happy Susanto, Pembagian Harta Gono-Gini Saat Terjadinya Perceraian, Cet. 3, Visimedia, Jakarta, 2008, hlm.3

<sup>6</sup>Abdul Manan, Aneka Masalah Hukum Perdata Islam Di Indonesia, Kencana, Jakarta, 2008, hlm.108

<sup>7</sup>Bahder Johan Nasution, Hukum Perdata Islam, Mandar Maju, Bandung, 1997, hlm.33

Article 36 paragraph (1) Regarding joint property, husband or wife can act upon the agreement of both parties, paragraph (2) Regarding individual assets, husband and wife have the full right to carry out legal actions regarding their property. Article 37 paragraph (1) If a marriage is broken up due to divorce, joint assets are regulated according to their respective laws.

Joint property acquired during marriage can be in the form of tangible or intangible objects. Tangible objects include:

- 1) Movable objects, such as houses, land and shops.
- 2) Not moving, such as household furniture, cars and motorbikes.
- 3) Securities, such as bonds, checks and deposits.

Meanwhile, intangible joint assets include:

- 1) Rights, such as the right to collect debts that have not been paid by other parties, and also lease rights that have not yet matured.
- 2) Obligations, such as the obligation to pay debts and the obligation to pay credit.

With regard to legal issues regarding joint property claims as in Case Number 2354/Pdt.G/2019/PA.Pwt, the author can describe as follows regarding the judge's legal considerations of the facts at trial.

The panel of judges in their legal considerations can interpret that there has been a divorce between the Plaintiff and the Defendant, namely NuningAswarini and Sobirin on October 25 2017 at the Purwokerto Religious Court. The termination of marital relations according to Article 38 of the Marriage Law is due to death, divorce and court decisions. So when one of the husband and wife dies, the marriage bond is broken. Divorce can only be done before a court hearing, after failing to reconcile the husband and wife. And divorce is carried out if there are sufficient reasons, that the two cannot live in harmony as husband and wife (Article 39).

The panel of judges in their legal considerations can interpret that the Defendant (Sobirin, SE) is located in his capacity as director of PT MSO. The Board of Directors or Director of a Company is an organ of the Company, in addition to other Company organs in the form of the General Meeting of Shareholders (GMS) and Commissioners, who have full duties, authority and responsibility for the management and running of the Company they lead for the interests and objectives of the Company and represent and act for and on behalf of the Company inside and outside the court in accordance with the applicable laws and regulations in the articles of association of the Company. Basically the Board of Directors is an organ that manages the activities of the Company (hence it is also called the term "administrator"), so every Limited Liability Company is "obliged" to have at least 1 member of the Board of Directors. However, for several types of companies it is mandatory to have at least 2 (two) Directors, namely those which are companies that collect and/or manage public funds, the company issues letters of acknowledgment of debt to the public and the company is a public company. If indeed in the event that the Company has more than one Director or Board of Directors, then one member of the Director is appointed as the main Director (President Director). Prior to serving as a member of the Board of Directors, in terms of appointment for the Board of Directors there are conditions set out in Article 93 Paragraph (1) of Law Number 40 of 2007 Concerning Limited Liability Companies (UUPT), namely: "Those who can be appointed as members of the Board of Directors is an individual who is capable of carrying out legal actions, unless within 5 (five) years prior to his appointment:

1. Declared bankrupt;
2. Become a member of the Board of Directors or a member of the board of commissioners who are found guilty of causing a company to be declared bankrupt; or
3. Convicted of committing a crime that is detrimental to state finances and/or related to the financial sector.

The panel of judges in their legal considerations can interpret that the Defendant is domiciled in his capacity as Director of PT MSO, is a legal subject acting for and on behalf of and representing PT MSO in sale and purchase transactions. Whereas based on the evidence, in the form of Sale and Purchase Deed Number: 296/2016, in the form of Building Use Rights Certificate Number: 00602, and evidence in the form of Sale and Purchase Deed Number: 297/2026, in the form of Building Use Rights Certificate Number: 00603, it is proven that the sale and purchase of objects the dispute in the plaintiff's claim posita, namely land and buildings with SHGB Numbers: 00602 and 00603 was carried out between WELLY BINTORO as the Original Owner or Seller and PT. MSO (Mitra Software Online) represented by its Main Director Sobirin SE. as Buyer. The authority of the Board of Directors of a company has been determined in Law Number 40 of 2007 concerning Limited Liability Companies and further details of this authority are set forth in the Company's Articles of Association (Article 92 paragraph (1) and paragraph (2) of Law

