



Division of Joint Assets Based on the Implementation of Responsibilities: Analysis of Sharia Court Decisions Based on Jurisprudence and Their Legal Implications in Banda Aceh

Mansari,¹ Irwansyah¹, Muhammad Rais², Elidar Sari³, Arif Rahman³

¹Universitas Iskandar Muda Banda Aceh, Indonesia

² Sekolah Tinggi Agama Islam Negeri Majene, Indonesia

³Universitas Malikussaleh Aceh Utara, Indonesia

Email. mansari@unida-aceh.ac.id

Abstract

The distribution of joint property after divorce is no longer solely based on Article 97 of the Compilation of Islamic Law, which provides for an equal division between the wife and the husband. Through Supreme Court jurisprudence Number 266 K/AG/2010 and Number 78 K/AG/2021, joint property has instead been allocated in a larger proportion to the wife. In Jurisprudence Number 266 K/AG/2010, the distribution was set at three-quarters for the wife and one-quarter for the husband, while Jurisprudence Number 78 K/AG/2021 allocated 70% to the wife and 30% to the husband. A similar paradigm departing from Article 97 of the Compilation of Islamic Law is also found in the practice of the Banda Aceh Sharia Court, notably in Decision Number 279/Pdt.G/2022/MS.Bna, which awarded a larger share of joint property to the wife. This study aims to analyze the reinterpretation of judges in the distribution of joint property and to develop a model of joint property distribution based on the implementation of responsibility and the principle of proportionality. This research employs empirical legal research using conceptual and statutory approaches. The data were obtained through interviews with judges of the Banda Aceh Sharia Court and an examination of relevant judicial decisions. Data analysis was conducted qualitatively by examining field findings and correlating them with Supreme Court jurisprudence. The findings indicate that judges' reinterpretation of joint property distribution is grounded in considerations of how husbands and wives fulfilled their responsibilities during the marriage. Husbands are deemed irresponsible when there is proven neglect of family obligations toward their wives and children. This study also proposes a model for the development of joint property distribution based on the implementation of responsibility and proportionality. The implications of these findings suggest the need for adjustments in the application of the law to accommodate contextual justice, while also considering its impact on the protection of the rights of both husbands and wives in the post-divorce distribution of joint property.

Keywords: Joint Property, Responsibility, Progressive Law, judge's Ijtihad

Abstrak

Pembagian harta bersama pasca perceraian tidak lagi semata-mata didasarkan pada ketentuan Pasal 97 Kompilasi Hukum Islam yang menetapkan pembagian setengah bagi istri dan setengah bagi suami. Melalui yurisprudensi Mahkamah Agung Nomor 266 K/AG/2010 dan Nomor 78 K/AG/2021, pembagian harta bersama justru diberikan dalam porsi yang lebih besar kepada istri. Dalam yurisprudensi Nomor 266 K/AG/2010, pembagian dilakukan dengan porsi 3/4 untuk istri dan 1/4 untuk suami, sedangkan dalam yurisprudensi Nomor 78 K/AG/2021 pembagian ditetapkan sebesar 70% untuk istri dan 30% untuk suami. Paradigma pembagian yang tidak sesuai dengan Pasal 97 KHI juga ditemukan di Mahkamah Syar'iyah Banda Aceh yang salah satunya terdapat dalam putusan Nomor 279/Pdt.G/2022/MS. Bna yang membagikan lebih banyak kepada istri. Penelitian ini bertujuan untuk menganalisis reinterpretasi hakim dalam pembagian harta bersama serta model pengembangan pembagian harta bersama yang berbasis pada pelaksanaan tanggung jawab dan prinsip proporsionalitas. Penelitian ini menggunakan jenis penelitian hukum empiris dengan pendekatan konseptual dan pendekatan perundang-undangan. Data penelitian diperoleh melalui wawancara dengan hakim Mahkamah Syar'iyah Banda Aceh serta telaah terhadap putusan-putusan pengadilan. Analisis data dilakukan secara kualitatif dengan mengkaji temuan lapangan dan mengaitkannya dengan yurisprudensi Mahkamah Agung. Hasil penelitian menunjukkan bahwa reinterpretasi hakim dalam pembagian harta bersama didasarkan pada pertimbangan pelaksanaan tanggung jawab suami dan istri selama masih terikat dalam perkawinan. Suami dinilai tidak bertanggung jawab karena adanya pengabaian terhadap kehidupan keluarga, baik terhadap istri maupun anak. Penelitian ini juga menghasilkan model pengembangan pembagian harta bersama yang berbasis pada pelaksanaan tanggung jawab dan prinsip proporsionalitas. Implikasi temuan ini menunjukkan perlunya penyesuaian dalam penerapan hukum supaya mengakomodasi keadilan kontekstual, sekaligus mempertimbangkan dampaknya terhadap perlindungan hak-hak suami dan istri dalam pembagian harta bersama pasca perceraian.

Kata Kunci: *Harta Bersama; Tanggung Jawab; Hukum Progresif; Ijtihad Hakim*

Introduction

The regulation on the division of joint property in the Compilation of Islamic Law traditionally mandates an equal distribution, granting one half to the wife and one half to the husband following divorce¹ However, this paradigm has gradually shifted in judicial practice following the emergence of Supreme Court jurisprudence that allows a departure from the rigid application of Article 97 of the

¹ Abd Rouf, Mufidah Ch, and Zaenul Mahmudi, "Joint Property Division in Indonesia: A Gender Equality Viewpoint," *De Jure: Jurnal Hu* 15, no. 2 (2023), p. 230–50.

Compilation of Islamic Law.² Such a shift is primarily influenced by factual findings in court, particularly where one party is proven not to have optimally fulfilled marital responsibilities. This development is reflected in Supreme Court Jurisprudence Number 266 K/AG/2010, which allocated three-quarters of the joint property to the wife and one-quarter to the husband, as well as in Jurisprudence Number 78 K/AG/2021, which divided the joint property proportionally by awarding 70 percent to the wife and 30 percent to the husband.³ These decisions demonstrate a progressive judicial interpretation that prioritizes substantive justice by considering responsibility and contribution rather than adhering strictly to formal equality.

After the Supreme Court gave birth to Jurisprudence through Decision Number 266K/AG/2010⁴ and Decision Number 78 K/AG/2021, there have been a number of new breakthroughs by judges at the first level to carry *out contra legem*⁵ against the provisions of Article 97 KHI. Several Religious Courts and Syar'iyah Courts have experienced a shift in the distribution of joint property after divorce. In the decision Number 168/Pdt.G/2014/MS-Lsk, the joint property was divided with a portion of 1/3 for the plaintiff (husband) and 2/3 for the defendant (wife). The decision was then appealed by the wife. The appeal memorandum filed by the appellant and the appellant was accepted and re-examined by the Aceh Syar'iyah Court and through the dictum of its decision with registration number 9/Pdt.G/2016/MS. Aceh distributes the property together with a portion of 1/2 for the appellant (husband/defendant) and 1/2 for the widow (appellant/plaintiff). The decision was not accepted by the plaintiff/appellant because he felt that it was unfair, where the wife worked and contributed more to acquire the property but it was distributed equally. On the basis of the decision, the plaintiff filed an appeal to the Supreme Court and the Supreme Court to examine and adjudicate the case and distribute the joint property through Decision Number 597 K/AG/2016 with a portion of 1/3 for the ex-husband and 2/3 for the wife.

