

Proof of marital seizure against joint property in a marriage resulting from divorce (A case study of decisions no. 533/Pdt.G/2021/Pa.Bn And No. 561/Pdt.G/2025/Pa.Krw)

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ABSTRACT

The marital beslag plays an important role in protecting common property. The urgency of submitting a marital beslag request was to protect the integrity of the communal property so that, during the process, neither the husband nor the wife could transfer the communal property to a third party. Sometimes, the marital beslag request might have been granted or denied by the judge. The purpose of this research was to understand and analyze the reasons why judges did not grant marital beslag requests, to understand and analyze the evidence of the marital beslag submitted by the plaintiff so that it could be accepted by the judge, and to examine and analyze Religious Court Decision Number 533/Pdt. G/2021/PA.Bn and Decision No. 561/Pdt. Bn. G/2025/PA.Krw regarding marital status. This study employs normative legal research. The research approach used in this thesis is legislative, conceptual, and case-based. The analysis results indicate that (1) In Decision Number 533/Pdt. G/2021/PA.Bn, a marital beslag could not be granted because the lawsuit was declared obscur libel (vague/unclear), thus formally not meeting the requirements of legal proceedings (Article 8 RBg jo. Article 118 HIR). Meanwhile, in Decision No. 561/Pdt. G/2025/PA.Krw, the marital beslag was denied because the divorce lawsuit as the main matter was not materially proven, so the matter of joint property along with its marital beslag was automatically not accepted; (2) The requirements for accepting marital beslag are: the lawsuit must not be vague, the object of the dispute must be described in detail; there must be authentic evidence demonstrating that the property is joint property acquired during the marriage; there must be urgent reasons to protect the property from potential transfer or concealment; and the seizure must not harm third parties. Failure to meet these requirements, both formally and materially, results in the denial of the marital beslag request. The rejection of marital beslag in Decision Number 533/Pdt. G/2021/PA.Bn and Decision No. 561/Pdt.G/2025/PA.Krw emphasizes that a request for marital beslag could only be granted if it met the formal and material requirements according to the provisions of civil procedural law.

Keywords: Marital beslag, Common Property, Divorce.

1. INTRODUCTION

Indonesia is a state governed by law, protecting the interests of its citizens and regulating the relationship between groups, individuals, and the government. In principle, law is universal and evolves according to societal dynamics, thus enabling it to address issues as human interaction evolves (Nurhayati, 2020). The public sometimes sees interest in each other as contradictory, and sometimes even as a harmonious relationship and harmony (Dahwal, 2020). Marriage teaches people to be responsible for all the consequences that arise from a sense of responsibility and affection for the family. Humans try to change the situation for the better with all their physical and spiritual strength, thus encouraging them to be more creative and productive.

According to the Compilation of Islamic Law (hereinafter abbreviated as KHI), the purpose of marriage is stated in Abror (2020), namely "to create a household life that is peaceful, loving and compassionate." Marriage must be conducted in public, in the building where the Civil Registry deed is made, in the presence of the Civil Registry Officer at the residence of one of the parties, and in the presence of two witnesses, either family or non-family, who have reached the age of 21 years and reside in Indonesia. Marriage is not free from household problems. If one of the partners wants to go in the opposite direction, they will not be able to walk together and simultaneously achieve all goals (Supardi, 2005). When this happens, it can be resolved positively, so a marriage on the verge of divorce is very close (Sari et al., 2024). According to Article 208 of the Civil Code, divorce with the consent of the husband and wife is not permitted (Simajuntak, 2025). Law Number 1 of 1974 concerning marriage states that all assets acquired during a marriage become joint assets unless there is a marriage agreement. Article 35 of Law Number 1 of 1974 concerning joint assets states: together that is a treasure object in the resulting marriage by partner husband wife in a way together during time marriage Still ongoing" (Royani, 2021).

The process often encounters obstacles, both administratively and legally, in the field. One of the main issues that arise is the potential for the misuse or embezzlement of joint assets by one party, either before or during the divorce process. This results in the other party losing their right to a portion of the assets that should be theirs. To prevent this, the law provides an instrument in the form of marital confiscation, which is the seizure of joint assets during the divorce process, to secure the disputed assets until a final and binding court decision is issued.

Marital sequestration plays a crucial role in protecting joint asset ownership. The urgency of filing a marital sequestration application is to protect the integrity of joint assets so that neither the husband nor the wife can transfer joint assets to a third party during the process. Judges sometimes grant or reject marital sequestration applications. The granting or rejection of a marital sequestration application depends on the judge's assessment of the suitability of the application submitted, namely the existence of suspicions or allegations supported by facts and evidence that the defendant is attempting to transfer or sell the object.