No. 40 of 2007). A Director is responsible for managing the company for the interests and objectives of the company (Article 92 Law No. 40 of 2007). On the basis of these provisions, a Board of Directors has the power to carry out tasks or work, and it also contains parties that are attached to the person. The authority or power possessed by a director of a company is based on his position as an organ of the company, meaning as a company tool (legal entity). In his position as an organ of the company, acting is limited by the authority given to him as a party representing the company (legal entity). A person who occupies a position as a Director is personally responsible for actions or actions taken for the company he represents, this is based on Article 92 of Law Number 40 of 2007 concerning Limited Liability Companies with the words "A Director is responsible for managing the company for the interests and objectives of the company" . On the basis of these provisions, a Board of Directors has the power to carry out tasks or work, and it also contains parties that are attached to the person. This can happen if he performs an action or deed that is not within his authority or exceeds the limits of his authority. The Board of Directors in carrying out their duties must refer to the applicable laws and regulations, the Company's Articles of Association and the GMS. The GMS is another company organ that has powers that are not granted to the Directors and Commissioners, within the limits specified in the Law and or the Articles of Association (Article 75 paragraph (1) of Law No. 40 of 2007).

Based on these considerations, the judge should have a role that is more inclusive of the Plaintiff's sense of justice, for example regarding the object of the lawsuit in the form of joint property land which was argued by the Plaintiff, which turned out to be legally owned by PT. MSO with evidence "That the SHGB Numbers: 00602 and 00603 were sold by Welly Bintoro in 2015 to PT MSO (Mitra Software Online) represented by its Main Director namely Sobirin, SE., so that the object of dispute between the Plaintiff and the Defendant is now owned by PT. MSO (Mitra Software Online) and not owned by the Defendant". On this basis it has been ascertained that the land of claim belongs to PT MSO. Is there any other assets besides the land in the form of shares deposited with the company? These assets can be considered by the judge to grant the Plaintiff's request, of course this must be based on evidence that is legally justifiable. The Panel of Judges in Case Number 2354/Pdt.G/2019/PA.Pwt decided to reject the Plaintiff's lawsuit because the object used as the basis for the claim for sharing joint assets is an asset owned by PT MSO, not private property or joint property between the Plaintiff and the Defendant. The judge in his considerations should not only focus on who the object of the dispute belongs to, but also must provide a sense of justice regarding joint property that should belong to the plaintiff. We can see based on the considerations of the judges mentioned above, that Sobirit or the Defendant is the main director of the Company which should also be considered by the judge regarding share ownership which can also be used as a reason for the object of dispute over joint assets.

#### **The procedure for inbreng in PT so that it can be recognized as joint property when a divorce occurs.**

A Limited Liability Company in another sense is a form of business with a legal entity, which was originally known as Naamloze Vennootschap (NV). The term "limited" in a limited liability company refers to the responsibility of shareholders which is limited to the nominal value of all the shares they own. The term "company" refers to the method of determining capital, which is divided into shares, and the term "limited" refers to the limit of shareholder responsibility, which is limited to the nominal amount of shares owned. Limited Liability Company is a legal entity association company.<sup>8</sup> A Limited Liability Company is a form of company that organizes a company, established by a joint legal act by several people, with a certain capital divided into shares, whose members can own one or more shares and have limited liability up to the number of shares they own.<sup>9</sup>

Limited Liability Companies have characteristics that are divided into two, namely:

- a. The company's shareholders are not personally responsible for the engagement made on behalf of the company, and
- b. Shareholders are not responsible for company losses exceeding the value of the shares they have taken and do not include personal assets

---

<sup>8</sup>ZaeniAsyhadie, *Hukum Bisnis Prinsip dan Pelaksanaannya di Indonesia*, PT. Raja Grafindo Persada, Jakarta, 2005, hlm.41

<sup>9</sup>R. Ali Rido, *Hukum Dagang tentang Aspek-aspek Hukum dalam Asuransi Udara, Asuransi Jiwa dan Perkembangan Perseroan Terbatas*, CV Remadja Karya, Bandung, 1986, hlm.335

Limited company consists of two words, namely company and limited. Company refers to PT capital which consists of ownership or shares, while the word limited refers to the obligations of shareholders whose amount is limited to the nominal value of the shares they own. Law Number 40 of 2007 concerning Limited Liability Companies describes 3 different types of capital, namely:

a. Authorized Capital

Authorized capital is the entire nominal value of the company's shares as stated in the Articles of Association. This has been confirmed in Article 31 paragraph (1) UUPT that the company's authorized capital consists of all nominal shares.

b. Issued Capital

Issued capital is shares that have been taken and have actually been sold, both to the PT founders and to the company's shareholders. The founders have agreed to take a certain portion of the company's shares, and therefore the founders of the company have an obligation to pay or deposit it to the company.

c. Paid-up Capital

Paid up capital is part of the capital placed or taken part by the founders (before the company became a legal entity) or shareholders (after the company became a legal entity) which was paid up by the founders or shareholders to a limited liability company.

