



The Division of Joint Property in the Form of Song Royalties (A Case Study of Decision Number 16/Pdt.G/2024/PTA.JK)

Annisa' Nailis Saadah^{1*}, Luthfiyah Trini Hastuti², and Solikhah³
Faculty Of Law, Sebelas Maret University

Corresponding Author: Annisa' Nailis Saadah: annisaailis12@student.uns.ac.id

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ABSTRACT

This article aims to analyze the methodology of royalty distribution in divorce cases and assess Decision Number 16/Pdt.G/2024/PTA.JK, regarded as the first legal precedent in Indonesia for dividing royalties as joint marital property upon court-declared dissolution of marriage. The analysis is based on John Rawls's and MH Kamali's theories of justice. Using normative research methods, the article examines statutory provisions regulating the rights and obligations of divorcing couples and evaluates the court decision in question. The findings indicate that royalties qualify as joint marital property since they are intangible assets derived from rights. The division of joint property is carried out equally, in accordance with Articles 96 and 97 of the Islamic Law Compilation. This decision reflects justice for the parties involved, as both contributed to the song creation process.

INTRODUCTION

Marriage is a legal and emotional bond between two individuals committed to supporting one another and sharing responsibilities in building a life together. Legally, marriage constitutes an official contract that regulates the rights and obligations of the husband and wife, including the division of assets, child custody, and other aspects of family life (Ja'far, 2021).

In Indonesia, marriage is governed by Law No. 1 of 1974, which defines it as a sacred union combining the spiritual and physical aspects of a relationship between a man and a woman as husband and wife, with the aim of creating a happy and lasting family based on religious values. This union also gives rise to joint ownership of assets acquired during the marriage.

One legal implication of marriage is the merging of property. Article 35 of Law No. 1 of 1974 distinguishes between separate property and joint property. Joint property includes assets acquired during the marriage, excluding gifts and inheritances, and must be divided equitably in the event of divorce. This division reflects the contributions of both parties during the marriage, encompassing both material and non-material assets.

In contemporary society, marital issues have become increasingly complex, particularly concerning the division of royalties from copyrighted musical works as joint property. Royalties, representing income derived from creations produced during the marriage, present challenges in the management of joint property. Copyrighted musical works created during the marriage raise questions regarding the division and management of royalties, highlighting the need for a deeper understanding of intellectual property rights within the marital legal framework.

Law No. 28 of 2014 on Copyright defines royalties as compensation for the use of intellectual property rights. However, this regulation does not explicitly recognize royalties as part of joint property, creating ambiguity in their treatment during divorce proceedings (Arso, 2017). The transfer of copyright is governed by Article 16(2) of the Copyright Law, which includes inheritance, grants, wills, or written agreements, but it does not address transfers arising from divorce.

In Islamic law, intellectual property rights are recognized as valuable assets (*mal*) based on the principle of *hifdzul mal* (protection of wealth). This principle underscores the importance of respecting knowledge and creativity. However, the status of royalties as part of joint property in marriage introduces new complexities.

A significant legal precedent is the Jakarta Religious High Court Decision No. 16/Pdt.G/2024/PTA.JK, the first in Indonesia to establish royalties as part of joint property in divorce cases. This case has sparked debate among legal practitioners, as the plaintiff sought the division of royalties from songs created during the marriage, alongside claims for child custody and spousal maintenance. The ongoing disputes in the marital life of the plaintiff and defendant served as the basis for the plaintiff's legal action. In this case, the plaintiff and defendant have three children from their marriage. In addition to filing for divorce, the plaintiff also submitted claims related to child custody, *iddah* maintenance, *hadhanah* maintenance, *mut'ah* (consolation payment), and

joint property, which included royalties from three songs created during their marriage, titled "Surat Cinta untuk Starla," "Bukti," and "Selamat." These songs were inspired by the plaintiff as the wife and their first child. The lyrics of these songs implicitly convey the defendant's love for his wife and first child.

