



Third party resistance (*Derden verzet*) against the execution of confiscation in shared assets seen from the aspect of a wife's rights in realizing equitable legal certainty

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Abstract

Marriage, based on Article 1 of Act No.1 of 1974 concerning Marriage, is as 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 under God Almighty. Property/wealth which is obtained in a marriage is called joint property. Legal actions regarding joint property must be approved by both husband and wife. Legal issues when disputes occur, namely *derden verzet* in which the focus is on the judges' considerations in decision making, the position of the wife as a third party, better arrangements that have legal certainty and justice, especially for the wife. There are three types of approaches to answer these research questions: the statute approach, an approach that is carried out with all the laws and regulations related to the legal issues under study; the comparative approach, that is by comparing one with another; and the conceptual approach which is based on the approach of concepts in law that refer to the principles of law (court decisions). The results show that the judges' consideration in the decision of a third-party resistance (*derden verzet*) has not been gender-equitable towards the executable confiscation filed. The position of the wife as a third party (*derden verzet*) in the decision has not been equal nor balanced. For better regulation, decisions on disputes regarding shared assets must prioritize gender equality or the wife as a conclusion in the *derden verzet* still experiences discrimination in judges' decisions, which is an indicator of gender inequality. Article 31 of the Marriage Act states that the rights and position of the wife are balanced with the rights and position of the husband in domestic life.

Keywords: wife, *derden verzet*, gender justice or wife

1. Introduction

A. Rationale

Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (known as *UUD NRI 1945*) affirms that all citizens are of the same position, including husband and wife in a marriage. If there is a dispute between husband and wife, it will be treated equally by law enforcement, in this case the judge. Article 24 paragraph (1) of *UUD NRI 1945* affirms the power of law enforcement officials, especially judges as an apparatus of the law, having independent power to administer justice in order to enforce "law" and "justice". Paragraph (1) of Article 28D of *UUD NRI 1945* states that every person has the right to recognition, security, protection and legal certainty that is fair, and have equal treatment before the law^[1]. Both men and women have different interests from one another in their social life as an individual. Sometimes their interests' conflict with one another, which can lead to a dispute. Article 5 paragraph (1) of Act Number 48 of 2009 concerning Judicial Authority, must explore, follow, and understand the legal values and sense of justice that lives in the community^[2]. Then the rights and obligations as regulated in civil law are fulfilled as they should be^[3].

Equality before the law and the court has been regulated in Indonesia's justice system in order to realize balance and equality. The Indonesian legal system as a system of rules that applies in the Indonesian state is a system of rules that is so complex and broad, consisting of legal elements, wherein the legal elements are interlocked and influence each other.

Every person who seeks justice will be treated equally regarding public and private matters. Private Law governs individual interests (*bijzondere belangen*). If reviewed through the vision of legal development based on the function, the scope of private law, it can be divided into two, namely: material civil law and formal civil law^[4]. Resistance/opposition (*Verzet*) is a legal remedy against decisions made without the presence of the defendant. Article 125 states that "if the claim is accepted, then the court's decision based on the chairman's order must be notified to the sentenced individual, and it must be explained that they have the right to submit resistance/opposition to the decision made against them, whilst not present before the court assembly in the time and manner specified in article 129". Prior to Act Number 1 of 1974, there were various regulations that were applied regarding marriage in Indonesia, namely customary law and

¹ The 1945 Constitution of the Republic of Indonesia (*Undang-undang Dasar Negara Republik Indonesia Tahun 1945*)

² Act Number 48 of 2009 concerning Judicial Authority (*Undang-undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman*)

³ Abdulkadir Muhammad, 2008, *Hukum Acara Perdata Indonesia*, Bandung, PT. Citra Aditya Bakti, p.16

⁴ Lilik Mulyadi, 2015, *Putusan Hakim Dalam Hukum Acara Perdata Indonesia Perspektif, Teoritis, Praktik, Teknik Membuat Dan Permasalahannya*, Bandung, Citra Aditya Bakti, p. 1

Islamic law for those of Islamic faith ^[5]. Marriage creates legal consequences for the husband and wife in a marriage, regarding the establishment of property, position, the legal status of children, and inheritance.