Based on Article 21 paragraph 4 of Law Number 40 of 2007, the Notary has the authority to make the letter, but not the Deed of Company Assets, but the Deed of Amendment to the Articles of Association regarding the approved increase in capital. In the GMS, the Notary will notify the Ministry of Law and Human Rights, provided that the established business entity has obtained the status of a Limited Liability Company legal entity. If the process is still in the process of validation, you can ask the Notary about the registration process that has been carried out in the Legal Entity Administration System at the Ministry of Law and Human Rights. If the process is already in the No Objection position, it is best to wait for the Ministerial Decree to be issued, then a GMS will be held to amend the articles of association and carry out the inbreg of the assets concerned. Because if done in the middle of the road will hinder the process. However, if the data is still in the process of entering data, an application for a deed of amendment/improvement can be made that changes the paid-up capital.

Deposit of shares in a form other than money must be accompanied by details explaining the value or price, type or type, status, domicile, and other things deemed necessary for the sake of clarity regarding the deposit. For the deposit in the form of inbreg, the name must be changed from the original name of the shareholder to the name of PT. Therefore, it is mandatory to transfer the name of the company's shares in the form of SHM/SHGB land to the company if the paid-up capital is in the form of land. In addition, if the inbreg that is deposited includes a car or other personal assets, the property rights are also released to fully become the Company's assets.

There are 2 (two) types of entry into the company (inbreg), namely inbreg to movable objects and to immovable objects. The author will describe the two types of inbreg, namely:

a. Inbreg against moving objects

Inbreg transactions are transactions that include non-cash assets such as land from shareholders to be used as company capital. The provisions governing the deposit of share capital in the form of Inbreg are Law Number 40 of 2007 concerning Limited Liability Companies "UU PT". In general, the deposit of shares is in the form of money. However, it does not rule out the possibility of depositing shares in other forms, either in the form of tangible or intangible objects, which can be valued in money and which have actually been received by the company.

Deposits for shares in other forms other than cash must be accompanied by details explaining the value or price, type or type, status, domicile, and other things deemed necessary for the sake of clarity regarding the deposit. For example with moving objects, cars, basically the inbreg procedure is the same for both movable and immovable objects. Movable objects, in this case, for example cars, include private cars as company assets, then the ownership of the car that originally belonged to you will fully become the property of PT. Thus, the increase in the company's capital must be carried out based on the approval of the General Meeting of Shareholders ("GMS") in accordance with the provisions of Article 41 paragraph (1) of the Company Law. If you want to make your personal car a company asset, alias increase the company's capital, the company must register with the Minister of Law and Human Rights as stipulated in Article 8 paragraph (1) of the Minister of Law and Human Rights 21/2021. The provisions for amending the articles of association that must be stated in a notarial deed are also listed in Article 9 paragraphs (2) and (3) of the Minister of Law and Human Rights 21/2021 that changes to the articles of association and/or company data are contained or stated

in a notarial deed in Indonesian. Amendments to the articles of association that are not included in the minutes of the meeting made by a notary must be stated in a notary deed within a maximum period of 30 days from the date of the Company general meeting resolution.<sup>10</sup>

b. Inbreg against immovable objects.

Regarding depositing capital in a PT, it is regulated in Article 34 paragraph (1) of the PT Law which reads: "Deposits for share capital can be made in the form of money and/or in other forms."

The deposit of shares in the form of immovable objects must be announced in 1 newspaper or more, within 14 days after the deed of establishment is signed or after the General Meeting of Shareholders ("GMS") decides to deposit the shares.

A certificate is a letter of proof of rights that is valid as a strong means of proof regarding the physical data and juridical data contained therein, as long as the physical data and juridical data match the data contained in the measurement letter and land title book concerned. Therefore, the land that will be deposited (inbreg) into the company must be registered until the certificate is issued. Furthermore, approval for the deposit of shares in the form of land must be submitted at the GMS and followed by an announcement in 1 or more newspapers, within 14 days after the GMS. The purpose of announcing it in a newspaper is to make it known to the public and to provide an opportunity for interested parties to be able to raise objections to the delivery of said object as a payment for share capital, for example it turns out that the object does not belong to the depositor.

In this study there is no inbreg because it is not explained that the involvement of the wife in signing the agreement on the deed of entry into the company and Mr. S as the Defendant made the sale and purchase transaction an action for and on behalf of and representing PT MSO because in his position as the President Director of PT MSO, and not it is proven that there is an aspect of legal transformation, namely the change in the inbreg of joint property in the form of movable property into commercial paper, which affects the composition of shares so that it is in accordance with the legal considerations of the judge who rejected the lawsuit from Mrs.