The unbalanced distribution model can also be observed from the decision of the Banda Aceh Syar'iyah Court through Decision Number 279/Pdt.G/2022/MS. Bna. The panel of judges through the decision gave the amount of joint property to the widow as a plaintiff of the Convention amounting to 4/7 of the total joint property and for the widower as a plaintiff of the Convention was given an amount

² Siah Khosyi'ah, "Keadilan Distributif Atas Pembagian Harta Bersama Dalam Perkawinan bagi Keluarga Muslim Di Indonesia," *Al-Manahij Jurnal Kajian Hukum Islam* 11, no. 1 (2017), p. 35–48.

³ M Ridwan et al., "Distribution Of Joint Properties According To Balanced Justice Principle," *Jurnal Hukum Dan Peradilan* 12, no. 1 (2023), p. 57–76.

⁴ Elimartati and Elfia, "Kritik Terhadap Kompilasi Hukum Islam Tentang Ketentuan Harta Bersama Dalam Perkawinan," *Jurnal Ilmiah Syariah* 19, no. 2 (2020): 231–43.

⁵ *Contra legem* is a deviation committed by judges to written legal rules that are obsolete and outdated so that when applied to all cases, it does not give birth to justice for the community. See also the book Mr. Fauzan, *Rules of Jurisprudence in the Field of Civil Law* (Jakarta: Kencana, 2014).

of 3/7 of the total joint property owned.⁶ The consideration is because the wife works as a trader in addition to carrying out her duties and responsibilities as a wife in the house. This distribution is particularly interesting to analyze within the framework of Islamic law, as it reflects a shift in the division of joint property following the development of Supreme Court jurisprudence. After the emergence of such jurisprudence, the distribution of joint assets is no longer rigidly divided equally, but is instead allocated in greater portions based on the actual contributions and responsibilities of each party during the marriage. Therefore, this study becomes significant to be examined comprehensively, especially in relation to the judges' interpretative approaches at the Banda Aceh Syar'iyah Court and the legal implications of Supreme Court jurisprudence on the division of joint property.

Studies on the distribution of joint property have been conducted by various scholars, including Abidin Nurdin, who examined it from the perspective of women's protection. He found that in Aceh, the division of joint property is generally carried out through deliberation with an orientation toward justice, where Syar'iyah Court judges demonstrate gender sensitivity by considering the respective contributions of husband and wife.⁷ Furthermore, Zaiyad Zubaidi's study on joint property concludes that judges generally divide common property by referring to Article 97 of the Compilation of Islamic Law, which mandates an equal half-and-half distribution between husband and wife.⁸ Then the research of Safira Maharani Putri Utami which examines the aspect of justice in distributing common property to working wives. Furthermore, the research conducted by Mursyid Djawas which more specifically discusses the *ijtihad* of judges in distributing common property.⁹ According to Mursyid, *ijtihad* carried out by judges refers to the provisions of the Marriage Law, KHI, the Quran, Sunnah and the sociological conditions of the community.¹⁰ Hafizha Harts explores the perspectives of ulama in Langsa City regarding the division of joint property for non-working wives, focusing primarily on normative-religious views outside the context of judicial practice.¹¹

Zuhra analyzes differences in judicial legal reasoning in the division of joint property following divorce across two Sharia Courts, with the study concentrating

⁶ Decision of the Judge of the Banda Aceh Syar'iyah Court Number 279/Pdt.G/2022/MS. Bna.

⁷ Abidin Nurdin, "Distribution of Shared Property and the Fulfillment of Women's Rights in Aceh According to Islamic Law," *El-Usrah: Journal of Family Law* 2, no. 2 (2020), p. 139.

⁸ Zaiyad Zubaidi, "Maslahah in the Decision of the Syar'iyah Court Judge in Aceh on the Joint Property Case," *El-Usrah: Journal of Family Law* 4, no. 1 (2021), p. 213.

⁹ Safira Maharani Putri Utami and Siti Nurul Intan Sari Dalimunthe, "The Application of Justice Theory to the Distribution of Joint Property After Divorce," *Usm Law Review Journal* 6, no. 1 (2023), p. 433.

¹⁰ Mursyid Mursyid, "The *Ijtihad* of Judges in the Settlement of Common Property Cases at the Banda Aceh Syar'iyah Court (Analysis with the Ushul Fiqh Approach)," *Ar-Raniry, International Journal of Islamic Studies* 1, no. 2 (2014), p. 317-318.

¹¹ Hafizha Harts, "Perpektif Ulama Kota Langsa Terhadap Pembagian Harta Bersama Bagi Istri Yang Tidak Bekerja," *El-Usrah Jurnal Hukum Keluarga* 5, no. 2 (2022), p. 374-87.

on disparities in judicial decisions.¹² Amelia Rahmaniah discusses the concept of joint property in marriage from a normative and conceptual Islamic law perspective without linking it to jurisprudential practice.¹³ Mesraini focuses on the concept and general implementation of joint property in religious courts, without positioning the performance of spousal responsibilities as a determining basis for division.¹⁴ The research conducted by Elimartati and Elfia critiques the regulation of joint marital property under Indonesian legislation; however, it does not relate the division of joint property to the performance of spousal responsibilities.¹⁵ Layyin Mahfiana dan Noor Dzuhaidah Binti Osman focuses on examining how religious interpretations and local cultural values influence the recognition and protection of women's rights in joint property settlements in Java, Indonesia.¹⁶ Siah Khosyi'ah focuses her research on the concept of distributive justice in the division of joint marital property among Muslim families in Indonesia by assessing the conformity between Islamic legal norms and the principles of substantive justice.¹⁷ Hani Sholihah concentrates her study on the regulation and conceptual framework of joint property division under Islamic law, employing a normative approach to classical fiqh sources and positive law.¹⁸ Mohd Norhusairi Mat Hussin analyzes the role of local wisdom and gender equality in the division of joint property in Malaysia from an Islamic legal perspective, with a particular focus on the integration of customary practices and Sharia principles.¹⁹ Several previous studies have not specifically examined judicial reinterpretation and the implications of Supreme Court jurisprudence in the distribution of joint property based on the implementation of the responsibilities of husbands and wives during marriage. Therefore, this study is important to explore, particularly in analyzing how judges reinterpret the law and how Supreme Court jurisprudence influences the division of joint property at the Banda Aceh Sharia Court.

¹² Zuhra, "Pembagian Harta Bersama Akibat Perceraian (Analisis Perbedaan Pertimbangan Hukum Di Mahkamah Syar'iyah Lhoksukon Dan Mahkamah Syar'iyah Aceh)," *Ar-Raniry, International Journal of Islamic Studies* 9, no. 2 (2022), p. 134–40.