The issue of justice in marital disputes is always related to matters of wealth in a marriage. Marriage assets according to customary law are all assets held by the husband and wife as long as they are bound together in the marriage, both the relatives' possessed assets / heirlooms (*harta kerabat*), as well as individual assets (*Harta perorangan*) originating from inheritance, grants, income assets, joint income assets, and gifts ^[6]. The separation between marital property which is called family property (*harta keluarga*) and relative assets / heirlooms (*harta kerabat*) is not easily done because there are indigenous people who have kinship (*kerukunan kerabat*) fatherhood, motherhood, and parenthood. The structure of a patrilineal society regulates marital property in such a way that all assets included in the marriage bond become joint property and unitary wealth controlled by the husband as the head of the family, all legal actions concerning marital property must be known and agreed upon by the husband, the wife must not act alone for inherited assets of customary value, everything is not only controlled by the husband, but also the husband's relatives ^[7].

Property can be divided into two forms, first 'shared/joint property' are assets obtained from a marriage, second 'property' or 'original assets' are assets carried by each partner, before a marriage takes place, and the property can be used 1 (one) in a marriage with the provision that before marriage there must be a property agreement. Therefore, based on the position of husband or wife in marriage, can act on the agreement of both parties, but concerning the property, the husband and wife can make their own legal actions without any consent from the husband or wife. Article 35 Paragraph (1): "property obtained during marriage becomes joint property", and in paragraph (2) that, "the inheritance of both husband and wife and the property obtained respectively as gifts or inheritance, is under the control of one another as long as the parties do not determine the otherwise".

Over time, a marriage might not fully meet the needs of the family, so the husband and wife make transactions with other parties, including debts that give rise to rights and obligations of debtors and creditors. Credit and debt agreements are always at risk, so there is a guarantee for the debt and credit agreements. The provision of collateral is used to make sure that if the debtor is unable to carry out their rights and obligations, then the goods are pledged as a means of legal protection for debt repayment from the debtor. Joint assets that are used as collateral by the husband or wife must have an agreement from the husband or wife, problems arise when a joint property dispute occurs related to the husband using joint property without the wife's permission as collateral.

In examining, adjudicating and giving decisions judges must

be based on legal arguments and evidence. However, if the opposition is not satisfied with the decision of the judge, they can file an appeal or cassation. Therefore, the opposition can obtain their rights. For this reason, the opposition must prove his claim for resistance/opposition in order for it to be deemed right by the judge.

The researcher is interested in studying about third-party resistance/opposition (*derden verzet*). Then the researcher would like to examine and compile in the writing of the Dissertation with the title: "Third Party Resistance/Opposition (*derden verzet*) of the Execution of Confiscation in Joint Assets seen from the Aspect of the rights of a wife in realizing Legal Justice". As for the research problems/questions: 1.) What is the judges' consideration in the decision of a third-party resistance/opposition (*derden verzet*) against an executable confiscation filed by a third party (*derden verzet*) on joint property? 2.) What is the position of the wife as a third party (*derden verzet*) toward the decision of the court that has permanent legal force of the joint property? 3.) What is a better arrangement that can bring about legal certainty and fairness in the resistance/opposition of third parties (*derden verzet*), especially when proposed by the wife of joint property?

B. Research Methods

A. Research Type

Judging from its type, this research is a normative legal research or library research. In normative legal research, library materials are basic data that in research science are classified as secondary data ^[8]. Soerjono Soekanto argued that normative legal research was carried out by examining literature or secondary data, which included research on legal principles, legal systematics, legal synchronization, legal history, legal comparison ^[9].