### Conclusion:-

1. The judge's legal considerations in trying, assessing and deciding case Number 2354/Pdt.G/2019/PA.Pwt, are correct in rejecting Plaintiff NS's lawsuit because the object used as the basis for the joint property dispute lawsuit is SHGB Number: 00602/Karangpucung and SHGB Number: 00603/Karangpucung, not SHM Number: 00602/Karangpucung and SHM Number: 00603/Karangpucung, are assets belonging to PT MSO, not privately owned or shared property between Plaintiff NS and Defendant S. This is evidenced by the Deed of Establishment of PT. MSO (Mitra Software Online), which was established on February 4 2015, who became the Director was Mr. S as the Defendant, then based on the Deed of Statement of Meeting Resolutions Number: 1 dated May 6 2019 Mr. S as the Defendant was appointed as the President Director of PT. the MSOs. This is because it is based on Article 98 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies.

2. The inbreg procedure in PT so that it can be recognized as joint property when a divorce occurs as contained in Article 34 paragraph (3) of the PT Law includes:

a. must be announced in 1 (one) newspaper or more.

b. The announcement is made within 14 (fourteen) days after the signing of the Deed of Establishment or after the GMS decides to deposit the shares.

The important thing that must be done next is the independent team's assessment, as well as the nomination of the transfer of land rights, namely the husband and wife who own the capital facing the PPAT where the land is located to make a reporting deed into the company, so that there is involvement of the wife to involve the approval of the reporting deed into the the company that forms the basis for conducting land registration. The settlement of the husband's inbreg in the PT is that each inbreg of the capital owner who is bound in a marriage becomes joint property after a divorce, so that it can be divided in half between the wife and in the PT. In this study there is no inbreg because it is not explained that the ex-wife's involvement in the approval of the deed of closing into the company and the ex-husband carrying out the sale and purchase transaction is an action for and on behalf of and

<sup>10</sup>Laura Reggyna, Bisakah Memasukkan Mobil Pribadi Jadi Aset PT, <https://www.hukumonline.com/klinik/a/bisakah-memasukkan-mobil-pribadi-jadi-aset-pt-lt527cf41ce63c6/>, diakses pada tanggal 25 Juni 2023, pukul.15.40 WIB.

representing PT MSO because in his position as President Director of PT MSO, it is also not proven the aspect of legal transformation, namely the change in the inbreg of joint property in the form of movable property into commercial paper, which affects the composition of shares, so that it is in accordance with the legal considerations of the judge who rejected the lawsuit from Mrs. NS as the Plaintiff against Mr. S as the Defendant, because there is no joint property.

### **Acknowledgment:-**

If joint assets in the form of land are to be included in the Company's assets, they must go through an inbreg mechanism. As well as registering the transfer of land rights, namely the husband and wife owners of capital facing the PPAT where the land is located to make a deed of entry into the company. The basis for land registration, in this case data maintenance to provide legal certainty and legal protection to rights holders over a registered plot of land so that they can easily prove themselves as the holder of the rights in question.

### **References:-**

- [1] Soemiyati, 1986, Hukum Perkawinan Islam Dan Undang-Undang Perkawinan, Liberty: Yogyakarta.
- [2] Sulistiani, Siska Lis, 2015, Kedudukan Hukum Anak Hasil Perkawinan Beda Agama menurut Hukum Positif dan Hukum Islam, Refika Aditama: Bandung.
- [3] Nasution, Ismy Syafriani, Tesis, Akibat Hukum Perceraian Terhadap Harta Bersama Berdasarkan Undang-Undang Perkawinan Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam, Universitas Sumatera Utara : Medan.
- [4] Mukti Arto, 2004, Praktek Perkara Perdata pada Pengadilan Agama, cet V Yogyakarta: Pustaka Pelajar.
- [5] Happy Susanto, 2008, Pembagian Harta Gono-Gini Saat Terjadinya Perceraian, Cet. 3, Visimedia, Jakarta.
- [6] Abdul Manan, 2008, Aneka Masalah Hukum Perdata Islam Di Indonesia, Kencana, Jakarta.
- [7] Bahder Johan Nasution, 1997, Hukum Perdata Islam, Mandar Maju, Bandung.
- [8] Zaeni Asyhadie, 2005, Hukum Bisnis Prinsip dan Pelaksanaannya di Indonesia”, PT. Raja Grafindo Persada, Jakarta.
- [9] R. Ali Rido, 1986, Hukum Dagang tentang Aspek-aspek Hukum dalam Asuransi Udara, Asuransi Jiwa dan Perkembangan Perseroan Terbatas, CV Remadja Karya, Bandung.
- [10] Laura Reggyna, Bisakah Memasukkan Mobil Pribadi Jadi Aset PT, <https://www.hukumonline.com/klinik/a/bisakah-memasukkan-mobil-pribadi-jadi-aset-pt-lt527cf41ce63c6/>, diakses pada tanggal 25 Juni 2023, pukul.15.40 WIB.