¹³ Amelia Rahmaniah, "Harta Bersama Dalam Perkawinan Di Indonesia (Menurut Perspektif Hukum Islam)," *Syariah Jurnal Ilmu Hukum* 15, no. 1 (2015), p. 69–80.

¹⁴ Mesraini, "Konsep Harta Bersama Dan Implementasinya Di Pengadilan Agama," *Ahkam* 12, no. 1 (2012), p. 59–70.

¹⁵ Elimartati and Elfia, "Kritik Terhadap Kompilasi Hukum Islam Tentang Ketentuan Harta Bersama Dalam Perkawinan."

¹⁶ Layyin Mahfiana, "Influence of Religion and Culture on Women's Rights in Joint Property Settlements in Java, Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 24, no. 1 (2025), p. 117–38, <https://doi.org/10.18326/ijtihad.v25i1.117-138>.

¹⁷ Khosyi'ah, "Keadilan Distributif atas Pembagian Harta Bersama dalam Perkawinanbagi Keluarga Muslim di Indonesia."

¹⁸ Hani Sholihah, "Pembagian Harta Bersama Menurut Hukum Islam," *Al-Manahij Jurnal Kajian Hukum Islam* 1, no. 2 (2007), p. 179–88.

¹⁹ Mohd Norhusairi and Mat Hussin, "Local Wisdom and Gender Equality in Joint Property Division: An Islamic Legal Perspective from Malaysia," *De Jure: Jurnal Hukum Dan Syar'iah* 17, no. 2 (2025), p. 394–416.

This research employs empirical legal research,²⁰ focusing on the practical application of law in judicial practice related to the division of joint marital assets. The study examines the implementation and consideration of Supreme Court Jurisprudence Number 266K/AG/2010 and Decision Number 597K/AG/2016 as applied in court decisions, analyzed in relation to legal theory and prevailing statutory provisions. The approaches used are the case approach and the conceptual approach.²¹ Primary data were obtained through field research, including the analysis of court decisions and relevant legal practices, while primary legal references include the Marriage Law, the Compilation of Islamic Law (KHI), and the aforementioned jurisprudence. Secondary data consist of books, journal articles, and previous research findings.²² Data analysis was conducted qualitatively by interpreting empirical findings and correlating them with applicable jurisprudence and legal principles.

Common property in the perspective of laws and regulations

Juridically normative, the regulation of joint property in the positive legal order (*ius constitutum*) in Indonesia, there are several legal rules that regulate common property, namely Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage and the Civil Code. The Marriage Law is one of the important legal foundations in regulating the marriage relationship and related rights. Articles 35–36 of the Marriage Law regulate joint property: property acquired during marriage is joint, while inheritance or gifts remain individual unless otherwise agreed.²³ Joint property requires both spouses' consent for legal actions, whereas each spouse has full rights over their own property.

Based on the provisions contained in Articles 35 and 36 as mentioned above, it can be understood that property acquired during marriage is considered as joint property. This means that the right of ownership and management of the property is joint between husband and wife. Spouses can commit legal acts related to joint property only with the consent of both parties. This shows the importance of cooperation and agreement in the management of common property. Second, the inherited property of each husband and wife, as well as the property obtained as a gift or inheritance, remains under the control of each other, unless there is another agreement between the spouses.²⁴ Khairuddin categorized into three types of

²⁰ Irwansyah, *Penelitian Hukum Pilihan Metode & Praktik Penulisan Arikel* (Makassar: Mirra Buana Media, 2021).

²¹ Yulianto Mukti Fajar, *Dualisme Penelitian Hukum Normatif & Empiris* (Yogyakarta: Pustaka Pelajar, 2015).

²² Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2021).

²³ Mansari et al., "Joint Property in Polygamous Marriages : Practical Experience in Religious Courts," *Jurnal Mediasas: Media Ilmu Syariah Dan Ahwal Al-Syakhshiyah* 7, no. 1 (2024), p. 151–64, <https://doi.org/10.58824/mediasas.v7i1.101>.

²⁴ Elfirda Ade Putri and Windy Sri Wahyuni, "Joint Property Dispute Resolution After Divorce in Positive Law in Indonesia," *Jurnal Mercatoria*, Vol. 14, No. 2 (2021), p. 40–52.

property contained in marriage, namely husband property, wife's property and joint property.²⁵ Article 36 of the Marriage Law reaffirms these principles, namely that the consent of both parties is required in legal actions related to joint property. Meanwhile, regarding their respective inheritances, the full right is given to the husband and wife to manage their property.²⁶

Regarding common property is also regulated in the KHI. KHI is one of the guidelines for the panel of judges in deciding cases in the Religious Court. KHI as expressed by Yahya Harahap is a form of positivization of Islamic law in Indonesia.²⁷ KHI is compiled based on the Qur'an and Sunnah and the phenomenon of Indonesian society in accordance with the legal practices and culture of the community.²⁸ KHI in addition to legitimizing Islamic law, also accommodates Islamic law by considering aspects of the life of Indonesian people.²⁹ Included in it is one of the aspects that has reflected the life of the Indonesian people is related to common property. This KHI became a consensus of scholars from various groups through workshops conducted nationally and initiated by the Supreme Court and the Minister of Religion.³⁰

There is no clear rule about common property in the Qur'an and Hadith, inspiring the Indonesian jurists to regulate it in the KHI.³¹ Conceptually, KHI defines joint property as referred to in paragraph (1) letter f which states that property in marriage or *shirkah* is property obtained either individually or jointly as long as the marriage bond lasts hereinafter referred to as joint property, regardless of being registered in anyone's name. This provision needs to be criticized because if the term property is mentioned along with property acquired during marriage, then it also includes property obtained from the husband or wife from the inheritance obtained from their parents when the parents died while the married couple was still bound in marriage. Even though property obtained from inheritance, gifts or grants cannot be said to be joint property, but is property obtained from parents not on the basis of the

²⁵ Khairuddin, *Ilmu Waris Metodologi Penyelesaian Kasus Waris* (Aceh Besar: Naskah Aceh, 2022).

²⁶ Arun Pratama, "The Implementation of Mixing Joint Property and Congenital Property in Marriage (Case Study of Religious Court Decision Number: 0189/PDT. G/2017/PA. SMG)," *Jurnal Ius Constituendum* 3, no. 1 (2018), p. 15.

²⁷ M.yahya Harahap, "Information on Islamic Law Compilation Material: Positively Abstraction of Islamic Law," *The Pulpit of Law* 2, no. 5 (1992), p. 84.

²⁸ Muhammad Zuhidayat, "Judge's Interpretation of the Distribution of Common Property (Supreme Court Jurisprudence Number 2531/Pdt.G/2022/Pajt)," *Sultan Adam: Journal of Law and Social* Vol 1, no. 1 (2022). p. 80-87.

²⁹ Umar Haris Sanjaya; Anur Rahim Faqih, *Islamic Marriage Law in Indonesia Textbook Series* (Yogyakarta: Gama Media, 2017).

