

DIVISION OF JOINT PROPERTY BASED ON CONTRIBUTIONS COHERENT WITH THE PRINCIPLES OF MARRIAGE LAW

Barru Aliyyu Nissaa Ismanto

¹ Faculty of Law, Narotama University, Indonesia. E-mail: barrualiyu23@gmail.com

Abstract : *Community property is a sacred issue in divorce and is frequently contested in both civil and religious courts. This is because the lack of a prenuptial agreement leads to many joint property issues, making it difficult to divide marital or joint property because there is no separation of authority over the husband's and wife's personal property. In the absence of a prenuptial agreement, the male and female widows will split the joint property equally (½). But according to some jurisprudence, the female widow receives two-thirds of the property, while the male widow receives one-third. Because marital wealth predominates, few people also support the allocation of property based on contributions. A ½ share for both parties is preferred by many, who also believe that the division of joint property is unfair because it is based on contributions made during the marriage. In actuality, the Civil Code, the Compilation of Islamic Law, and Law Number 1 of 1974 concerning marriage already regulate the partition of property. Understanding and analyzing the distribution of joint property based on contributions in accordance with marriage law principles is the author's goal in creating this scholarly paper. Normative legal research is the type of research that the author uses. While this research is consistent with a certain decision, the author's choice is one that has been established as jurisprudence, yet it goes against Indonesia's positive legislation, specifically HIR and KHI. Based on a number of comparable rulings, the research's findings paint a clear picture of legal certainty in the partition of joint property.*

Keywords: *Property partition; logical contributions; and marriage law principles*

INTRODUCTION

In the context of divorce, the division of joint property or gono-gini property is one of the most crucial and often debated legal issues in court. The existence of joint property has significant implications for the economic life of the former spouse, especially when there are no clear arrangements in advance, such as a prenuptial agreement. Without clarity on the rights and obligations of each party, the division of property can be a source of prolonged disputes, creating uncertainty and injustice for the parties involved.

A marriage agreement is one of the best ways to prevent disputes or disputes related to joint property in Indonesia. This agreement can reduce future conflicts by

providing legal certainty and clear arrangements about the property. It is important for couples to understand the benefits and importance of this agreement as a proactive step to maintain the integrity of the household, despite the challenges in its implementation. To ensure that the marriage agreement functions as well as possible under Indonesian law, couples must learn from each other and communicate well. As stated in article 29 of the Marriage Law paragraphs (1) and (2) related to the ability to enter into a marriage agreement. It is stated that before the marriage is carried out, both parties with a mutual agreement can make a written marriage agreement with the approval of the marriage registrar or the Religious Affairs

Office (KUA) for those who are Muslim, as long as the agreement does not contradict the limits of law, religion, and morality. Marriage Agreements in Indonesia are usually also carried out against joint property or marital property, namely related to the agreement on mixing and separating assets.¹

In this research, the author will discuss the analysis of one of the jurisprudence on the division of property in the judgment No. 266k/Ag/2010 based on the principle of marriage. Where the distribution of property is divided based on the contribution of the plaintiff (ex-wife) of $\frac{3}{4}$ and the defendant of $\frac{1}{3}$ (ex-husband). In the decision, the judge ruled that based on the evidence and facts at the trial, it turned out that the husband did not provide support from his work and all the joint property was obtained by the wife from the results of her work (*double burden*). For the sake of justice, the judge determined that the plaintiff deserved the amount of the portion that had been determined.

The urgency of this research arises from the high number of cases of distribution of common property filed in district courts and religious courts. Many couples are trapped in legal complications due to a lack of understanding of the legal principles of marriage that govern the division of property. In many cases, courts tend to divide property equally, i.e. $\frac{1}{2}$ for each party, although there are opinions in favor of division based on each other's contributions during the marital period. This shows a discrepancy between legal practice and expected principles of justice.