B. Research Approach

There were several approaches taken in this study, namely:

B.1 Statute Approach

B.2 Comparative Approach

B.3 Conceptual Approach

B.1. Statute Approach

Statute Approach, is an approach that is carried out by examining all laws and regulations relating to the legal issues that are being handled ^[10]. The laws and regulations used in this study include those governed by *RV (Wetboek op de Burgerlijke Rechtvordering)*, *HIR (Herzien Inlandsch Reglement)*, *RBg (Rechtreglement voor de Buitengewesten)*, Act Number 48 of 2009 concerning Judicial Authority, Act Number 49 of 2009 concerning the Second Amendment to Act Number 2 of 1986 concerning the Courts.

B.2. Comparative Approach

The Comparative Approach is executed by comparing one object to another object, for example a comparison of the legal system with the justice system in Indonesia, comparison of legal principles with the principles of justice in Indonesia, comparison between legal theories with

⁵ Djuhaendah Hasan, 1988, *Hukum Keluarga setelah berlakunya UU Nomor 1 Tahun 1974* (menuju ke hukum keluarga nasional), Armico, Bandung, 1988, p. 2

⁶ Hilman Hadikusuma, 1990, *Hukum Perkawinan Adat*, Bandung, Citra Aditya Bakti, p. 156

⁷ Hilman Hadikusuma, 2003, *Hukum Perkawinan Indonesia Menurut Perundangan Hukum Adat*, Bandung, CV Mandar Maju, p. 124

⁸ Soerjono Soekanto, dan Sri Mamudji, *Penelitian Hukum Normatif. Suatu Tinjauan Singkat*. RajaGrafindo Persada, Jakarta, 2001, p. 24

⁹ Soerjono Soekanto, *Pengantar Penelitian Hukum*, UI Press, Jakarta, 1986, p. 50

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, Jakarta, 2010, p. 93

theories of justice in Indonesia, and a comparison between Legal Certainty Theory and Guidelines for the Implementation of Duties and Administration of Courts in the four Courts.

B.3. Conceptual Approach

The Conceptual Approach is based on the approach of concepts in law that refer to legal principles. Peter Mahmud Marzuki argues that besides the legal concepts in the law, it can also be found in court decisions ^[11]. The legal concept which is based on legal principles or relevant legal principles is very much used in this research approach which is intended to understand the application of the principle of fast justice in civil cases in the District Court.

C. Types of Data and Data Collection Techniques

The main data type in this study is library data which is also referred to as secondary data. Data collection techniques used in the study include several legal materials, namely primary legal materials, secondary legal materials, and tertiary legal materials, as follows:

C.1. Primary legal materials, namely the main legal materials obtained and collected from a number of laws and regulations that underlie this research, as in Article 24 paragraph (2) and Article 28D paragraph (1) of the *UUD NRI 1945*, Article 2 paragraph (4) of Act Number 48 of 2009 concerning Judicial Authority, which states that "Judicial proceedings are carried out simply, quickly and at a low cost.

C.2. Secondary legal material was obtained mainly from literature books, legal journals, research results, magazines/newspapers of various Supreme Court regulations as Guidelines, Implementation Guidelines, Circular Letters, Supreme Court Regulations, etc.

C.3. Tertiary legal materials, namely legal materials that can clarify the meanings of primary and secondary legal materials. Tertiary legal material is obtained from dictionaries such as the Law Dictionary.

D. Data Analysis Techniques

The data obtained from the results of this study were then analyzed with the theoretical basis; both primary data and secondary data were analyzed using qualitative analysis.

Primary, secondary, tertiary legal material, information and other information in accordance with the formulation of problems were analyzed qualitatively and judicially in order to arrange the discussions and conclusions.

Results and Discussion

A. Judges' Considerations in the Decision of Third Party Resistance/Opposition (*derden verzet*) for the Execution of Confiscation submitted by the Third Party (*derden verzet*) of Joint Assets

In considering what is proven and rejected, third party resistance/opposition is highly dependent on the judicial process and the facts of the trial. The process in the court includes filing claims for rights, examinations, decisions and the implementation of decisions, all of which are subject to civil procedural law. As we know, resolving disputes through the courts is wise and avoids vigilantism. After all the processes in the civil court have been passed, of course the parties involved in the dispute would want legal

certainty, namely the judges' decision. The essence of Holmes's teachings is known as "the founder of the realist shoud". For 30 years Holmes served as Chief Justice of the United States, his best-known statement is *the life of the law has been, not logic, but experience*. The empirical and pragmatic aspects of law are important. According to Holmes, the law is what is predicted to be decided in reality by the court.