³⁰ Hikmatullah Hikmatullah, "An Overview of the History of the Compilation of Islamic Law in Indonesia," *Adjudication : Journal of Law* 1, no. 2 (2018), p. 39–52.

³¹ Linda Firdawaty, "The Philosophy of Shared Property Distribution," *Source: Journal of Islamic Law and Economics* 8, no. 1 (2016), p. 88–102.

efforts of each party. Therefore, it cannot be said to be joint property even though it is obtained while still tied to marriage.

Sayuthi Talib, as cited by Siah Khosi'ah, classifies husband and wife property into three types:³² inherited property owned before marriage, property obtained during marriage from grants, wills, or inheritance, and livelihood property acquired during marriage through the efforts or business of one or both spouses. KHI regulates marital property in Articles 85–97, providing more comprehensive rules than the Marriage Law, including the division of property after death or divorce.³³ Article 97 grants each widow or widower half of the joint property unless stated otherwise in the marriage agreement, reflecting equal contribution in acquiring assets. The KHI combines sharia principles with customary law, recognizing 'urf as a legitimate source of law.³⁴

Distribution of Common Property in Supreme Court Jurisprudence

Supreme Court Jurisprudence Number 266K/AG/2010 and Jurisprudence Number 78 K/AG/2021 are the beginning of dynamics that contribute to the development of Islamic law in Indonesia, especially in the context of the distribution of common property. The division of joint property is no longer divided equally between married couples after divorce. The Supreme Court Judge gave a portion that was not the same as stipulated in the KHI, namely half for widows and half for widowers, but given with a portion of 3/4 widows and 1/4 widowers in Decision Number 266K/AG/2010 and Decision Number 78K/AG/2021 given with a portion of 30% for widows and 70% for widowers. The deliberations of the panel of judges in Decision No. 266K/AG/2010 are as follows:

"If all the property obtained in marriage is the result of the wife's hard work, while the husband never brings or uses the results of his career to meet the needs of the family, then the husband is considered to have never carried out his obligations in providing support to his family, so if the provision of the division of joint property 50%: 50% is applied, it will eliminate the element of justice in law enforcement".

Furthermore, in jurisprudence Number 78K/AG/2021, the Supreme Court gave a portion of joint property amounting to 30% for the husband and 70% for the

³² Sia Khosyi'ah, "Distributive Justice on the Distribution of Joint Property in Marriage for Muslim Families in Indonesia," *Al-Manahij Journal of Islamic Law Studies* 01, no. 105 (2017), p. 1–7.

³³ Firman Wahyudi, Interpretation of Article 97 Khi on the Distribution of Common Property in the Perspective of Maqāshid Sharia, accessed on February 9, 2024 on the <https://www.pa-bangil.go.id/images/ARTIKEL/pasal%2097.pdf>. website p. 3.

³⁴ Abdul Manan, *Aneka Masalah Hukum Perdata Islam Di Indonesia* (Jakarta: Kencana, 2008). p. 111.

wife of the total property. The considerations that are the basis for the judge to give such a portion are as follows:

That Article 31 paragraph (3) and Article 34 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage jo. Article 75 paragraph (1) of the KHI states that the husband is the head of the family who is obliged to earn a living, provide a place to live for his children and wife, while the wife is a housewife who is obliged to take care of the household and take care of children;

That in the situation where both parties carry out their respective functions towards the common property, each has the right to 1/2 (one-half) of its share;

However, if the wife performs two functions at once, namely trying/working to meet household needs and also taking care of the household and taking care of children as in a *quo* case, then it is unfair for the common property if each gets 1/2 (one-half) share, therefore the division of the common property as determined by *Judex Facti* namely 70 (seventy) percent for the reconvention plaintiff/convention defendant and 30 (thirty) percent for the convention defendant/convention plaintiff is correct and correct;

Considering that based on the above considerations, it turns out that the decision of the *Judex Facti*/Bandung High Court of Religion in this case is not contrary to the law and/or the law, the cassation application filed by the Cassation Applicant, AH Bin RH, must be rejected;

Considerations are used in the Supreme Court Decision Number 78/K/AG/2021 with the following considerations:

"That if both parties carry out their respective functions towards the common property, each is entitled to (half) of its share;

However, if the wife performs two functions at once, namely to work/work to meet household needs and also take care of the household and raise children as in the case of a quo, then the joint property becomes unfair if each gets half (50:50). Therefore, the distribution of joint property as determined by Judex Facti: 70 percent for the plaintiff (husband) and 30 percent for the defendant (wife) is correct and correct. "

The reinterpretation built by the panel of judges in deciding case Number 78K/AG/2021 is due to the dual role played by the wife. The basis for the judge to consider in the decision so as to distribute the portion of property together with a larger amount to the wife is as follows:

That the Petitioner's reason for the cassation regarding *Judex Facti* is wrong and wrong in considering the case a quo cannot be justified because *Judex Facti* did not misapply the law, with the following considerations:

That Article 31 paragraph (3) and Article 34 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage jo. Article 75 paragraph (1) of the Compilation of Islamic Law states that the husband is the head of the family who is obliged to earn a living, provide a place to live for his children and his wife, while the wife is a housewife who is obliged to take care of the household and take care of children;

That in the situation where both parties carry out their respective functions towards the common property, each has the right to 1/2 (one-half) of its share;

However, if the wife performs two functions at once, namely trying/working to meet household needs and also taking care of the household and taking care of children as in a quo case, then it is unfair for the common property if each gets 1/2 (one-half) share, therefore the division of the common property as determined by *Judex Facti* namely 70 (seventy) percent for the Reconvension Plaintiff/Convention Defendant and 30 (thirty) percent for the Reconvension Defendant/Convention Plaintiff is correct and correct.

Reinterpretation of the Division of Joint Property in the Banda Aceh Sharia Court as an Implication of Supreme Court Jurisprudence

Following Supreme Court Jurisprudence Number 266 K/AG/2010 and Jurisprudence Number 78K/AG/2021, the division of joint property has undergone a significant shift, as judges increasingly apply contextual reinterpretation based on sociological facts revealed during trial proceedings. These jurisprudences have strengthened judicial discretion to prioritize substantive justice, legal utility, and fairness over rigid, purely mathematical divisions of joint assets. Consequently, the post-jurisprudential practice reflects an evolution in legal reasoning, where the substance of justice prevails even when judicial decisions depart from formalistic statutory provisions.³⁵ Thomas Aquinas as a figure who adheres to natural law even once said *lex inusta non est lex*, that is, an unjust law is not a law.³⁶ The main nature

³⁵ Abintoro Prakoso, *Penalaran Hukum (Legal Reasoning)* (Yogyakarta: Laksbang Justitia, 2023). p. 201.