Previous research (Poetri, 2020) has demonstrated that copyrights and trademarks obtained during marriage can be considered joint property, even if registered under one spouse's name. This article further examines the division of royalties and evaluates the court's decision using the justice theories of John Rawls and Mohammad Hashim Kamali.

The Copyright Act regulates the transfer of copyright but does not include provisions for the transfer of copyright through marital property or divorce. Royalties, as intangible objects, require further study. Based on this, this article will discuss how royalties are divided as marital property and whether the court's decision reflects a sense of justice according to the theories of justice by John Rawls and Mohammad Hashim Kamali.

THEORETICAL REVIEW

M.H Kamali's Theory Of Justice

According to Kamali, within the concepts of justice, equality, and difference, justice is associated with the equitable distribution of social goods or benefits, as well as the elimination of inequalities that harm individuals. Kamali refers to this as the distribution of primary goods, encompassing all benefits, both material and non-material, that can influence a person's living conditions and future prospects. These goods are those that every rational person desires. Such benefits include economic value, rights and freedoms, power and opportunities, as well as self-respect. Social justice, therefore, entails equality in the distribution of income and wealth, as well as equality in rights, freedoms, opportunities, and the foundations for self-respect.

John Rawls' Theory Of Justice

John Rawls proposed a principle of justice known as "The Original Position" or "Veil of Ignorance." In this perspective, justice is achieved when policies and resource distribution benefit all members of society, particularly the most vulnerable. To apply this principle in Court Decision Number 16/Pdt.G/2024/PTA.JK in conjunction with Decision Number 1622/Pdt.G/2023/PA.JB, it is necessary to consider whether the distribution of royalties with a 50:50 ratio can objectively be deemed fair to both parties.

METHODOLOGY

This normative research adopts statutory, conceptual, and case study approaches. The analysis incorporates not only Western justice theories but also perspectives from contemporary Islamic scholars to assess whether the court's decision reflects comprehensive justice.

RESEARCH RESULTS

A. Judicial Considerations in Decision Number 16/Pdt.G/2024/PTA.JK Concerning the Division of Royalties as Joint Property

The judicial considerations in Decision Number 16/Pdt.G/2024/PTA.JK reaffirm the judgment of the West Jakarta Religious Court No. 1622/Pdt.G/2023/PA.JB dated November 10, 2023. This judgment granted the Plaintiff's (Inara's) request, particularly regarding the status of royalties from several musical works of the Defendant (Virgoun) as joint property acquired during the marriage.

The panel of judges agreed that the joint property mentioned in the petition included half of the net royalty income received by the Defendant as the composer of the song "Surat Cinta Untuk Starla." These royalties were paid by PT Digital Rantai Maya as the publisher and were deemed shared property between the Plaintiff and the Defendant. The court noted that the song was clearly created while the couple was still married, as evidenced by the title of the song, which references the name of their child.

In its appellate decision, specifically regarding royalties as objects of joint property, the court considered Articles 96 and 97 of the Islamic Law Compilation, which allocate half of the property to each spouse upon divorce.

Additionally, the judges found that the three songs composed by the Defendant, namely "Surat Cinta Untuk Starla," "Bukti," and "Selamat," were created during the marriage. Based on Article 35(1) of Law No. 1 of 1974 on Marriage (as amended by Law No. 16 of 2019), the royalties from these songs are categorized as joint property subject to division.

Therefore, the panel of judges in Decision Number 16/Pdt.G/2024/PTA.JK upheld Decision No. 1622/Pdt.G/2023/PA.JB, allocating 50% of the copyright royalties from these songs to each party.

From the perspective of intellectual property law and marital law, this decision significantly contributes to the understanding of joint property, especially regarding royalties from works created during the marriage.

The legal framework constructed by the panel of judges reflects a progressive interpretation of joint property. The recognition of royalties as joint property transcends traditional definitions and aligns with the evolving legal understanding of economic dynamics in the creative economy era.

Furthermore, the court's reliance on Article 35(1) of the Marriage Law demonstrates a strong legal foundation. The phrase "property acquired during the marriage" is interpreted comprehensively, extending beyond conventional tangible assets to include intellectual property with economic value (Jannah, 2018).