Previous research has shown that the division of common property often does not consider the real contribution of each party. Some studies highlight that a fair distribution should consider factors such as financial contributions, time sacrifices, and roles in the

household. However, on the other hand, there is also a view that affirms that the equitable distribution of wealth is the fairest way to avoid further conflicts. Thus, there is an urgent need to explore and analyze the legal aspects of the division of joint property based on contributions, in accordance with the applicable principles of marriage law.

The limitations of the problem in this study consist of several subabs, including:

A. Analysis of Ratio Decidendi in Decision No. 266 K/AG/2010 and No. 901 K/Pdt/2019.

The case of Decision No. 266 K/AG/2010 involved a dispute over the division of gono-gini property between the ex-husband and wife. In this case, the judge considered various evidence showing each party's contribution to the acquisition of property during the marriage period. This ruling emphasizes the importance of the principle of justice and balance in the division of property, where the judge decides to divide the property fairly, despite the inequality in economic contributions between husband and wife. In the analysis of the judge's decision, it can be seen that this decision is not in accordance with the Principles of Marriage Law with the coherent contribution that exists in Indonesia as stated in Law Number 1 of 1974 concerning Marriage, HIR, and Compilation of Islamic Law (KHI).

Then there is also Decision No. 901 K/Pdt/2019, the distribution is carried out equally ($\frac{1}{2}$ for each party), even though the wife is considered to have a greater contribution, on the grounds of consistency with the applicable positive legal rules. This difference raises a fundamental question: to what extent can the principle of justice be implemented in the division of common property, and how does positive law in

¹ Mohhamad Atho Mudzhar and Muhammad Maksum, *Fiqh Responsive to the Dynamics of Integration of Law, Economic Law and Islamic Family Law*, Pustaka Siswa,

Yogyakarta, 2017, p. 212

Indonesia provide legal certainty in this context?, a comparison of the two rulings to understand the application of the principles of marriage law in Indonesia. By using normative juridical methods involving legal approaches and case studies, this study is expected to provide recommendations that can strengthen the implementation of marriage law in Indonesia, especially in the context of the division of joint property after divorce.

B. Marriage and the Definition of Justice in the Distribution of Shared Property.

In Indonesia, the principles of marriage law are regulated in several different laws and regulations, namely Law Number 1 of 1974 concerning Marriage, HIR, and Compilation of Islamic Law (KHI). These three sources of law make a coherent contribution to shaping the legal framework of marriage in Indonesia. The integration of the principles of these three sources of law shows that there is significant coherence in the marriage arrangement in Indonesia. Each source of law makes a complementary contribution, both in terms of the protection of individual rights, the regulation of property, and equality in marriage. This coherence creates a legal framework that is more comprehensive and responsive to the needs of the community.

The findings of this study are expected to provide a clear picture of legal certainty in the distribution of gono-gini property, based on the analysis of relevant decisions. Thus, this article is expected to make an important contribution to the development of the theory and practice of marriage law in Indonesia, as well as formulate recommendations for a

fairer legal policy in the future.

METHOD

The author uses a normative juridical method, which is a legal research method that examines the norms or legal rules that apply in Indonesia, the author uses two approaches, namely, the statute *approach* where this approach uses legislation and regulations.², this approach is carried out by examining relevant laws and regulations, such as Law Number 1 of 1974 concerning Marriage, Compilation of Islamic Law (KHI), and other positive legal provisions. The analysis of this law aims to understand the legal basis related to the division of joint property after divorce in marriage. The second approach is a case study or it can be said that the author researches the *Ratio Decidendi* of a decision. According to Prof. Dr. Peter Mahmud Marzuki, S.H., M.S., LL.M in his book entitled Legal Research, he mentioned that in the case approach, it is necessary to understand *the Ratio Decidendi*. *Ratio Decidendi* itself is a legal science that is perspective, not descriptive. In some decisions, there are several dictums that are descriptive, so the use of this case approach does not focus on the dictum of a court decision, but focuses on the *Ratio Decidendi* of a judge.³ The author conducted a case study of 2 decisions, namely Decision No. 266 K/AG/2010 and Decision No. 901 K/Pdt/2019. This case study aims to understand the application of legal principles in a concrete context, analyze the principles

² Peter Mahmud Marzuki, *Legal Research Revised Edition*, Cet 4, Kencana, Jakarta, 2024, p. 137.