³⁶ Mr. Natsir Asnawi, *Joint Property Law Comparative Legal Review, Norm Review, Jurisprudence and Legal Reform* (Jakarta: Kencana, 2020). p. 203.

of the law is for the good of human beings which also contains moral and ethical values.³⁷

According to Yusri, a judge of the Banda Aceh Sharia Court, “In cases concerning joint property, I have on several occasions allocated a larger share of the joint assets to the wife. A greater portion was awarded to the wife because the facts revealed during the trial demonstrated her substantial contribution to maintaining the continuity of the household, including earning a livelihood by trading from early morning. Following the emergence of jurisprudence, judges now have a stronger legal basis to prioritize substantive justice over rigid, purely mathematical divisions.³⁸ This explanation indicates a shift in the judicial paradigm from a formalistic division of joint property toward a substantive justice approach that takes into account the parties’ actual contributions within the household. The emphasis on the role of jurisprudence further demonstrates the development of judicial practice by granting judges broader discretionary space to align their decisions with social justice considerations and the factual circumstances of the parties.

This view was also expressed by Fauziati, who explained that jurisprudence has created space for the application of legal justice principles in the division of joint property, particularly for wives who bear disproportionate domestic and economic burdens. This development encourages judges to consider the respective responsibilities of spouses in maintaining family life, rather than relying solely on formal marital status that automatically entitles each party to an equal one-half share. This view was also expressed by Fauziati, who explained that jurisprudence has created space for the application of legal justice principles in the division of joint property, particularly for wives who bear disproportionate domestic and economic burdens. This development encourages judges to consider the respective responsibilities of spouses in maintaining family life, rather than relying solely on formal marital status that automatically entitles each party to an equal one-half share.³⁹ Fauziati’s statement reflects a progressive judicial approach that prioritizes substantive justice by recognizing unequal responsibilities within marriage as a legitimate basis for deviating from rigid, formalistic rules on equal division of joint property.

³⁷ Mr. Natsir Asnawi, *Deconstruction of the Law Traces of Interpretation and Norm Formation in Law Enforcement* (Yogyakarta: Magnum Pustaka Utama, 2021). p. 22.

³⁸ Interview with Yusri, Judge of the Shar'iyah Court of Banda Aceh, on November 26, 2023.

³⁹ Interview with Fauziati, Judge of the Shar'iyah Court of Banda Aceh, on Desember 4, 2024.

The judges' decision to divide the joint property in an unequal proportion is reflected in Decision Number 279/Pdt.G/2022/MS.Bna, which was based on the following considerations:

Whereas, in the a quo case, the Panel of Judges is of the view that the provision contained in Article 97 of the Compilation of Islamic Law, which stipulates that "a widow or widower due to divorce is each entitled to one-half of the joint property insofar as it is not otherwise stipulated in a prenuptial agreement," may be interpreted as applying only under normal circumstances as referred to in Articles 80, 81, and 83 of the Compilation of Islamic Law. In the a quo case, the Panel of Judges considers that the Defendant in the reconventional claim had performed duties exceeding her role as regulated in Article 83 of the Compilation of Islamic Law. Accordingly, in the interest of the principle of justice, the Panel of Judges deemed it necessary to deviate from the provision of Article 97 of the Compilation of Islamic Law by not dividing the joint property equally. This approach is also consistent with Exhibit T.10 in the form of the Supreme Court of the Republic of Indonesia Jurisprudence Number 266 K/AG/2010 dated 12 July 2010, although the cases are not identical; nevertheless, the division of joint property differs from the provision stipulated in Article 97 of the Compilation of Islamic Law. Therefore, the Panel of Judges resolved to distribute the joint property between the Plaintiff in the reconventional claim and the Defendant in the reconventional claim in order to fulfill a sense of justice.⁴⁰

The consideration demonstrates the judges' boldness in applying a contextual interpretation of Article 97 of the Compilation of Islamic Law, prioritizing substantive justice over formalistic division. In this case, the panel allocated 3/7 of the joint property to the wife and 4/7 to the husband, referencing Supreme Court jurisprudence that recognizes actual contributions and responsibilities as the basis for division. Conceptually, the judge's decision is based on a complete and comprehensive consideration of the legal facts that are the main problem.⁴¹ Every fact submitted by the parties at the trial is the basis for the judge to decide. The judge's decision also refers to the applicable legal rules. specifically related to joint property, the assembly is guided by the provisions that have been determined in the KHI and the Marriage Law. Interestingly, in jurisprudence No. 266 K/AG/2010 and jurisprudence No. 78/K/AG/2021, the panel does not decide as contained in Article 97 of the KHI, but interprets it more broadly by relating to the responsibilities of

⁴⁰ Decicion number 279/Pdt.G/2022/MS.Bna, p. 65-66

⁴¹ M. Natsir Asnawi, *Hermeneutics of Judges' Decisions: Multidisciplinary Approach in Understanding Civil Court Decisions* (Yogyakarta: UII Press, 2020). p. 103.

husband and wife. The judge's interpretation is more contextual which does not look at the text of KHI *an sich*, but also looks at the facts presented at the trial by the parties, especially regarding the neglect of the husband's responsibilities during marriage.

The decision of the panel of judges to give a larger division of common property to the wife, amounting to 3/4, and a smaller share to the husband, amounting to 1/4, reflects wise considerations. The fact that most of the joint property is derived from the wife's work, while the husband is not involved in the same contributions during the marriage and has not even provided for his wife and children for the past eleven years, supports the decision. A division that prioritizes the discretion of judges in the division of common property is the same as applied in Malaysia.⁴² In this situation, the decision of the panel of judges takes into account the difficulties experienced by the wife and justice in the division of joint property. This is in line with the principle of justice in Islam which places the benefit (*maṣlahah*) as a priority, as stated in the jurisprudence "*taṣarruf al-imām 'ala al-ra'iyah manūt bi al-maṣlahah*," which means "the authority of the leader over the people is based on the benefit."⁴³

The decision of the Panel of Judges that prioritizes justice and the benefit of justice seekers, in this case wives who have contributed significantly to marriage, is a manifestation of the function of judges as law enforcers and ensures justice in society. Thus, the decision can be considered as an appropriate application of the principle of justice in the context of Islamic law. The fiqh rule "*taṣarruf al-imām 'ala al-ra'iyati manūt bi al-maṣlahah*" describes the principle that policies made by the government or state apparatus, including judges, must be based on the interests of its people. This means that when the government or leaders make a rule, the public interest or the benefit of the community must be the top priority. Judges as law enforcers must consider the benefits of justice seekers in carrying out their duties. This indicates that the judge's decision must take into account its impact on the public interest and the welfare of the community as a whole. It is important for governments and judges to make decisions that not only pay attention to legal aspects, but also take into account the social, economic, and humanitarian implications of the

⁴² Wiwin Sutini and Putu Eka Trisna Dewi, "The Distribution of Joint Property After Divorce on the Contribution of Spouses as Breadwinners (Comparative Study in Australia, Malaysia and Japan)," *Journal of Actual Justice* 6, no. 2 (2021), p. 121–39.