Regarding joint property, husbands and wives can only carry out legal actions on the property if there is an agreement from both parties. Meanwhile, for property brought by both husbands and wives, they have full rights to manage and carry out legal actions regarding their property (Article 36, paragraphs 1 and 2, of the Marriage Law). If a marriage ends in divorce, the distribution of joint property follows existing legal provisions, whether based on Religious Law, Customary Law, or the Civil Code.

Seizure is a legal measure to place the defendant's assets under control, preventing them from being transferred to a third party during the case. A seizure can also be defined as an extraordinary legal action taken by a judge at the request of one of the parties to the case. The purpose of seizing is to secure the disputed object or guarantee that the assets are not transferred, damaged, or destroyed by the party in control (Saebeni, 2017).

The plaintiff has the right to file a petition for the seizure of the defendant's property. This petition can be submitted to the judge even if the case has not yet been examined or decided. In other words, a seizure can be carried out even before a final and binding judge's decision is issued. In practice, there are four recognized types of seizure: (a) Sita Guarantee (Conservatory) Beslag). Base the law there is in Article 227 HIR/261 RBg; (b) Sita Right Belonging (Rivindcatoir Beslag). Arranged on Article 266 HIR or Article

260 paragraph (1) RBg; (c) Sita Treasure Together (Marital Beslag). Base the law there is on Article 823 Rv, as well as Article 24, Paragraph 2, Letter c, PP. No. 9 of 1975; (d) Sita Execution (Executoir Beslag). Based on the law arranged in Article 208 R. Bg (Suyuthi, 2014).

Husbands and wives have equal status, including in the management of joint assets and assets acquired during marriage. Meeting family needs. The crucial role of safeguarding joint assets lies in ensuring fairness for both partners and preventing conflicts, such as alleged embezzlement, regarding assets jointly owned during marriage.

One case at the Bengkulu Religious Court was numbered 533/Pdt. G/2021/PA.Bn. The chronology of the case began with the marriage between the plaintiff and defendant in 2013. The plaintiff received an inheritance from the plaintiff's parents in 2014, and the plaintiff purchased items in the form of gold jewelry from the distribution of inheritance. The gold jewelry was given to the defendant because the plaintiff strongly believed in the defendant's persuasion to help the defendant renovate the house building on the land given by the defendant's parents for a joint residence and build eight kiosk doors. In 2020, the marriage bond between the plaintiff and the defendant was terminated due to a divorce at the Bengkulu Religious Court, which has permanent legal force. The plaintiff and defendant's joint assets have never been divided until this lawsuit was registered at the Bengkulu Religious Court class 1 A in the form of one house, eight kiosk buildings, a house building on land owned by the defendant occupied by Mr. Muhammad, one L300 Diesel car, one Carry car, one Fuso Colt Diesel car, kitchen equipment, and kiosk rental income for six years. The plaintiff is concerned that there is an indication that the defendant will offer or transfer some or all of the joint assets obtained during the Marriage to another party or the defendant's family, so the plaintiff filed a request for marital confiscation to the Bengkulu Religious Court.

The decision regarding the subsequent confiscation of marriage is stated in Decision Number 561/Pdt. G/2025/PA. The chronology of the case began with a legal marriage between the plaintiff and the defendant in 2018, who were previously had the status of widowed. In 2019, the plaintiff and defendant's household began to falter due to frequent disputes and quarrels with various causes, including the plaintiff experiencing depression due to the actions carried out by the defendant by remarrying, the defendant evicting and treating the plaintiff inappropriately, the defendant was not satisfied with one woman, and the defendant often played online gambling so that the plaintiff had filed for divorce. In 2024, the plaintiff was evicted from living together again. The plaintiff and the defendant had assets obtained while still married, and the plaintiff indicated that the defendant would sell and transfer ownership rights to the joint assets. Therefore, it was reasonable for the plaintiff to apply to the Karawang Religious Court for a marital confiscation.