³ Ibid pp. 158-159.

of justice used by judges, and compare their conformity with applicable laws and regulations.

ANALYSIS AND DISCUSSION

Ratio Decidendi Analysis in Decision No. 266 K/AG/2010 and No. 901K/Pdt/2019 Supreme Court Decision No. 266 K/AG/2010

The judge decided to divide the joint property by 3/4 for the wife and 1/4 for the husband. The ratio decidendi used is the principle of justice based on the contribution of each party during the marriage. In this case, the wife is considered to have made a greater contribution because she took on the role of the main breadwinner and housekeeper (double burden). The judge used jurisprudence considerations that emphasized the actual contribution in the marital relationship as the basis for the division of joint property.

Based on the results of the ratio decidendi above, the judge decided:

1. Granting the plaintiff's lawsuit in part;
2. Imposing talak one ba'in sughra of the Defendant against the plaintiff;
3. Punishing the defendant to pay child support;
4. Stipulates that the plaintiff is entitled to $\frac{3}{4}$ of the property and the defendant $\frac{1}{3}$.

The legal sources on which the decision is based:

1. Article 37 of Law No. 1 of 19 974 concerning Marriage;
2. Compilation of Islamic Law (KHI) Article 97;
3. The principle of justice according to Article 2 of Law No. 48 of 2009 concerning Judicial Power.

Supreme Court Decision No. 901 K/Pdt/2019.

The judge ruled that the division of the

joint property was 50:50, even though the wife's contribution was greater during the marriage. The ratio decidendi used is the principle of legal certainty and conformity with positive legal rules, as stipulated in Article 37 of Law No. 1 of 1974 and Article 97 of the KHI. The judge considered that the equitable distribution reflects justice as stipulated in the laws and regulations, regardless of the greater contribution made by one of the parties.

Based on the results of the ratio decidendi above, the judge decided:

1. Rejecting the plaintiff's lawsuit entirely;
2. Punishing the cassation respondent to pay the case costs.

The legal sources on which the decision is based:

1. Article 35 paragraph (1) of Law No. 1 of 1974 concerning marriage;
2. Article 97 of the KHI;
3. Article 190 HIR.

Table 1: Comparison of Gono-Gini

The results of the study show that there is a difference in the application of the principle of justice in two important decisions, namely Decision No. 266 K/AG/2010 and Decision No. 901 K/Pdt/2019. In Decision No. 266 K/AG/2010, the judge emphasized the importance of each party's contribution in the distribution of gono-gini property. Despite the inequality in economic contributions between husband and wife, the judge still decided to divide the property fairly. This shows that the court strives to achieve a balance between the principles of justice and legal certainty. On the contrary, Decision No. 901 K/Pdt/2019 divides property equally even though the wife has a larger contribution. This decision reflects an effort to be consistent with the positive law in force, although it may cause dissatisfaction for the aggrieved party. The analysis of these two decisions shows that the application of the principle of justice in the

distribution of gono-gini property is still a challenge in the Indonesian legal system. The fundamental question that arises is the extent to which the principle of justice can be implemented in the context of existing positive law.

The authors used normative juridical methods in this study to reveal that although positive law provides a clear framework, there is a need for adjustments to be more responsive to complex social and economic contexts. The author also agrees more with the ratio decidendi of the second decision, the decision is considered fairer and in accordance with Indonesia's positive legal views.