Justice for the wife in *derden verset* is very much dependent on the Judge's decision to consider sufficient law, which means to explain the basis or sufficient argumentation for each part of the plaintiff's claim. The legal basis which confirms this can be seen in the provisions of article 178 paragraph (1) *HIR* / Article 189 paragraph (1) *Rbg*. The inclusion of basis or argument in each judges' decision is a guarantee for an unbiased judiciary as well as ensures justice for the community. Van Boneval Faure believes that the moral strength of the judges' decision lies in their consideration, *in die motivering ligt de zedelijke kracht van het vonnis* ^[12].

Justice for the wife is very dependent on legal considerations in the judges' decision including matters providing guarantees that the trial is based on a fair trial, so that the parties may easily understand the reasons for the decision by the judge. Circular Letter number 03 of 1974 dated 23 November 1974 confirms that the Chairperson of the High Court and the District Court throughout Indonesia, has given instructions that the judge has the obligation to give consideration/reasons for the sentencing and the consequences if the sentencing does not consider everything, including:

1. It is a fact that decisions taken by the District Court/High Court sometimes are not accompanied by the consideration desired by the Act.
2. Article 23 (1) of Act Number 14 of 1970 concerning the basic provisions of judicial authority in conjunction with Article 50 paragraph (1) of Act Number 48 of 2009, which reads: all court decisions must contain the reasons and grounds for the decision, also must include certain articles of the relevant regulations or unwritten legal sources which are used as a basis for adjudicating/judging, requiring the grounds and considerations that are the reasons for the decision of the district court/high court.
3. By not giving/lacking consideration/reason, even if the reasons are unclear, difficult to understand or contradict each other, then such matter can be seen as negligence (*vormverzuim*) which can result in the cancellation of the court's decision relevant/involved in the examination at the cassation level.
4. The Supreme Court requests that the provisions in the law, which require the court to give a reason (*motiveringplicht*), are fulfilled to prevent the possibility of canceling the court's decision if it does not contain the reasons or considerations.

The guarantee of an independent judicial authority, free from the influence of other powers, is closely related to the independence of the judiciary. The separation of powers requires that judges be able to work independently of the influence of executive and legislative powers. The Supreme Court of the Republic of Indonesia considers that the main

¹¹ Peter Mahmud Marzuki, *Ibid*, p. 139

¹² Setiawan, *Aneka Masalah Hukum dan Hukum Acara Perdata*, Alumni, Bandung, 1992, Hal. 371

conditions for conducting an objective judicial process is the existence of a judicial body. In the blueprint of the 2010-2035 judicial reform, the following judicial review on judicial authority is given;

1. Institutional Independence, the judiciary is an independent institution and must be free from intervention outside judicial authority.
2. Functional independence, every judge must maintain independence in carrying out their duties and functions. This implies that the judge, in adjudicating a case, is only based on legal facts and the legal basis they know, and is free from influence, pressure and threats^[13].

The judges' decision is made after going through a series of examination processes in which the judge presented the facts to the parties to the litigation, and with these facts the judge can determine the truth and apply the applicable law or establish the legal relationship between the two parties who litigate.

Judges' considerations in practice are often outlined in the main problem and then the judges' considerations are outlined in their legal considerations which are then outlined in the decision dictum. The world of justice is distinguished between decisions (called "*vonnis*" in Dutch for decisions that have not obtained permanent legal force, while "*gwijsde*" is used for decisions that have obtained permanent legal force or *inkracht*, and the decision of judges' in Dutch is called *beschikking*^[14].