⁴³ Moh Aqil Musthofa, "Philosophy of Law in Supreme Court Decisions: A Study on the Preliminary Distribution of Property Between Husband and Wife in a Country Based on Law (*State of law*), judicial power is a body that greatly determines the content and strength of the huk rules" 52, no. 1 (2018). p. 103-132.

decision.⁴⁴ This underlines the role of judges as guardians of justice and the benefit of the community in the legal system.⁴⁵

The verdict of the panel of judges in the above case shows that the law is directed for the benefit of humans, and that the verdict has benefits for both the wife and the husband. A greater distribution of wealth for wives is expected to provide benefits for their lives in the future. Thus, the ruling reflects the application of the legal paradigm that views that the law is for human beings, and that legal decisions must serve justice and the benefit of the individuals involved in the case. Such a decision has strengthened the progressive theory as developed by Satjipto Rahardjo.⁴⁶ According to Radbruch, the ideal judge's decision should contain the main elements, namely:⁴⁷ The judge's decision reflects three key principles: justice, benefit, and legal certainty. Jurisprudence ensures fairness and provides tangible benefits, especially for wives, while also clarifying the exact share each party receives.

Judges of the Banda Aceh Sharia Court, in judicial practice, have carried out a reinterpretation of the provisions of Article 97 of the Compilation of Islamic Law by directly linking them to the fulfillment of the obligations and responsibilities of husbands and wives during the marriage. This provision is no longer understood textually as mandating an automatic equal division between the parties, but is instead interpreted contextually based on the facts revealed during the trial. Where it is proven that one party has failed to properly perform their responsibilities, judges consider there to be a legitimate basis to depart from a purely formalistic division. This reinterpretation reflects a shift in judicial orientation from rigid legal certainty toward substantive justice that takes into account the parties' actual contributions. Consequently, Article 97 of the Compilation of Islamic Law is positioned as a general norm that may be set aside on a case-by-case basis in order to achieve proportional justice.

This shift in judicial interpretation of joint property division cannot be separated from Supreme Court jurisprudence that has become an important reference in judicial practice, namely Jurisprudence Number 266 K/AG/2010 and Number 78 K/AG/2021. These two precedents affirm that the division of joint property does not always have to be conducted on an equal basis when the facts of the case demonstrate an imbalance in the fulfillment of spousal obligations and responsibilities. Through these decisions, the Supreme Court has provided legitimacy for lower court judges to deviate from Article 97 of the Compilation of Islamic Law in order to realize

⁴⁴ Zaiyad Zubaidi, "Maslahah in the Decision of the Syar'iyah Court Judge in Aceh on the Joint Property Case," *El-Usrah* 4, no. 1 (2021), p. 198–215,

⁴⁵ Mansari, Erha Saufan Hadana, and Rahmad Hidayat, "Hukum Dan Keadilan Dalam Dimensi Ilmu Hukum Dan Hukum Islam," *Journal of Dual Legal Systems* 1, no. 1 (2024), p. 17–27, <https://journal.staisar.ac.id/index.php/jdls>.

⁴⁶ Marilang Marilang, "Considering the Paradigm of Progressive Legal Justice," *Constitution Journal* 14, no. 2 (2017), p. 315.

⁴⁷ Sudikno Mertokusumo, *Teori Hukum* (Cahaya Atma Pustaka, 2012), p. 23.

substantive justice. As a consequence, judges possess a strong juridical foundation to consider economic contributions, domestic roles, and social responsibilities of each party when determining the proportion of joint property. Accordingly, these jurisprudential decisions have served as a basis for legal reform, encouraging a shift from a formalistic model of division toward one grounded in responsibility and proportionality.

Development of a Responsibility-Based and Proportional Joint Property Distribution Model

The pattern of distribution of common property as explained in the above responsibility-oriented jurisprudence is interesting when it is related to fiqh which actually does not recognize the concept of common property. During the time of the imam of the madhhab, there was no distribution of common property to the wife because the wife's contribution was only as a party that served the husband from a biological perspective. The culture of the Arab nation tends not to allow wives to work outside the home and domestic activities are done by maids.⁴⁸ Meanwhile, the preparation of KHI is based on the local culture and values of Indonesian society where the wife also contributes to organizing and taking care of all family needs, taking care of and caring for children.⁴⁹ Although it does not directly bring in finance, the wife's contribution can be taken into account so that the wife is still allowed to acquire joint property with a portion of half of the total joint property. Al-Banjari was the first person to put his wife entitled to joint property on the basis that he contributed to taking care of the household in accordance with the local values of Indonesian society.⁵⁰

Shifts in social dynamics have led wives to work not only in the domestic sphere but also outside the home to help meet household needs and support their children's education, resulting in dual responsibilities. However, a wife's external employment does not shift the husband's primary obligation to provide for the family, as this responsibility remains with him according to his capacity. Therefore, granting a larger share of joint property solely because the wife earns more would be inappropriate, as it risks reducing marriage from a sacred bond (*mitsaqan ghalizhan*) to a material arrangement and undermines its spiritual essence as a form of worship.

The expected goal of a marriage is to form a happy and eternal family, meet legitimate and healthy biological needs, obtain/pass on offspring, to pass on culture to the next generation, clarify the lineage, strengthen the kinship relationship from

⁴⁸ Mursyid Djawas et al., "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law," *Juris: Jurnal Ilmiah Syariah* 21, no. 2 (2022), p. 207–19.

⁴⁹ Erfani Aljan Abdullah, *Islamic Civil Law Reform Practices and Ideas* (Yogyakarta: UII Press, 2017), p. 78.

⁵⁰ Zikri Darussamin and Armansyah, "Joint Property Rights for Working Wives from the Perspective of Maqasid Ash-Sharia," *Ash-Syir'ah Journal of Sharia and Law* 51 (2017), p. 354–65.

the husband and wife and obtain affection, happiness and a sense of security.⁵¹ A number of the purposes of marriage show that the purpose of marriage is not to accumulate wealth. The essence of the marriage relationship is to create an eternal and happy life within the framework of Islamic law. Property obtained in marriage as a complement is used to meet family needs and children's education costs so that their future becomes more secure through proper education. Even though both parties work together. The author argues that when both husband and wife work and contribute to joint property, it should be shared equally. Historically, KHI Article 97 prescribes a 50:50 division, reflecting the fact that both spouses work both inside and outside the home, including in fields or gardens.

The new joint property is divided jointly or more to one of the parties, appropriately distributed if one of the parties does not carry out his responsibilities as a husband or as a wife.⁵² The model of division of common property from the two jurisprudences above, is not purely because the wife works in two different domains, but precisely because of the neglect of responsibility carried out by the husband by never again providing the maintenance that is his responsibility.