The Principle of Marriage and the Definition of Justice in the Distribution of Common Property

Marriage is not just a legal bond, but also an innate commitment between a man and a woman that aims to form a happy, prosperous, and lasting family. To realize this goal, marriage is certainly regulated in a law that is binding and regulates the rights and obligations of husband and wife in a balanced manner. The principles underlying marriage in Indonesia reflect the values of justice, equality, and shared responsibility as outlined in Law Number 1 of 1974 concerning Marriage, Compilation of Islamic Law (KHI), and other laws and regulations.

However, when marriage faces divorce, one of the issues that is often debated is the division of joint property. In this context, the principles of marriage are not only a moral guideline, but also a legal basis for determining justice in the division of property. Principles such as monogamy,

equal rights, justice, protection of vulnerable parties, and cooperation in building a household are the main references to guarantee the rights of husbands and wives fairly without overriding the certainty of applicable laws. Thus, the principle of marriage is not only relevant to maintain harmony in the household, but also a strong foundation in resolving post-divorce disputes, including in determining the division of joint property in accordance with the principles of justice and legal certainty.

Islam shari'a marriage in order to realize the sense of *sakīnah*, *mawaddah*, and *rahmah* for both husband and wife. However, these three, as M. Quraish Shihab said, do not come out of nowhere; they must be tried by every couple for their presence in the field of the household.⁴ To achieve the goal of marriage as desired by the Qur'an, Islam prepares a series of principles as a hold for each couple so that the sense of *sakīnah*, *mawaddah*, and *rahmah* is achieved in the domestic life that it fosters.

Here are some of the principles of marriage:

1. The Principle of Freedom to have a partner

Women's freedom in choosing a partner that suits their wishes must still involve permission and blessing from the guardian. This cannot be ignored, because marriage will achieve perfection if this freedom is at the same time accompanied by the approval and blessing of the parents (guardian), who have an important role in the marriage contract with the prospective husband.⁵

2. Principle of Equality

⁴ M. Quraish Shihab, *Women: From Love to Sex, From Mut'ah Marriage to Sunnah Marriage, From Old Bias to New Bias* (Jakarta: Lentera Hati, 2007).

⁵ Rustam Dahar Karnadi AH, "Equality of Men and Women in Islamic Marriage Law", *SAWWA* 8:2 (April 2013), 361-386.

The equality between husband and wife can be understood from the fact that both were created without fundamental differences. The Qur'an states that "some of you come from some of the others [ba'dukum min ba'd], a phrase that affirms the values of equality, togetherness, and partnership. This statement also shows that a man or husband is not perfect without the presence of a woman or wife, and vice versa. This perfection is achieved through the union of the two, which is biologically derived from the fusion of male sperm and female eggs.⁶

1. Principles of *Mu'asyarah bi al-Ma'rūf*

Regarding *Mu'asyarah bi al-Ma'rūf*, in addition to being interpreted with a gentle attitude and good speech, Shaykh Nawawi interpreted the lafaz *ma'rūf* with the word fair in terms of staying (the division of turn time for polygamists), alimony, and including speaking well.⁷

2. The Principle of Deliberation

By deliberating with your partner (husband/wife) on every problem and desire can enrich the paradigm from different perspectives, so that every decision taken is made with full awareness of the various benefits and consequences arising from the decision.⁸

3. The Principle of Mutual Acceptance

In the Qur'an, this principle is called the term *a'n taradhin minhuma* which describes the attitude of acceptance and willingness between husband and wife. This principle emphasizes that each couple must accept each other, not only the strengths that the partner has, but also the existing shortcomings. In addition, couples also need

to be aware of their strengths and weaknesses. By applying this principle, neither party feels superior or perfect to their partner. This helps prevent the appearance of arrogance (*gumede*) towards the partner. Rather, this principle instills the awareness that husband and wife complement each other, where each other's strengths are used to cover their partner's shortcomings.⁹

From the five principles above, the author concludes that what is in accordance with the expected principle of justice is the principle of justice with the mecca of the principle of marriage with the form of equality. The principle of equality in marriage is the foundation that is in accordance with the concept of justice that the author expects, namely, the balanced division of common property, namely 50:50 between husband and wife. In the perspective of Islamic and national law, as reflected in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI), equality is the main pillar that guarantees the rights and obligations of husband and wife in a proportional manner.