The verdict is the final result of a case examination, which consists of the case position, fact analysis, law analysis and the conclusions of the judge, therefore a decision also reflects the intellectual level and even the level of morality of the judge that made the decision for the case, or the decision ending a dispute or case at a certain level of justice^[15], for example decisions of the legal contract, verdict decisions, verdicts of resistance/opposition (*verzet*), instant verdicts, decisions of acceptance of principals (*verweer ten principale*) and verdicts (*exemptief verweer*), decisions of appeal, decisions of cassation. Therefore, it is often stated that the decision is the crown of a judge.

In terms of practical needs, the decision is the end of a trial and on the other hand the decision is the fulcrum of an execution^[16]. Another principle that must be fulfilled is that the decision contains *amar: condemnatoir*. Only *condemnatoir* decisions can be executed, i.e. decisions that are *amar* or dictum contain an element of "punishment". Decisions which are *amar* or dictum do not contain an element of punishment, cannot be executed or are "non-executable".

The existence of a judge's decision or commonly referred to as a "court decision" is needed in order to resolve a civil case. Therefore it is expected that the parties, both the plaintiff (*eiser*) and the defendant (*gedaagde*) can accept the decision so that people who feel that their rights have been violated by others get their rights back and those who feel and are perceived to have violated the rights of others must

restore these rights. When viewed from the vision of the judge who has decided the case, the judges' decision is the crown as well as the summit and the closing deed reflecting the values of justice, truth, legal control and facts, ethics, and morals of the judge concerned^[17]. Based on the provisions of article 184 *HIR*, article 195 *Rbg*, article 30 *RO* (*Reglement op de Rechterlijke Organisatie en het Beleid der Justitie in Indonesie*), article 50 paragraph 1 of Act number 48 of 2009 concerning judicial authority is not found regarding the definition or limitation of the judge's decision. *Amar* or dictum decisions, thus justice for the wife is very dependent on the judge's decision. This resistance/opposition does not prevent the commencement of the enforcement of the decision, unless the head of the district court gives an order to suspend the execution. Article 207 *HIR* "Resistance/Opposition cannot prevent or delay the execution of a decision, unless the Chairperson has given an order so that it is postponed by awaiting the decision of a district court." In jurisprudence the owner is interpreted in a broad sense.

B. The position of the wife as a third party (*derden verzet*) toward the decision of the district court that has permanent legal force in joint property.

Marriage raises the rights and obligations of a husband and wife. What is meant by 'rights' is something that belongs to or can be owned by a husband or wife arising from their marriage, while an 'obligation' is something that must be done or carried out by a husband or wife to fulfill the rights of other parties. The position of husband and wife in Indonesian marriage law is based on the equality of position listed in article 27 paragraph (1) of *UUD NRI 1945* which states that: "all citizens are in the same position before the law and government and must uphold the law and government with no exception". Likewise, Article 36 Paragraph 2 of Act No. 39 of 1999 concerning Human Rights states that: "no person may be deprived of his property arbitrarily and unlawfully".

Equality is the most important element of justice, relating to relations between two or more people, where unequal treatment between them will result in injustice. Justice and equality have a very close relationship, so close that if there is unequal treatment, then it is an act of injustice^[18].

Justice is a value that creates an ideal relationship between humans as individuals, as members of society, and as part of nature, by giving people what their rights and freedoms are in accordance with their achievements and imposes according to their obligations according to law and morals, which if necessary must be enforced by the State by treating the same things equally and treating different things differently^[19].

Justice is divided into 2 groups: first, distributive justice, namely justice that gives each person a ration in accordance with their services and second, cumulative justice that gives each person the same ration without taking into account their respective services^[20]. Distributive justice emphasizes the notion of proportionality, while cumulative justice emphasizes the notion of equality.

