

## **Juridical Analysis of the Impact of Economic Contribution and Infidelity on the Division of Marital Assets in Divorce Proceedings**

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### **Abstract**

*Chapters 96 and 97 of the Compilation of Islamic Law (KHI) state that widows and widowers, whether due to death or divorce, are entitled to half of the marital property, unless otherwise specified in a marriage agreement. This textual interpretation is often applied rigidly, resulting in potential injustices. This study aims to identify and analyze the effect of family contributions and commitments on the distribution of marital property. Employing a legal approach, this research analyzes judges' considerations in making legal decisions. The findings indicate that family contributions significantly influence judicial decisions on the division of marital assets. For instance, in case number 298/Pdt.G/2022/PA.Kdl, differing contributions from the husband and wife led the judge to deviate from the standard 50:50 division of property. Judges performed *contra legem* (deviations from the law) by using legal discovery efforts (*rechtvinding*) with a *maslahah* approach and considering the *legis ratio* to ensure justice and fairness. Conversely, in case number 53/Pdt.G/2022/PA.Gtlo, a party's violation of family commitments was not factored into the judge's decision to reduce their share of the marital property. Traditionally, infidelity could affect the division of joint property. It is suggested that judges consider traditional laws to potentially reduce the share of those violating family commitments, ensuring more equitable outcomes.*

**Keywords:** *Marital property division, Economic contribution, Infidelity, Divorce proceedings*

### **Introduction**

Marital property under Indonesian law, specifically governed by Article 35 of the Marriage Law, denotes assets acquired during the marriage as joint property. Referred to as *syirkah* assets, these encompass all properties acquired by either spouse individually or jointly throughout their marital union, regardless of the registered owner-whether it be the husband, wife, or their children (Siddik, 2021). However, not all assets acquired during marriage are automatically considered joint property; some may still be categorized as the personal property of either spouse. Classical Islamic jurisprudence traditionally does not advocate for the merging of a husband's and wife's assets after marriage. Instead, a wife's entitlement to her husband's assets is rooted in the concept of *nafaqah* (maintenance). Joint property, or *syirkah*, only materializes when there is a specific *syirkah* agreement made either during the marriage contract or subsequently (Mardani, 2017).

The development of *fiqh* texts in the 13th-century Middle East occurred within a patriarchal framework that did not extensively address gender issues. Consequently, classical scholars of that era did not give significant attention to the nuances of joint property. Moreover, the concept of joint property is not explicitly outlined in the Quran

and Hadith. It wasn't until later centuries, around the 16th century, that local fiqh studies began to delve into discussions on joint property (Arsyad Albanjari, n.d.).

In contemporary Indonesian fiqh, the Compilation of Islamic Law (KHI) provides detailed explanations from Articles 85 to 97 regarding joint property. It defines joint property as encompassing income derived from individual employment, commercial activities, intellectual pursuits, pensions, allowances received by spouses, and other funds accumulated during the marriage. However, personal assets such as inheritances, gifts, and bequests are considered the sole property of the individual spouse and are not subject to division. Joint property automatically forms from the date of marriage, irrespective of the identity of the acquirer or the registrar, unless specifically excluded by mutual agreement.

The scope of joint property extends to both tangible and intangible assets. Tangible assets encompass movable items (e.g., vehicles), immovable properties (e.g., real estate), and securities (e.g., government bonds). Intangible assets may include rights (e.g., pension entitlements, insurance benefits) and obligations (e.g., debts). Joint assets can be utilized as collateral, sold, or transferred with the consent of both spouses. Debts incurred for the benefit of the family are considered joint liabilities, while debts incurred for personal purposes without mutual consent remain the responsibility of the individual spouse.

Under KHI Articles 96 and 97, in cases of divorce or death, widows and widowers are entitled to half of the joint property unless otherwise specified in a prenuptial agreement. However, the strict application of this equal division principle can sometimes lead to perceived injustices, particularly when one spouse has significantly contributed more to the acquisition of joint assets or has breached marital commitments, such as through infidelity. This raises complex legal questions about the role of family contributions and commitments in the distribution of joint property within the context of religious courts.

The interpretation of joint property in Islamic family law involves not only legal principles but also considerations of equity and fairness. Judges in religious courts often face challenges in applying these principles effectively, especially when dealing with cases where one party claims a larger share of joint assets due to unequal contributions or breaches of marital obligations. The need for a nuanced understanding of these issues is crucial to ensuring just outcomes in divorce settlements and inheritance distributions, reflecting both legal standards and societal expectations.