The development model for the distribution of common property that can be shared in the future as part of the distribution of common property is as follows:

1. Half for the husband and half for the wife

The main principle of joint property division in marriage, as regulated in Article 97 of the KHI, is an equal distribution, half for the husband and half for the wife, when both fulfill their respective roles and responsibilities.⁵³ This includes wives working inside the home and those working outside, as well as husbands who sincerely carry out their duties as breadwinners, even if their income is small. The provision recognizes that all contributions, financial or domestic, are equally important, ensuring a balanced and just division of property at divorce, reflecting the principle of fairness in marriage.⁵⁴ As stated by Yusri, joint property is divided equally between husband and wife when both fulfill their duties and responsibilities proportionally.⁵⁵

The interview results with Yusri, a judge of the Banda Aceh Sharia Court, emphasize that an equal division of joint property one half for the husband and one half for the wife remains the ideal model when both spouses carry out their obligations and responsibilities in a balanced and proportional manner during the

⁵¹ A. Kumedi Ja'far, *Islamic Marriage Law in Indonesia* (Jakarta: Arjasa Pratama, 2021). p. 57.

⁵² Isnawati Rais, "The Settlement of Joint Property in Religious Courts of Indonesia (A Case in the Religious Court of South Jakarta)," *Al-'Adalah* 15, no. 2 (2018), p. 243–62.

⁵³ Sholihah, "Pembagian Harta Bersama Menurut Hukum Islam."

⁵⁴ Muchlis et al., "Child-Centered Adjudication: Integrating the Best Interests Principle Into Indonesian Marital Property Distribution," *NURANI: Jurnal Kajian Syariah Dan Masyarakat* 25, no. 2 (2025), p. 473–92.

⁵⁵ Interview with Yusri, Judge of the Shar'iyah Court of Banda Aceh, on November 26, 2023.

marriage. According to him, under normal conditions in which the husband fulfills his duty to provide financial support and the wife performs domestic roles as well as other mutually agreed responsibilities, an equal division reflects justice and is in line with the provisions of Article 97 of the Compilation of Islamic Law.⁵⁶ A similar view was expressed by Fauziati, who stated that the principle of an equal division remains relevant as long as there are no trial facts indicating neglect of responsibility by either party.⁵⁷ She emphasized that justice does not always mean an unequal distribution, but rather a correspondence between the rights received and the obligations performed throughout the marriage.

2. Greater division to wives based on jurisprudence Number 266K/AG/2010 and Jurisprudence Number 78 K/AG/2021

The model of sharing of joint property in Jurisprudence Number 266K/AG/2010 and Jurisprudence Number 78 K/AG/2021 shows a pattern of greater distribution of joint property given to the wife in the case of divorce.⁵⁸ Such a model of division is based on the consideration of the husband's responsibilities during the marriage period who do not carry it out to the family. In Jurisprudence Number 266K/AG/2010, the joint property is divided in the proportion of 3/4 for the wife (plaintiff) and 1/4 for the husband (defendant). Meanwhile, in Jurisprudence Number 78 K/AG/2021, the distribution of joint property is 70 percent for the wife and 30 percent for the husband. Both rulings give a larger portion to the wife based on the fact that the husband does not carry out his responsibilities as the head of the family. The husband in both cases does not provide for himself and abandons his family, which means that the wife works to provide for the family and pay for her children's education. The judge decided that a larger division of the joint property to the wife was based on the consideration that the wife who worked hard to support her family deserved greater compensation than the joint property.

In Jurisprudence Number 266K/AG/2010, joint property is divided into portions of 3/4 for the wife and 1/4 for the husband.⁵⁹ The main consideration is because of the husband's unwillingness to carry out his responsibilities as the head of the family. The author says the unwillingness is because the husband does not try to fulfill family life. The wife who is the plaintiff plays a big role in meeting the needs of the family, so that according to the jurisprudence, she gets a larger share of the common property. Furthermore, in Jurisprudence Number 78 K/AG/2021, the distribution of joint property is 70 percent for wives and 30 percent for husbands.⁶⁰

⁵⁶ Interview with Yusri, Judge of the Shar'iyah Court of Banda Aceh, on November 26, 2023.

⁵⁷ Interview with Fauziati, Judge of the Shar'iyah Court of Banda Aceh, on Desember 4, 2024.

⁵⁸ Nurnazli, "Transformasi Hukum Harta Bersama di Indonesia Melalui Putusan Mahkamah Agung," *Ahwal* 11, no. 2 (2018), p. 184–98.

⁵⁹ Norhusairi and Hussin, "Local Wisdom and Gender Equality in Joint Property Division : An Islamic Legal Perspective from Malaysia."

⁶⁰ Ridwan et al., "Distribution Of Joint Properties According To Balanced Justice Principle."

Husbands who abandon their families and do not provide support are considered not to contribute fairly to marriage, because they do not carry out their responsibilities as a husband who is obliged to provide for the family. A wife who works and finances the needs of the family and finances all the children's education is entitled to a larger share. Decisions in both jurisprudence are based on the principle of justice. The judge considers the real contribution of each party in the marriage. Wives who work hard to provide for the family and pay for the children's education are given greater compensation as a form of recognition for her efforts and as compensation for her husband's negligence.

3. *Greater division to the husband*

The model of joint property division in Jurisprudence Number 266K/AG/2010 and Jurisprudence Number 78 K/AG/2021 is an important foundation in decisions to distribute joint property in the context of divorce.⁶¹ These two jurisprudences provide guidance on how the responsibilities carried out by the husband or wife during marriage can affect the judge's decision. Based on these two jurisprudence, the same model of division can also be applied if the wife does not carry out her responsibilities as a wife. In situations where the wife is nusyuz, or does not obey her husband and does not carry out her responsibilities, the judge can consider giving a larger portion of the joint property to the husband. This means that there is a possibility for the husband to also obtain a larger portion of the joint property based on the wife's negligence in carrying out her responsibilities.

Until now, throughout the author's search in the directory of Supreme Court decisions, there has been no decision that gives a larger amount to the husband on the basis that the wife does not carry out her responsibilities. Most of the findings were larger divisions distributed to wives which can be seen in the following table:

Yes	Supreme Court/PA/MS	Number	Portion of the Distribution
1	Supreme Court	266K/AG/2010	Widow 3/4, Doubter 1/4
2	Supreme Court	597K/ AG/2016	Janda 2/3, Duda 1/3
3	Supreme Court	605 K/AG/2019	Janda 3/5, duda 2/5
4	Banjarmasin High Court of Religion	38/Pdt.G/2018/PTA. BJM	Janda 3/5, duda 2/5
5	Banjarbaru Religious Court	354/Pdt.G/2018/PA. Bjb	Janda 3/5, duda 2/5

⁶¹ Rais, "The Settlement of Joint Property in Religious Courts of Indonesia (A Case in the Religious Court of South Jakarta)."

6	Bukit Tinggi Religious Court	618/PDT. G/2012/PA. BKT	Janda 2/3, Duda 1/3
7	Lhoksukon Syar'iyah Court	168/pdt.9/2014/MS. LSK	Janda 2/3, Duda 1/3,
8	Syar'iyah Court of Banda Aceh	279/Pdt.G/2022/MS. Bna	Amanda 4/7 Man 3/7
9	Syar'iyah Court of Banda Aceh	369/Pdt.G/2022/MS. Bna	70 percent of one house unit for the plaintiff (wife), 30 percent for the defendant (husband)

4. *Distribution of joint property on the basis of agreement*

The model of sharing common property can also be done by distributing common property which refers to a mutually agreed agreement. This agreement regarding joint property can be made before or after the marriage. This is justified through the decision of the Constitutional Court Number 69/PUU-XIII/2015, where through this decision the marriage agreement can not only be made before the marriage takes place but can also be carried out after the marriage has occurred.⁶² Including related to the division of joint property, it can also refer to the decision which allows the husband and wife to make the marriage agreement.