B.1 Western Law (*Burgerlijk Wetboek / BW*)

¹³ Desertasi I Gede Yuliaartha, Asas Audi Et Alteram Partem Dalam Putusan Verstek Bagi Pencari Keadilan, program Studi Doktor Ilmu Hukum Fakultas Hukum Universitas Jember tahun 2018, p. 64

¹⁴ Sri Wardah dan Bambang Sutiyoso *Op.Cit.*, p 64

¹⁵ Sudikno Mertokusumo, *Op.Cit.* p. 192

¹⁶ Mahkamah Agung RI, 2005, *Bunga Rampai Makalah Hukum Acara Perdata*, p 98

¹⁷ Lilik Mulyadi, *Op.Cit.*, p. 125

¹⁸ Sonny Dewi Judiasih, *Op. Cit.*, p. 38

¹⁹ Munir Fuady, *Dinamika Teori Hukum*, Jakarta, Ghalia Indonesia, 2007, p. 101

²⁰ J.B. Pengantar Ilmu Hukum, Jakarta, Gramedia, 1989, p. 39

In western law (*BW*), if a woman whose origin is free is then bound to a man in a marriage bond, then the woman (wife) will no longer have the skills to act for herself (*onbekwaam handelings*)^[21]. A wife cannot take legal actions or actions in the field of property law concerning her property without the power or assistance of her husband, the wife's actions related to personal assets or marriage assets will not bring legal consequences or will not get perfect/full legal protection if she does not have the power of an attorney or help from her husband. Article 1330 of the Civil Code states that: incompetent to make an agreement are the persons who are not yet mature, those who are placed in a capacity, women, in the case stipulated in the law, and in general, all those to whom the law has prohibited making certain agreements". It is also stated in article 108 of the Civil Code which confirms that: "a wife may marry outside the union of assets, or even if she is separated in that matter, but she must not give something or transfer it, or obtain it either for free or for free burden, but with help in the deed, or with written permission from her husband". The Civil Code puts the wife in an inept condition (*handelings onbekwaam*) not only in terms of marrying the unity of property unanimously, but also in terms of marriage with the separation of property and even in a state of separation of tables and beds. There are 2 (two) reasons, namely^[22] first for the sake of the unity of wealth in the family, a wife is placed under the authority of her husband. This is based on an assumption that it is not possible in a ship (ark) household for there to be two captains. Secondly, there is an assumption that a wife is weak and lacking in her thinking ability, so she needs to be put under the authority of her husband.

The wife's inadequacy is not only in the matter of marriage to the unity of the property unanimously, but also in the case that she marries with the separation of assets. Even if the wife separates the table and the bed (*scheiding van tafel end bed*) she remains in a state that she no longer has the skills to act [for herself] (*handelings onbekwaam*). The wife's incompetence is only limited to legal actions concerning the wife's property in question^[23]. However, other legal actions that are not related to the wife's assets or the wife's marital assets, she is capable and can take legal actions without the need of assistance from her husband.

The wife's inability to carry out a legal act especially regarding personal assets and marital assets brings about a consequence, the management of the wife's personal assets and marriage assets to the husband, and to carry out a legal action related to the wife's personal assets and marriage assets must require assistance or power from her husband. Likewise, if the wife faces a lawsuit before the court, the wife needs the help of her husband, except in the case of criminal charges, divorce claims, separation of beds and separation of assets originating from the wife, demands relating to labor law where the wife acts as a laborer, and submits claims for registration of mortgages if the husband refuses to give permission or power of attorney, then permission or power of attorney from her husband can be

replaced with a court permit^[24].

Permission from the court is intended to resolve the issue when the husband for various reasons does not give permission, when the wife is in dire need of legal provisions. The legal consequences of western marriages on the status of a wife who cannot perform legal actions on her personal property are no longer in accordance with modern developments and are unfair to a wife, therefore these provisions have been disobeyed and ignored by the issuance of the Supreme Court circular letter Number 3 of 1963 Number 1115/P/3292/M/1963 dated 5 September 1963. These provisions allow for women to have better individual rights, because they can take legal actions in any form, including women who are bound in marriage obtain their rights to participate in the continuation of her married life.