In recent years, there has been growing scholarly interest and debate surrounding the concept of joint property in Islamic law, particularly in how it intersects with modern legal frameworks and societal changes. This includes discussions on gender equality, economic empowerment, and the evolving roles of spouses within marital relationships. Such debates are essential for adapting Islamic legal principles to contemporary realities while upholding the foundational principles of justice and fairness that underpin Islamic jurisprudence.

## **Research methods**

This research employs a qualitative approach focusing on case studies to analyze judicial perspectives in rulings on joint property disputes, specifically in cases numbered 53/Pdt.G/2022/PA.Gtlo and 298/Pdt.G/2022/PA.Kdl. The methodology involves content analysis of judicial considerations in these rulings, using court decisions as the primary data source. The qualitative approach aims to gain a deep understanding of the legal reasoning processes employed by judges. The study aims to uncover how judges weigh factors such as economic contributions, family commitments, and violations of marital

commitments in the division of joint property. Thus, a legal approach is utilized to explore and analyze the judicial decision-making process within the context of these cases. Qualitative analysis in this research seeks to delve into the case contexts, explore the rationales behind judicial decisions, and identify patterns or themes emerging from their legal considerations. Through this approach, the research endeavors to provide insights into how non-technical factors such as principles of justice and moral considerations influence court outcomes in joint property disputes. By employing a qualitative approach and focusing on case studies, this research contributes to understanding judicial practices in religious courts concerning the division of joint property. It also aims to identify areas for improvement or development within the judicial system to enhance fairness in family court rulings..

### **Results and Discussion**

Marriage represents the union of two individuals who were initially separate and independent, coming together as a unified and partnering entity. Based on QS An-Nisa: 34, men have the responsibility to provide for their families. It is understood that joint property is not a pooling of assets between husband and wife, but rather assets belonging to the husband that are utilized for the benefit of the entire family. Any income earned by the wife is not automatically considered part of joint property. The issue of joint property often receives insufficient scrutiny from legal experts, primarily because society still perceives it as a trivial matter. Couples typically only question the division of joint property after a divorce ruling from the court. Disputes over joint property commonly arise during legal proceedings, complicating the divorce process as both parties claim ownership rights. However, joint property is a significant issue in the lives of married couples (Hyma Puspytasari, 2020).

Marital assets wield significant influence over the lives of spouses, especially in the event of divorce, making marital property law crucial in family life even when marriages are thriving (Djuniarti, 2017). It is challenging to comprehend the sustainability of a marriage without the support of shared wealth. The division of joint property is governed by Article 97 of the Compilation of Islamic Law, where widows and widowers are entitled to half of the joint property. This division is deemed fair when both spouses contribute equally during the marriage. However, in many households, one party may neglect their obligations, such as husbands failing to provide maintenance or wives neglecting household duties (Kurniawan, 2018).

### **Analysis of Case Number 53/Pdt.G/2022/PA.Gtlo**

The plaintiff, along with their legal counsel, stated that this case began when the plaintiff and defendant were married in 2013 and officially divorced in 2020 at the Gorontalo Religious Court. During their marriage, the plaintiff explained that they had joint property consisting of land with a building on it, with certificate number 34/Baladu, covering an area of 555 square meters, acquired through auction at the KPKNL by both parties. The land was subsequently leased, yielding a net income of Rp. 250,000,000 (Two Hundred Fifty Million Rupiah). According to Clause 13 paragraph 1 of the Lease Agreement dated December 12, 2017, "Upon the termination of this Lease Agreement, in accordance with the provisions of Article 1 of this deed, the second party must vacate and surrender the building to the first party no later than 2 (two) months from the date of the termination of this lease."

The proceeds from the lease were used to purchase a car on credit with an initial payment of Rp. 125,000,000 (One Hundred Twenty-Five Million Rupiah) and monthly installments of Rp. 3,000,000 (Three Million Rupiah) over a five-year term. In 2018, both parties borrowed Rp. 250,000,000 (Two Hundred Fifty Million Rupiah) from a bank to pay off debts, settle the car installments, and cover their daily expenses. In 2019, they renewed the land lease, generating a net income of Rp. 250,000,000 (Two Hundred Fifty Million Rupiah). According to the plaintiff, the total rental income amounted to Rp. 500,000,000 (Five Hundred Million Rupiah), which was directly transferred to the defendant's account and enjoyed solely by them. The plaintiff requested the judges to declare that the land, building, car, and rental income were joint property and had not been divided.