Based on the model of distribution of common property that has been described above, both those that have been accommodated in jurisprudence and decisions from the Religious Court, it shows the need to evaluate the regulation of common property in Indonesia. The reconstruction of the arrangement of joint property regulated by Articles 35 to 37 of the Marriage Law and Article 97 of the KHI is a necessity that needs to be done. A number of these regulations need to be reviewed in order to be able to answer the legal problems and dynamics faced by the community. Legal changes are very much determined by changes in society, because of the rapid changes in society, the law must also adapt to changes in society.

A number of models developed above, the following will be described in a table to make it easier to understand. Each of these models has indicators that are the basis for the provision of common property in the future. The following is the model of the distribution of common property as shown in the following table:

⁶² Oly Viana Agustine, "The Legal Politics of Marriage Agreements After the Constitutional Court Decision Number 69/PUU-XIII/2015 in Creating Marital Harmony," *Rechts Vinding Journal: National Legal Development Media* 6, no. 1 (2017), p. 53.

Yes	Distribution Model Joint Property	Argumentative Description
1	Half for the husband and half for the wife	The division of common property is divided in half if it meets the indicators: 1. Husband and wife both work. Both outside the home and inside the house sincerely and full of sacrifices. 2. Husband and wife are not nusyuz. 3. The amount of income of each husband and wife is not the basis given as long as both have tried and carried out their respective responsibilities.
2	Greater division to wives based on jurisprudence Number 266K/AG/2010 and Jurisprudence Number 78 K/AG/2021	1. The wife is given a larger amount if it turns out that the husband neglects his responsibility. 2. The husband does not provide support to his wife and children.
3	Greater division to the husband	1. The husband is given a larger portion if the wife is nusyuz and has never carried out his responsibilities as a wife. 2. The wife's nusyuz is proven by the testimony of witnesses.
4	Distribution of common property based on agreement	1. If the husband and wife agree on the division of joint property, the judge is obliged to appeal to the agreement that has been agreed. 2. The agreement regarding joint property must be proven at the trial.

The novelty of this study lies in the “distribution of joint property based on responsibility and proportionality.” Responsibilities of husbands and wives are considered according to their roles, and property shares are adjusted proportionally. A larger portion for either spouse is justified when it reflects the fulfillment of their respective responsibilities, ensuring that the division upholds justice. The proportional distribution model ensures justice for those with dual roles, such as the wife who serves as the family’s main support. Her rights to property should reflect her role, responsibilities, and contributions, in line with Aristotle’s principle of

justice.⁶³ In relation to the larger role of the wife, in accordance with the distributive justice developed by Aristotle, a larger portion must be given to the wife who works double.

Second, the second argument that can be built so that it is necessary to develop a model of sharing common property with a dimension of justice is because the provisions of Article 97 of the KHI do not relate to any conditions in distributing common property. KHI tends to regulate a half-hearted division for each party. The arrangement is not related to the situation and conditions contained in the family environment. The consequence is that if it is applied textually by the judge without paying attention to the implementation of the responsibilities of the husband and wife, then it is very possible for injustice to occur.

Third, the next argument is based on the rules of fiqh which says:⁶⁴

الاءصل بقاء ما كان على ما كان مالم يكن ما يغيره

Meaning: "The law of origin remains in that state as long as nothing else changes it".⁶⁵

The original law in relation to joint property is the provisions of Article 97 of the KHI, which is divided in half if the husband and wife carry out their responsibilities. On the other hand, if there is a disobedience to these responsibilities, then the legal provisions must change, namely by giving a larger portion to those who carry out more responsibilities.

The facts that have been accommodated in the two jurisprudence above are things that need to be used as a basis by the government in giving birth to new rules and policies that are oriented to the interests of the community. A good legal product is a legal rule that is able to accommodate all the interests of the community. A good law is a law that is able to bring equality and justice to society.⁶⁶ According to Satjipto Rahardjo, law exists for humans, not humans for law. It should serve as a tool to achieve justice, welfare, and human well-being, shifting the legal focus from mere rule compliance to its impact on human life. The primary purpose of law is to serve humanity by ensuring justice, welfare, and happiness. Holmes criticized legal formalism and emphasized that laws should respond to social realities and benefit

⁶³ Inge Dwisvimiari, "Keadilan Dalam Perspektif Filsafat Hukum," *Jurnal DInamika Hukum* 11, no. 3 (2011), p. 502–11.

⁶⁴ Darmawan, *Rules of Fiqhiyah*, Lampung: Revka Prima Media, 2020, p. 16.

⁶⁵ Abdu al-Rahman, Jalal al-Din ibn Abu Bakr al-Suyuthi. *al-Asyabh wa al-Nazhair fi al-Furu'*. Indonesia: Dar Ihya' al-Kutub al-'Arabiyah, t.th. p. 119. See also Johari & Wahidin, *Fiqh Rules and Their Application in Contemporary Medical Ijtihad*, Yogyakarta: Kalimedia, 2022, p. 113.

⁶⁶ Yogi Prasetyo, "Urgensi Pembentukan Peraturan Perundang-Undangan Yang Berkeadilan," *Jurnal Legislasi Indonesia* 20, no. 2 (2023): 31.

society. Good laws are those that meet community needs and have a positive impact on daily life.⁶⁷ The judge's interpretation of the exercise of responsibility in the two jurisprudence above shows a shift in the distribution of common property that is not only textual, but more contextual which provides greater benefits to the parties, namely the wife.

Conclusion

The research concludes that judges' reinterpretation in the distribution of joint property reflects a shift from a formalistic model of division toward a more contextual approach grounded in substantive justice. Judges no longer rely solely on an equal mathematical division but instead take into account sociological facts, actual contributions, and the implementation of responsibilities of each party within the household. Supreme Court jurisprudence has provided a strong legal foundation for judges to adopt a progressive interpretation of the rules governing joint property. The legal implication of this development is the opening of judicial discretion to deviate from normative provisions insofar as such deviation aims to realize justice, legal utility, and legal certainty in a balanced manner. This reinterpretation strengthens the role of judges as enforcers of substantive justice rather than merely as the mouthpiece of statutory law. The division of joint property based on responsibility and proportionality ensures fairer protection for parties who, in practice, bear greater domestic and economic burdens. Such jurisprudence thus functions as an instrument of renewal in Islamic family law that is responsive to social dynamics and the evolving demands of justice.

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⁶⁷ Brian Z. Tamanaha, "Understanding Legal Pluralism: Past to Present, Local to Global," *Legal Theory and the Social Sciences: Volume II*, no. July (2017), p. 447–83.

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