Although marital confiscation is a recognized legal instrument in Religious Court practice, its implementation still generates various legal and technical debates. Not all judges consistently accept requests for marital confiscation, and not all parties fully understand the urgency of such requests. Decisions No. 533/Pdt.G/2021/PA.Bn and No. 561/Pdt.G/2025/PA.Krw are relevant for analysis as concrete examples of legal applications in marital confiscation cases. These two decisions reflect the legal dynamics within Religious Courts and how judges interpret substantive and procedural justice in the context of marital confiscation requests. Therefore, an analysis of these two decisions is crucial to understand the legal analysis of the evidence submitted by the plaintiff for marital confiscation, ensuring its acceptance by the judge, and the legal consequences of the rejection of the plaintiff's application.

The problems in this study are as follows: (1) What is the reason for the judge not granting the application for the confiscation of marital property? and (2) How can proof of marital seizure filed by the plaintiff be accepted by the judge?

2. METHOD

This research is a normative legal study that focuses on the examination and analysis of legal documents and sources related to positive law. This type of research does not aim to collect empirical data from the field but analyzes and interprets legal norms to identify relevant principles, concepts, and doctrines of law. The legal materials used include statutory regulations, court decisions, contracts or

agreements, legal theories and expert opinions. Several approaches are applied in this study, namely the statute approach, the conceptual approach, and the case approach. These approaches are employed to provide a comprehensive understanding of the legal issues under study from normative, theoretical, and practical perspectives.

The sources of legal materials in this research are divided into three categories: primary, secondary, and tertiary. Primary legal materials consist of binding regulations and court decisions; secondary materials include books, academic journals, and expert opinions that support legal analysis; and tertiary materials include legal dictionaries, encyclopedias, and other supporting references. The collection of legal materials is conducted through library research, document examination, and archival studies relevant to the research topic. This process involves searching and reviewing various legal literatures, both printed and online. After collecting all legal materials, data analysis is carried out using the method of legal interpretation, which involves interpreting legal norms to discover their precise meaning in the context of the research problem. This interpretative analysis aims to sharpen legal reasoning and produce logical, scientifically accountable legal conclusions (Muhaimin, 2020).

3. RESULT AND DISCUSSION

3.1 Reasons for Judge's Rejection Application Marital Seizure

Based on the contents of Decision Number 533/Pdt. G/2021/PA.Bn, the Panel of Judges refused to grant the request for marital property confiscation. because The Plaintiff's lawsuit was deemed *obscure* (vague/unclear). In civil procedural law, the principle of clarity of the posita and petitum is a fundamental requirement for a lawsuit (Article 8 RBg/Article 118 HIR). The lawsuit must contain a clear, logical, and interrelated description of the facts (positum) and claims (petitum). If there is any ambiguity or contradiction that gives rise to doubt, the lawsuit can be declared *niet ontvankelijk verklaard* (NO) or inadmissible. In this case, the judge found a number of ambiguities, including: (a) Etitum is unstructured and does not separate the main and alternative demands; (b) the objects of joint property are not clearly detailed, for example, vehicles that are not stated in whose name and who controls them, as well as restaurant business equipment whose time, value, and whereabouts are not explained; and (c) the application for marital confiscation is not accompanied by specific details of the object, making it difficult to execute if granted. This ambiguity raises doubts about whether the object is truly a joint property legally recognized under marriage law.

3.2 Proof Marital Seizure Filed by Plaintiff to be Able Accepted by Judge

3.2.1 Case Number 533/ Rev.G /2021/ PA.Bn

In case No. 533/Pdt.G/2021/PA.Bn, the plaintiff, filed a request for marital sequestration to ensure that joint assets would not be transferred or unilaterally controlled by the defendant during the divorce proceedings. However, the panel of judges rejected the request, arguing that the evidence did not meet the formal or material requirements stipulated in the civil procedure.

From a formal perspective, every lawsuit must meet the principle of *lex certa*, or the principle of clarity of the object of the dispute. This is in line with Article 8, paragraph (3) RBg jo. Article 118 HIR requires that the lawsuit must contain a clear description of the identity of the parties and the object of the dispute (Harahap, 2017). In this case, the panel of judges considered the plaintiff's lawsuit *obscur libel* (vague) because the object of the joint property requested for confiscation was only mentioned in general terms, for example, "joint house" or "joint land," without detailed information such as address, land area, certificate number, and boundaries. This ambiguity creates legal uncertainty as to whether the object is truly part of the joint property (*gono-gini*) or whether it is actually included in the property brought or the personal property of one of the parties. In addition, the request for marital confiscation was not accompanied by a description of the urgent reasons that confirm its connection to the main point of the

divorce case, as mandated in Article 178, Paragraph (3) HIR, which stipulates that the judge can only decide in accordance with what is clearly requested in the petitum (Harahap, 2017).