This equality not only reflects the value of togetherness in building a household, but also ensures that no party feels dominated or disadvantaged, both during their married life and when facing problems such as divorce. In the context of the division of joint property, this principle recognizes that the contribution of husband and wife in building a household is equal, so that the fair division of property (50:50) is a reflection of the principle of justice and the principle of equality itself. With the principle of equality, the relationship between husband and wife is not only based on love and commitment, but also

⁶ Abd Basid Dan Ruqayyah Miskiyah, "Tafsir Kesetaraan Dalam Al-Qur'an (Telaah Zaitunah Subhan Atas Term Nafs Wahidah)," *Jurnal Kesetaraan Dan Keadilan Gender*, Volume 17, No 1 (2022): 15.

⁷ Muhammad Nawawi Al-Bantani, *Murāh Labīdz*, (Beirut: Dār Ma'rifat al-, Ilmiyyah, Tt), 135.

⁸ Mohamad Rana and Usep Saepullah, "The Principles of Marriage (Philosophical Analysis of Implementation in Minimizing the Divorce Rate)," *Journal of Islamic Law Studies*, 119 vol. 6, no. 1, June (2021).

⁹ Ibid

on the awareness that both have balanced rights and responsibilities.

This principle provides a solid foundation for maintaining domestic harmony while providing clear and fair guidelines for post-divorce dispute resolution. Therefore, the author views that the principle of equality is the most appropriate form of justice in the context of marriage and the division of common property. This coherence creates a legal framework that is more comprehensive and responsive to the needs of the community. Each source of law makes an important contribution to equality and the protection of the rights of couples in marriage. However, challenges remain in the implementation of these principles on the ground.

CONCLUSION

Analysis of the ratio decidendi of Supreme Court Decisions No. 266 K/AG/2010 and No. 901 K/Pdt/2019 shows different approaches in determining the fairness of the distribution of joint property after divorce. In Decision No. 266 K/AG/2010, the principle of justice used focuses more on the actual contribution during the marriage, where the wife who has the dual role of the main breadwinner and housekeeper, gets a larger share (3/4), while the husband gets 1/4. This reflects the responsiveness of judges to the social and economic context in the marital relationship. On the contrary, Decision No. 901 K/Pdt/2019 emphasizes the principle of legal certainty and conformity with positive law, where the distribution of assets is carried out equally (50:50) in accordance with Article 37 of Law No. 1 of 1974 and Article 97 of the KHI. The judge considered that the equal distribution was more reflective of justice under the prevailing legal framework, even though one party's contribution was greater.

Of these two decisions, the author supports the ratio decidendi in Decision No. 901 K/Pdt/2019 because it is more in accordance with the principle of justice based on the principle of equality. The equal division of property (50:50) between husband and wife reflects proportional justice in the marital relationship, both according to Islamic and national law. The principle of equality is not only relevant for establishing harmony in the household, but also becomes a clear and definite guideline in the resolution of post-divorce disputes. The author also believes that the principle of equality provides a guarantee of justice in the distribution of common property without ignoring the values of togetherness and shared responsibility in marriage. This also ensures that the rights of both parties are protected in a balanced manner in accordance with Indonesia's positive law.