B.2 Act Number 1 of 1974 concerning Marriage

The Civil Code places the wife in inadequacy (*onbekwaam handelings*) not only in the case of unanimously marrying the unity of assets, but also in the case of marriage by separation of assets and even in separate tables and beds. Property obtained during marriage becomes shared property. The property of both husband and wife and property obtained as a gift or inheritance shall be under the respective control of the parties as long as the parties do not stipulate otherwise (Article 35 of the Marriage Law)^[25]. In the Marriage Law, the classification of marriage assets includes:

1. Joint assets, which are assets obtained by both husband and wife during the marriage (Article 35 paragraph 1). In Balinese society there are differences in the use of the term for this type of property, namely there are those who refer to the terms *Druwe Gabro*, *Arok Sekaya*, and others (Panetja, 1986). The term commonly used in the *awig-awig* of the *pakraman* villages is *pegunakaya* or *gunakaya*.
2. The property of both husband and wife and the assets obtained respectively as a gift or inheritance (Article 35 paragraph 2). In Balinese society, girls are not heirs so wives are unlikely to obtain property from inheritance. According to the Balinese Traditional Inheritance Law (*Hukum Adat Waris Bali*) in the past, daughters could only receive gifts from their parents based on voluntary gifts called *jiwadana*, privately before marriage (*sekaya*) or obtained as gifts from parents (*jiwadana*) are commonly called *tetadtadan*, while assets obtained as inheritance are commonly called *tetamian*^[26].

At the time of the enactment of the provisions of the marriage law in Indonesia in 1974, things that underlie the equality of the position of husband and wife in marriage are a matter of great relief for the Indonesian people in general. The marriage law states that the position of the wife is balanced/equal with the position of the husband, both in domestic life and in the community, therefore everything in the family can be negotiated and decided by both the husband and the wife.

Based on article 31 of the marriage law, the status and position of the wife are equal to the husband, and the wife is no longer under the authority of the husband such as in the Civil Code, therefore both husband and wife can carry out legal actions individually without having to ask for help,

²¹ J. Andy Hartanto, *Hukum Harta Kekayaan Perkawinan menurut Burgerlijk Wetboek dan Undang-undang perkawinan*, Yogyakarta, LaksBang Pressindo, 2017, p. 12

²² Andy Hartanto, *Op.Cit*, p. 22

²³ Pitlo dan G. Meijling, *Het Personenrecht naar het Nederland Burgelijk Wetboek*, H.D Tjeenk Willink & soon, Haarlem, p. 153

²⁴ J. Andy Hartanto, *Op.Cit*, p. 14

²⁵ P.N.H Simajuntak, *Op.Cit*, p. 60

²⁶ <http://sudantra.blogspot.com/2011/09/hukum-perkawinan.html>

permission or power of attorney from the other party. Although the rights and position of husband and wife are balanced however they have different roles and responsibilities in the family. In Article 31 of the marriage law, the husband is the head of the family and the wife as the housewife is the husband's assistant. In Islamic law, the husband is the head of the family (QS 4:34) and the wife is the housewife. In the position of head of the household, the husband is the leader and at the same time a guide to his wife, children and other households. The wife as a housewife is obliged to organize and manage daily household needs as well as possible. In Islamic law, the main obligation of a filial wife is physically and mentally to her husband as long as it is justified by the Islamic Religion (QS 4:34). Especially for Hindus in Bali, the implementation of marriage will also be enhanced by the enactment of customary law, in addition between custom/tradition and religion are difficult to separate, marriage law is also strongly influenced by family law which is still controlled by customary law. The *purusa* (patrilineal) family system adopted in the traditional family law (*hukum adat keluarga*) in Bali (*dresta*) is very important for its influence on marriage law for Hindus in Bali. The influence is very clearly seen in the forms of marriage which ultimately affect the status of the husband and the wife and the children in the family.

A Balinese woman as a wife has a legal position in the (extended) family environment of her husband, because according to the family system that applies in Balinese society, namely patrilineal or *kepurusa*, that through marriage a woman is released from the legal family relationship with her family of origin (biological parents) and subsequently enters the husband's family environment. Thus, a wife will fulfill her rights and obligations, at noon, within the husband's family environment, not the environment of her original/biological family. The opposite happens in the form of a *nyeburin* marriage, where the husband opposes the law and fulfills his rights and obligations in his wife's family environment as *purusa*.