From a material perspective, the plaintiff was unable to provide strong evidence to support the claim that the object of the seizure was joint property. The legal basis for joint property is contained in Article 35, paragraph (1) of Law Number 1 of 1974 concerning Marriage: "Property acquired during a marriage becomes joint property." Article 85 of the Compilation of Islamic Law (KHI): "The existence of joint property in a marriage does not preclude the possibility of property belonging to each husband or wife." With this provision, the plaintiff is obliged to prove that the property was acquired during marriage. However, in the trial, the plaintiff did not submit authentic evidence in the form of a land certificate, sale and purchase deed, proof of payment from joint income, or motor vehicle documents. Without such evidence, the judge has no legal basis to determine that the property is part of the joint property. In addition, Article 227 HIR, which regulates conservatoir seizure (temporary seizure), emphasizes that a seizure can only be granted if there is sufficient reason to believe that the defendant will hide or transfer the disputed property. In this case, the plaintiff was unable to prove the existence of such indications; therefore, the application for confiscation did not meet the material requirements of the law.

3.2.2 Case Number 561/ Pdt.G /2025/ PA.Krw

In case No. 561/Pdt.G/2025/PA.Krw, the plaintiff also filed a request for marital confiscation on the grounds that assets acquired during the marriage needed to be secured so that they would not be transferred unilaterally by the defendant. However, the panel of judges rejected the request because the evidence did not meet the requirements in terms of formal and material aspects; therefore, the judge did not have sufficient basis to grant it. According to Article 8, paragraph (3) RBg jo. Article 118 HIR, the lawsuit must be formulated clearly regarding the identity of the parties, the disputed object, and their legal relationships. In this case, the plaintiff's lawsuit was deemed *obscuur libel* because the description of the object of confiscation was only stated in general terms, for example, "joint house" or "joint land," without including the complete address, certificate number, area, boundaries, or other legal identity. In addition, the seizure request did not show a clear connection to the main case of the study. According to Article 178, paragraph (3) HIR, a judge can only grant a request if it is clearly stated in the petition. If the description of the object and the reasons for the request are unclear, the formal requirements for a lawsuit are not met.

From a material perspective, the plaintiff failed to prove that the assets sought for confiscation were joint. This is contrary to the provisions of: Article 35 paragraph (1) of Law No. 1 of 1974 concerning Marriage: "Assets acquired during a marriage become joint assets." Article 85 of the Compilation of Islamic Law (KHI): "The existence of joint assets in Marriage is not as well as immediately closes the possibility of any property belonging to each husband or wife." To prove joint property, authentic evidence is required, including a land certificate, a deed of sale and purchase, proof of payment sourced from joint funds, and a complete vehicle BPKB.

3.2.3 Consequence Law to Decision Religious Court Number 533/ Pdt.G /2021/ PA.Bn and Decision No.er 561/ Pdt.G /2025/ PA.Krw

Rejection of application for marital confiscation by the judge in divorce case causes significant law, both for the parties and regarding property status together. Normatively, marital confiscation is a form of confiscation regulated by Article 227 HIR, and aims to secure object disputes so that they are not transferred, sold, or hidden by the wronged party. With the rejected application of marital confiscation, the disputed property is still in the mastery of the party that controls it without restrictions from the court.

In case No. 533/Pdt.G/2021/PA.Bn, one of the petitions filed by the plaintiff, was a request for the marital seizure of assets considered joint property during the marriage. However, because the panel of judges accepted the defendant's *obscuur libel* exception, the lawsuit was declared inadmissible (*niet ontvankelijk verklaard*). The legal consequence was that the marital seizure application was formally rejected. With the rejection of the marital seizure application, the status of the disputed assets remains

unchanged (status quo). This means that there is no binding legal determination regarding whether the assets fall into the category of joint property. The assets remain under the control of the party that controls them de facto, without any prohibition or freezing by the court.

Therefore, it can be concluded that the legal consequences of the rejection of marital confiscation in Decision Number 533/Pdt. G/2021/PA.Bn are: (1) disputed property keeps the status quo, not under confiscation court; (2) the right owned by the defendant is still protected because marital seizure is not capable of being charged on objects that are not clear; (3) principle certainty law is awake, because marital seizure is only legitimate if based on a lawsuit that meets the requirements of formal and material conditions; and (4) the plaintiff still owns the right to submit a new lawsuit with repairs, including submitting a return of marital confiscation.