The defendant and their legal counsel explained that the land and building were still under dispute with their heirs, namely the defendant's parents and aunts (originally owned by the defendant's grandfather), so their status as joint property was unclear. The status of this land was still in dispute over inheritance in the Gorontalo Religious Court. The defendant explained that since the property had not yet been divided among the heirs, the income from the lease could not be considered joint property, and neither could the car purchased from this income. The loan of Rp. 250,000,000 (Two Hundred Fifty Million Rupiah) in 2018 was secured against the defendant's civil servant ID card. Therefore, the defendant had to deduct monthly installments directly from their salary. Since the property had not yet been divided among the heirs, the rental income was handed over to the defendant's mother and aunts. Consequently, the defendant requested the judges to dismiss the plaintiff's entire lawsuit.

After deliberating on legal considerations, the judge, bearing in mind and observing all applicable legal regulations and legal principles, including Sharia guidance, determined that the joint property of the plaintiff and defendant consisted of Rp. 105,000,000 (One Hundred Five Million Rupiah) in cash and one four-wheeled vehicle. This joint property was then divided with  $\frac{1}{2}$  (half) for the plaintiff and the other  $\frac{1}{2}$  (half) for the defendant. From this judicial decision, it is evident that the judge strictly adhered to Article 97 of the Compilation of Islamic Law (KHI) as a mandatory rule (*dwangon*). The judge did not consider other factors such as commitment to the sacred vows of marriage. In this ruling, it is noted that the cause of the plaintiff and defendant's divorce was the plaintiff's infidelity. In legal considerations, the judge mainly addressed the status of the property and did not discuss considerations regarding each party's share in detail because the plaintiff did not request specific allocation details.

Nevertheless, the application of the equal division rule (50:50) of joint property under Article 97 of the KHI for each spouse may not necessarily achieve fairness. Therefore, to ensure justice for all parties involved, aspects of utility and fairness should be prioritized, alongside legal certainty and balance. It is important to ascertain whether the parties also committed to maintaining family harmony in achieving the goals of marriage, which are *sakinah*, *mawaddah*, and *rahmah*. Did they also commit to preserving the integrity and blessing of shared wealth in marriage? Hence, in cases where such commitments are evidently not fulfilled, the division of joint property should consider distributive justice based on proportional balance rather than cumulative fairness based on pragmatic equality.

Commitment to fidelity in marital life can also serve as a *ratio legis* and deserves consideration in the division of joint property. If divorce occurs due to infidelity resulting



in the dissolution of marriage and has been adjudicated, then infidelity can be a mitigating factor in the division of joint property. Within this framework, it is argued that the division of joint property should not be strictly understood in textual terms (50:50), but should be influenced by modifying factors such as commitment to marriage vows, such as refraining from infidelity, domestic violence, and intoxication. This ratio decidendi is built on the concept of maqasid al-shariah, considering the five fundamental principles: the preservation of religion, life, progeny, intellect, and property.

Although statutory regulations do not explicitly address the influence of infidelity in determining joint property cases, judges may still apply customary law in Indonesia. According to Dayak Kenyah customary law, after divorce, joint property unequivocally belongs to the party declared innocent by the Customary Institution if the cause of the divorce is adultery or death. Meanwhile, in divorces by mutual consent, joint property is divided equally. Such customary laws are widely applied by Indonesian communities when resolving joint property issues after divorce (Chitra Pharawangsa and Apriani, 2023). Based on customary law, judges can reduce the share of the guilty party. According to Article 5 paragraph (1) of Law No. 48 of 2009 concerning Judicial Authority, "Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice prevailing in society." This is also in line with Article 37 of Law No. 1 of 1974 concerning Marriage, which states that "When a marriage ends due to divorce, joint property is governed by their respective laws." "Their respective laws" mean religious law, customary law, and other laws.

In Muslim communities, customary law can be applied if it does not contradict Islamic law, as per the principle of al-adatu muhakkamah (customs can be considered in determining the law). Judicial decisions serve as mediators between national regulations and the laws practiced in society. Therefore, to ensure justice that aligns with the values prevalent in society, judges should not only adhere to written regulations but also consider the laws observed in society, such as allocating a slightly smaller share to those who are at fault for causing divorce, such as infidelity.