C. Better arrangements that can bring about legal certainty and justice in the resistance/opposition of third parties (*derden verzet*), especially those proposed by the wife on joint assets.

All people are equal before the law and legislation including men and women, especially a woman in obtaining their rights in marriage. The government highly respects justice for women with the enactment of Supreme Court circular letter No. 3 of 1963 concerning the non-validity of Article 108 of the Civil Code, which resulted in the birth of Act No. 1 of 1974 concerning Marriage, whereby wives can make legal changes and make arrangements for personal property or to marriage assets, in accordance with Article 31 of the Marriage Law, that:

"The rights and positions of the wife are balanced/equal with the rights and positions of the husband in domestic life and social life together in the community"

"Each party has the right to carry out legal actions"

"The husband is the head of the household and the wife is the housewife"

Marriage law states that the position of the wife is

balanced/equal with the position of the husband, both in domestic life and in the community, therefore everything in the family can be negotiated and decided by both the husband and wife. This clarifies the recognition and respect for a woman / wife in marriage.

In other words, the status and position of the wife are equal to the husband, and the wife is no longer under the authority of the husband as stated in the Civil Code, therefore the husband and wife can take legal actions individually without having to ask for help, permission or power from other parties. Marriage creates legal consequences for both husband and wife in marriage, regarding the formation of property, position, legal status of children, and inheritance. The emergence of these legal consequences can only happen if the marriage is carried out in accordance with the provisions of article 2 paragraph (1) and paragraph (2) of Act Number 1 of 1974.

Conclusions and Recommendation

A. Conclusion

1. The judges' considerations in determining the proof and decision of resistance/opposition of a third party (*derden verzet*) have not prioritized justice for the rights of a wife. In obtaining justice for a wife, the decision must be balanced because in addition to seeing the legal certainty or regulations that govern, the judge in determining a decision cannot only see or review the technical guidelines for the implementation of duties and administration of the court in four judicial environments, because the judge must also see and also consider how justice is obtained for a wife in maintaining what is rightfully hers.
2. The position of the wife as a third party (*derden verzet*) toward the decision of the district court that has the permanent legal force in joint property is balanced/equal, not necessarily both husband or wife to the joint property or assets obtained in marriage that are directly transferred to third parties, because in article 31 of the Marriage Law it explains that the rights and positions of the wife are balanced/equal with the rights and positions of the husband in domestic life and association together in the community, and each has the right perform legal acts, therefore what is expected in the marriage law is that the position of the wife can be balanced, equal and fair.
3. For a better arrangement that can realize legal certainty and be fair in the resistance/opposition of third parties (*derden verzet*), especially when proposed by the wife on shared property, the dispute regarding the joint property, should promote justice for a wife in defending her rights so as not to cause discrimination, in order for the application of legal measures against resistance/opposition of third parties (*derden verzet*) to be able to realize legal certainty and be fair in the resistance/opposition of third parties (*derden verzet*), especially when proposed by the wife of said joint property must obtain equal protection before the law, in accordance with what has been governed by the Law, so that every person who submits a legal effort that has legal certainty can always be treated fairly, regardless of whether they are a woman or a man. Because everything before of the law or those dealing with the law are equal without being biased.

B. Recommendation

1. By looking at/observing the judges' considerations in determining the evidence and decision of a third party's resistance/opposition to an executable confiscation filed by a third party, one must not only look at/observe the technical guidelines for carrying out the duties and administration of the court in the four judicial environments, because the judge in deciding a case must also see from the angle of justice and its benefits.
2. The position of the wife as a third party (*derden verzet*) towards the decision of the district court in joint property is balanced and is not biased, because the rights and position of the wife with the rights and position of the husband in domestic life and association of life together in the community are the same/equal, therefore the position of the wife can be balanced, parallel and fair.
3. The application of legal measures against third-party resistance/opposition (*derden verzet*) in order to realize and defend the rights of third-party resistance/opposition with legal certainty and justice must be in accordance with what has been regulated by the law, so that every person who submits a legal effort will always get fair treatment.

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