BIBLIOGRAPHY

Books

- Abdul Manan. (2014). *Aneka Masalah Hukum Perdata Islam di Indonesia*. Jakarta: Kencana.
- Achmad Ali. (2009). *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial Prudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*. Jakarta: Kencana.
- Dr. Esti Royani, S.H., S.Pd., M.Pd., M.H., C.PS., C.Me. (2020). *Pembagian Harta Bersama Akibat Perceraian Yang Berkeadilan Pancasila*. Yogyakarta: Zahir Publishing.
- Mohammad Atho Mudzhar dan Muhammad Maksum. *Fikih Responsif Dinamika Integrasi Ilmu Hukum, Hukum Ekonomi dan Hukum Keluarga Islam*. Yogyakarta: Pustaka Pelajar.
- McLeod, I. (1999). *Legal Method*. London: Macmillan.

Prof. Dr. Peter Mahmud Marzuki, S.H., M.S., LL.M. (2024). *Penelitian Hukum* Edisi Revisi. Jakarta: Kencana.

Siti Zulaikha. (2019). *Hukum Perkawinan dan Pembagian Harta Bersama*. Jakarta: Sinar Grafika.

Watjik Saleh. (1987). *Hukum Perkawinan di Indonesia*. Jakarta: Ghalia Indonesia.

Jurnal

Abd Basid dan Ruqayyah Miskiyah. (2022). "Tafsir Kesetaraan Dalam Al-Qur'an (Telaah Zaitunah Subhan Atas Term Nafs Wahidah)", *Jurnal Kesetaraan Dan Keadilan Gender*, 17(1): 15.

Mohammad Atho Mudzhar dan Muhammad Maksum. (2017). Fikih Responsif Dinamika Integrasi Ilmu Hukum, Hukum Ekonomi dan Hukum Keluarga Islam, p. 212.

M. Quraish Shihab. (2007). Perempuan: Dari Cinta Sampai Seks, Dari Nikah Mut'ah sampai Nikah Sunnah, Dari Bias Lama sampai Bias Baru. Jakarta: *Lentera Hati*.

Rustam Dahar Karnadi AH. (2013). "Kesetaraan Laki-Laki Dan Perempuan Dalam Hukum Perkawinan Islam", *SAWWA*, 8(2): 361-386.

Muhammad Nawawi Al-Bantani. Murāḥ Labīdz. Beirut: *Dār Ma'rifat al-'Ilmiyyah*.

Mohamad Rana dan Usep Saepullah. (2021). "Prinsip-Prinsip Perkawinan (Analisis Filosofis Implementasi Dalam Meminimalisir Angka Perceraian)", *Jurnal Kajian Hukum Islam*, 6(1): 119.

Peraturan Perundang-undangan

Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan. (1974). Lembaran Negara Republik Indonesia Tahun 1974 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 3019.

Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama. (1989). Lembaran Negara Republik Indonesia Tahun 1989 Nomor 49, Tambahan Lembaran Negara Republik Indonesia Nomor 3400, sebagaimana telah diubah dengan Undang-Undang Nomor 3 Tahun 2006 tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1989 Tentang Peradilan Agama. (2006). Lembaran Negara Republik Indonesia Tahun 2006 Nomor 22, Tambahan Lembaran Negara Republik Indonesia Nomor 4611.

Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman. (2009). Lembaran Negara Republik Indonesia Tahun 2009 Nomor 157, Tambahan Lembaran Negara Republik Indonesia Nomor 5076.

Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Perundang-Undangan. (2011). Lembaran Negara Republik Indonesia Tahun 2011 Nomor 82, Tambahan Lembaran Negara Republik Indonesia Nomor 5234.

Peraturan Pemerintah Nomor 9 Tahun 1975 tentang Pelaksana Undang-Undang Nomor 1 Tahun 1974. (1975). Lembaran Negara Republik Indonesia Tahun 1975 Nomor 12, Tambahan Lembaran Negara Republik Indonesia Nomor 3050.

Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam.

Putusan Pengadilan

Putusan Mahkamah Agung Nomor 266 K/AG/2010.

Putusan Mahkamah Agung Nomor 901 K/Pdt/2019.