#### **Analysis of Case Number 298/Pdt.G/2022/PA.Kdl**

The plaintiff and their legal representative explained that the essence of this case began when the plaintiff and defendant were married in 1996 and officially divorced in 2020 at the Kendal Religious Court. The plaintiff stated that during the marriage, they acquired joint assets consisting of a plot of land and a permanent house registered under Certificate of Ownership number 372/Kendal (disputed object I), a piece of paddy field (disputed object II), and a piece of land (yard) Block Mijil Persil 39 (disputed object III). The plaintiff requested the court to designate these assets as joint marital property and to divide them, with half (1/2) belonging to the plaintiff and the other half (1/2) to the defendant.

The defendant and their legal counsel acknowledged that indeed, during the marriage, the plaintiff and defendant jointly purchased these three assets. However, the defendant clarified the origin and process of acquiring these assets, as well as the source of funds used for their purchase. The defendant explained that: first, during the marriage, the plaintiff never provided financial support to the defendant; second, from 1998 until May 2021 (approximately 23 years), the defendant worked abroad (in Singapore and Hong Kong) and took only 4 vacations (one annual leave of approximately 1 month at home); third, during the marriage, the plaintiff rarely worked and relied solely on remittances from the defendant, enjoying the fruits of the defendant's labor,

including: (1) remittances from the defendant while working abroad totaling more than Rp. 100,000,000 (one hundred million Rupiah); (2) a land certificate (disputed object I), which the plaintiff used as collateral to a cooperative for Rp. 10,350,000 (ten million three hundred fifty thousand Rupiah), with the defendant paying off the loan; (3) a Yamaha RX King motorcycle owned by their child, bought by the defendant, was sold by the plaintiff; (4) a laptop with audio equipment bought by the defendant for their child was sold by the plaintiff; (5) a 200cm x 180cm teak wood bed was also sold by the plaintiff. The defendant also clarified that disputed objects I, II, and III were acquired from earnings abroad, except for Rp. 12,000,000 (twelve million Rupiah), which was part of the defendant's inherited wealth from their biological mother.

Basically, all assets acquired after marriage are joint property, but this can be overlooked if there is a prenuptial agreement (Ani, Budiarta, and Widiati 2021). In addition, a prenuptial agreement also sets clear boundaries for joint assets between husband and wife (Seri Rezki Fauziah, 2019). However, the defendant strongly objected to the division, despite the equal division of joint property based on Article 97 of the Compilation of Islamic Law, which states that widows and widowers are entitled to half of the joint property. The division is deemed fair if both spouses contribute equally during the marriage. However, in this case, only one party worked hard to meet household needs and struggled to earn and accumulate wealth, namely the defendant. The effectiveness of the division of joint property after divorce will be maximum if the following five factors are met, namely legal factors; law enforcement factors; supporting facilities or facilities; community factors; and cultural factors (Rahman, Qamar, and Kamran 2020). The defendant then asked the Judges to carry out *contra legem*, which means disregarding the norms rules contained in Article 97 of the Compilation of Islamic Law, where the joint property should be divided half the same amount between the parties, but the panel of judges decided that the joint property was to be divided with provisions for 1/3 (one third) of the Plaintiff and 2/3 (two thirds) of the Defendant's shares. *Gono gini* property is the shared price that is created by the partnership or cooperation between husband and wife. majority view it as an *abdan* partnership. Scholars have differing opinions on this matter, but the majority consider it as *syirkah abdan*. If a divorce occurs, the joint property can be divided by comparing it to *syirkah abdan* or by any other agreed-upon means (Nawawi, 2018). Agreements in settling joint property can be done through mediation. Mediation allows both parties to understand and empathize with each other so they can mutually accept an agreement (Suprianto, 2022).

After discussing the legal considerations, the judge, mindful of all applicable legal regulations and legal principles, as well as Sharia guidance, determined that the joint property of the plaintiff and defendant includes objects I, II, and III. This joint property was then divided into 1/3 (one third) for the plaintiff and 2/3 (two thirds) for the defendant. Although according to Article 97 of the Compilation of Islamic Law (KHI), divorced widows or widowers are entitled to half of the joint property as long as it is not specified otherwise in the marriage agreement, based on Supreme Court Jurisprudence Number: 266.K/AG/2010, dated July 12, 2010, and based on considerations of justice, those who work hard to earn money to buy joint property get a 3/4 share (divorced widows), while those who do not work and thus do not contribute to buying joint property get a 1/4 share (divorced widowers) (Efrinaldi et al. 2022). In cases of joint property disputes, even though acquired during a valid marriage, it cannot simply be divided equally or fifty-fifty. Instead, consideration must be given to the origin of the money used

to buy the joint property; naturally, the one who contributes more money will receive a larger share.