From an intellectual property perspective, this decision establishes an important precedent. Recognizing royalties as joint property suggests that creative works produced during the marriage are viewed as collective products, with both material and moral contributions from the spouses.

Notably, the panel of judges did not limit their considerations to formal legal aspects but also accounted for social contexts. For instance, the inclusion of

the child's name in the song title was taken as evidence of the work's reflection of familial unity.

The reference to Articles 96 and 97 of the Islamic Law Compilation strengthens the legal argument, emphasizing the principle of equity in the division of assets after divorce. This reflects a fundamental sense of justice in Indonesia's family law system.

B. Resolution of Royalty Distribution as Joint Property

The civil law system in Indonesia recognizes the concept of joint property (*harta gono-gini*), encompassing movable and immovable assets acquired during the marriage (Nawawi, 2018). Joint property includes various types of assets, both tangible and intangible.

Immovable property, as defined in Articles 506–508 of the Indonesian Civil Code, generally includes land and its attachments, such as buildings or plants. Movable property encompasses assets not permanently attached to land or buildings, such as household items, as well as legal rights like usufructuary rights and negotiable instruments.

The Islamic Law Compilation, in Article 91, provides an outline of joint property, including immovable and movable assets as well as valuable documents. It also permits the use of joint property as collateral, provided both parties consent.

Intellectual Property Rights (IPR) are legal entitlements granting creators exclusive rights over their creations (Rizkia & Fardiansyah, 2022). These rights safeguard intangible assets derived from intellectual activities in industrial, scientific, literary, or artistic domains.

Musical works, including compositions with or without lyrics, fall under legal protection. Article 58(1) of Law No. 28/2014 on Copyright stipulates that protection for such works extends throughout the creator's lifetime and continues for 70 years posthumously. Additionally, Article 1(21) of the Copyright Law, along with Article 1 of Government Regulation No. 56/2021 on Copyright Royalty Management, defines royalties as compensation for the use of economic rights associated with copyrighted works.

The status of royalties as joint property hinges on the timing of copyright creation. If the copyright is obtained during the marriage, the benefits derived, including royalties, are considered joint property. This principle can be altered by a prenuptial agreement, as permitted under Article 29 of the Marriage Law and Constitutional Court Decision No. 69/PUU-XIII/2015.

The dispute in Decision Number 16/Pdt.G/2024/PTA.JK demonstrates that royalties from songs created during the marriage are joint property. In accordance with Articles 96 and 97 of the Islamic Law Compilation, joint property must be divided equally upon divorce unless otherwise stipulated in a prenuptial agreement.

This equal division, granting each spouse 50% of the royalties, reflects the principle of fairness, considering both spouses' contributions to the marriage.

C. Decision Number 16/Pdt.G/2024/PTA.JK from a Justice Perspective

1. Royalties as Joint Property

The panel of judges ruled that the royalties from three songs composed by Virgoun ("Surat Cinta Untuk Starla," "Bukti," and "Selamat") constitute joint property acquired during the marriage.

The division of royalties between Inara (the Plaintiff) and Virgoun (the Defendant) was determined to be 50:50, as stated in Decision Number 16/Pdt.G/2024/PTA.JK in conjunction with Decision Number 1622/Pdt.G/2023/PA.JB.

This means that Inara is entitled to half of the royalty income, while Virgoun receives the other half.

2. Decision Number 16/Pdt.G/2024/PTA.JK from the Perspective of Mohammad Hashim Kamali's Concept of Justice

In Mohammad Hashim Kamali's framework, justice is a fundamental principle in Islamic law, emphasizing both procedural and substantive dimensions. Kamali argues that justice extends beyond formal legal compliance to include efforts to achieve holistic well-being (*maslahah*) for all parties involved (Ramadhan, 2011).

Kamali highlights the importance of balance (*al-mizan*) between individual rights and social interests, incorporating social, psychological, and spiritual contexts into legal decisions (Kamali, 2002). Justice, according to Kamali, is achieved through procedural adherence (*al-'adl al-ijra'i*) and substantive outcomes (*al-'adl al-mawdu'i*), which must coexist to ensure comprehensive justice in Islamic law.