The legal consequences of the rejection of marital confiscation in Decision Number 561/Pdt. G/2025/PA.Krw has crucial implications for both the continuation of a case and the legal standing of the parties. The Panel of Judges firmly stated that the plaintiff's divorce suit was rejected because the reasons for the divorce submitted were not legally and convincingly proven, as required by Article 39 (2) of Law Number 1 of 1974 concerning Marriage in conjunction with Article 19 (f) of Government Regulation Number 9 of 1975 in conjunction with Article 116 (f) of the Compilation of Islamic Law. Failure to prove the main case of this divorce has direct implications for the accompanying claims, namely, regarding joint assets and marital confiscation.

4. CONCLUSION AND SUGGESTION

4.1 Conclusion

The reason the judge did not grant application marital seizure on Decision Number 533/ Pdt.G /2021/ PA.Bn , marital confiscation is not capable granted because lawsuit stated *obscur libel* (obscure / not) clear) so that in a way formal No fulfil condition law event (Article 8 RBg jo. Article 118 HIR), the judge assessed Plaintiff No Enough strong arguments to prove his lawsuit, so the judge refused the lawsuit application for marital seizure filed by the plaintiff. Meanwhile on Decision Number 561/ Pdt.G /2025/ PA.Krw , the reason the judge did not grant application marital seizure, because no reasonable law. In this case, the plaintiff submitted a divorce lawsuit due to disputes, ongoing quarrels, and begging for distribution of treasure together accompanied by marital confiscation. However, the panel of judges rejected the lawsuit because the reason for the divorce was not proven materially. Therefore, the case is considered a treasure along with confiscation, and marriage is automatically not accepted.

Proof marital seizure filed by plaintiff to be able to accepted by the judge based on Decision Number 533/ Rev.G /2021/ PA.Bn and DecisioNo.er 561/ Pdt.G /2025/ PA.Krw capable concluded that condition received Marital seizure are: (1) The lawsuit is not vague, the object of the dispute must be described in detail; (2) There is authentic evidence that proves that the assets are joint assets obtained during the marriage; (3) There is a pressing reason to protect assets from potential diversion or concealment; and (4) Seizures must not harm third parties. Failure to meet these requirements, whether formal or material, results in the legal rejection of a marital sequestration application.

Consequence law to Decision Number 533/ Rev.G /2021/ PA.Bn and DecisioNo.er 561/ Pdt.G /2025/ PA.Krw in the form of disappearance protection temporary for Plaintiff on treasure together with the disputed, so that object treasure still is at in mastery the party that controls it until There is decision distribution treasure together. On the other hand, the rejection of marital confiscation also shows the judge's caution in guarding the principle of certainty of law and protection of the rights of a third party in good faith.

4.2 Sugestion

a. For the Plaintiff

Before filing a marital seizure application, the plaintiff must ensure that the divorce suit and claims regarding joint property are clearly and completely formulated, with detailed disputed matters and authentic evidence supporting their joint property claim. This is to meet both formal and material requirements so that the marital seizure application has a strong legal basis.

b. For Legal Practitioners and Advocates

It is recommended to provide careful assistance to clients in preparing lawsuits and supporting evidence, especially regarding proof of joint property and reasons for temporary protection, so that the court can accept the application for marital confiscation.

c. For the Court

This ruling underscores the crucial need for judges to exercise caution when assessing marital confiscation applications. Judges should consistently apply the principles of legal certainty and protection of the rights of good-faith third parties and ensure that each application meets formal and material requirements before granting it.

d. For further researchers

Further research can be conducted regarding the mechanism for proving joint property in divorce cases and the effectiveness of marital confiscation as a temporary protection tool to provide clearer policy recommendations or guidelines for legal practice.

Ethical Approval

Not Applicable.

Informed Consent Statement

All participants were informed of the purpose of the study, and informed consent was obtained prior to data collection. Participation was voluntary, and all responses were kept confidential and used solely for academic research purposes.

Authors' Contributions

R contributed to the conceptualization of the study, data collection, case analysis, and preparation of the manuscript. He also served as the corresponding author and was responsible for coordinating the research process and revisions. AM provided supervision and guidance in the application of legal theory, ensuring the validity of the normative legal analysis and interpretation of judicial decisions. W contributed to literature review, legal documentation, and assisted in compiling and organizing case data used in the study.

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The authors report no potential conflicts of interest was reported by the author(s)

Data Availability Statement

The data presented in this study are available on request from the corresponding author due to privacy reasons.

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Notes on Contributors

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