In this case, it was the defendant who worked more and provided the financial resources to purchase this joint property. Therefore, the defendant deserves a larger share in this joint property dispute. Maqashid Sharia as an instrument in legal reasoning (istinbath) plays a significant role in this case, especially when it involves distributive justice where the interests and objectives of the law are the primary benchmarks in seeking justice (Sebyar, 2021). Contextual reasoning and a substantive approach to the purpose of Article 97 of the Compilation of Islamic Law, focusing on psychological and contributory aspects to the joint property division case, will make this article flexible (Risky, 2020). In cases where one party's role is significantly greater in contributing to the acquisition of joint property and there is inconsistency in one party's commitment to marriage, this becomes the rationale for reducing the former spouses' share of joint property. The fifty-fifty distribution of joint property is no longer absolute in accordance with Article 97 of the Compilation of Islamic Law. Philosophical reasoning to measure the value of justice in joint property division cases is by considering the extent of each party's contribution to the joint property (Giyanthi et al, 2022). If, in today's millennial context, the wife's role is more dominant in contributing, then her share of the property will be larger than that of the husband. Indeed, the dual role of the wife as a housewife and a working wife to help the household finances should be considered by judges in dividing the joint property. The provisions of Article 97 of the Compilation of Islamic Law can be deviated from using *contra legem*. *Contra legem*, from Latin, means to go against the law; this term is used to describe court decisions that oppose and disregard the government's legal regulations. *Contra legem* is the opposite of *intra legem*, which describes a court decision that is consistent with government regulations. Case number 298/Pdt.G/2022/PA.Kdl is considered a step forward in applying progressive and dynamic law. Considering the arguments of both parties, the fairest decision is in line with the ruling, namely 1/3 for the plaintiff and 2/3 for the defendant. Seen from their proportional contributions.

In Surah An-Nisa verse 32: *"And do not wish for that by which Allah has made some of you exceed others. For men is a share of what they have earned, and for women is a share of what they have earned. And ask Allah of his bounty. Indeed Allah is ever, of all things, Knowing."* In the interpretation of Dr. Muhammad Sulaiman Al Asyqar's book "Tafsir min fathil qadir", the meaning of this verse explains that Allah commands not to envy what Allah has bestowed upon others. However, it is permissible to desire to have what others have without expecting it to be taken away from them. "For men is a share of what they have earned" refers to the reward from deeds that Allah has prepared for them. As for men, there is a reward for jihad, fallen in the way of Allah, and seeking halal livelihood; and for women, there is a reward for pregnancy, childbirth, breastfeeding, nurturing children, and managing the household. Allah has allocated shares for both genders according to His will and wisdom. Joint property issues are among the complex issues, both in determining joint property and its distribution. In terms of determining joint property, parties often argue that the property is not from the efforts of husband and wife but rather a gift (*hibah*) or inheritance. The selfishness of the parties who want more property often provides exaggerated statements to benefit themselves. This is where the trial process becomes long and exhausting both physically and mentally. Once it is determined that it is joint property, the next task is to determine the share of each spouse. Article 97 of the KHI does indeed stipulate that each

party's share is 50:50, but the nature of this rule is to regulate (regulate) not to force (force), thus judges can carry out *ius contra legem*. This means in a normal case, the husband and wife work together to contribute to the family, and then the joint property is distributed using Article 97 of the KHI. However, if the contributions of husbands and wives are different, as in the case of 298/Pdt.G/2022/PA.Kdl, then it is not fair if the property is divided equally, so that judges must take into account the human effort (*rechtvinding*) with a ratio on justice and truth.

In normal cases, some customs split the inheritance into 1/3, such as in the public distribution of the country in Bireuen district in general carried out with a third pattern. In some cases, this is also applied as a pattern of KHI distribution. In response, scholars of Islamic boarding schools in Bireuen district do not reject the formulation of joint property distribution of article 97 of the KHI.

### Conclusion

In the context of distributing joint property based on distributive justice, it inevitably intersects with efforts to maintain proportional and equitable wealth distribution. By considering the extent of contributions and examining the commitment of each party in the marriage, the outcome aligned with the objectives and purposes of Islamic law is achieved, which is for the welfare of the Muslim community, with the subjects being the former spouses themselves. Emphasizing distributive justice aspects in the application of joint property division cases reflects the goal of *maqasid Sharia*. Through contextualization efforts concerning Articles 96 and 97 of the Compilation of Islamic Law (KHI), it is hoped that the substance of Islamic law can provide a sense of justice to all parties involved in joint property division cases, thereby reducing the practice of legal rigidity.

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