In Decision Number 16/Pdt.G/2024/PTA.JK, procedural justice is evident in the court's provision of equal opportunities for both parties to present their arguments and evidence. The appellate process exemplifies the checks and balances inherent in Indonesia's judicial system, allowing for reconsideration of the initial ruling to ensure broader justice.

Substantive justice is reflected in the court's recognition of royalties as joint property, emphasizing both parties' contributions to the creative works. The acknowledgment of songs like "Surat Cinta Untuk Starla" as joint property underscores a holistic understanding of shared marital contributions, aligning with Kamali's emphasis on contextualized justice.

Through the lens of *Maqasid Syariah*, the decision supports the principle of protecting progeny (*hifz an-nasl*) by ensuring economic stability for the child post-divorce. The equal division of royalties also addresses psychological dimensions, recognizing both parties' contributions to the marriage and its creative outcomes.

This approach aligns with Kamali's concept of balance (*al-mizan*), which emphasizes justice not only as material distribution but also as acknowledgment of dignity and roles.

The decision demonstrates Kamali's vision of flexible legal interpretation. Recognizing royalties as joint property illustrates the adaptability of Islamic legal systems to contemporary challenges, such as

those arising from creative economies. Kamali's perspective of dynamic ijtihad supports such progressive judicial interpretations.

Thus, Decision Number 16/Pdt.G/2024/PTA.JK exemplifies Kamali's theory of justice. It transcends merely resolving disputes to construct a legal framework that respects balance, dignity, and the well-being of all parties. The decision reflects justice as a dynamic, contextual, and evolving concept aligned with societal development.

3. Decision Number 16/Pdt.G/2024/PTA.JK from the Perspective of John Rawls's Theory of Justice

John Rawls proposed a justice framework called the "Original Position" or "Veil of Ignorance" (Faiz, 2017). According to this principle, justice is achieved when policies and resource distribution benefit all members of society, particularly the most vulnerable. Applying this theory involves assessing whether the 50:50 division of royalties can objectively be considered fair to both parties.

In Rawls's concept of justice, the original position assumes individuals are unaware of their specific roles in a given situation. In this case, imagining oneself as an uninvolved observer would likely lead to supporting an equitable distribution of royalties.

However, factors such as each party's creative contributions to the songs must also be considered. If Virgoun contributed more significantly to the creation of these works, a 50:50 division might not be deemed entirely fair. Rawls's theory implies that justice must consider proportional contributions and efforts.

It is noteworthy that Inara's claim to the royalties from these songs stems from her involvement as the primary inspiration. The court acknowledged Virgoun's admission that the songs were inspired by Inara and their child. Thus, Inara's contribution included providing the context and inspiration for the works.

The division of royalties at a 50:50 ratio, as determined by the West Jakarta Religious Court, incorporates both legal and fairness considerations. Under Rawls's principle of "justice as fairness," equal distribution aligns with justice when both parties contributed to the creative process during the marriage. Hence, Decision Number 16/Pdt.G/2024/PTA.JK reflects a sense of justice for the parties involved.

CONCLUSIONS AND RECOMMENDATIONS

The discussion above demonstrates that royalties qualify as joint property since they represent intangible assets derived from rights. In the case between the Plaintiff and the Defendant in Decision Number 16/Pdt.G/2024/PTA.JK, the royalties from songs created during the marriage were deemed joint property and subject to division. The resolution of joint property division adhered to an equal distribution of 50:50, as stipulated in Articles 96 and 97 of the Islamic Law Compilation.

From the perspective of John Rawls's and MH Kamali's theories of justice, Decision Number 16/Pdt.G/2024/PTA.JK reflects fairness for the parties involved, as both contributed to the creation of the three songs at issue.

As a recommendation, the author suggests that musicians enter into prenuptial agreements specifying the division of royalties from their creations. This measure would exclude royalties from joint property, reducing the potential for future disputes.

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