

## Jurimetrics in the Reconstruction of the Joint Property Division Model for Wage-Earner Wives in Indonesia

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### Abstract

The joint property division in Article 97 of the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) is one-half ( $1/2$ ) as long as it is not specified otherwise in the marriage agreement. This is followed mainly by judges because of the legal certainty in it, but not for wives with double burdens who work to earn a living and are also housewives. This research aims to reconstruct the joint property division through jurimetrics analysis to obtain more objective and tested results because it is based on empirical data. This research is a normative law study with a descriptive approach. The data in this study are the Compilation of Islamic Law, and concepts, as well as other laws and regulations related to the joint property division analyzed with jurimetrics to get the ideal formulation and scale of division. The results obtained include several models of joint property division for wage-earner wives (breadwinners) along with the scale of formulation which are divided into two groups, namely the joint property division with a share of one-half for the former husband and wife and the joint property division with a share other than one-half for the former husband and wife according to the role taken by both. This research can be used as a reference by judges in deciding cases of joint property, especially related to the condition that a wife is a wage-earner.

**Keywords:** breadwinner; jurimetrics; joint property; wage-earner wife

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Pembagian harta bersama dalam Pasal 97 Kompilasi Hukum Islam (KHI) adalah seperdua ( $1/2$ ) sepanjang tidak ditentukan kesepakatan lain dalam perjanjian perkawinan. Bagian seperdua ini lebih banyak diikuti oleh para hakim karena adanya kepastian hukum di dalamnya, namun tidak bagi istri yang memiliki beban ganda dengan bekerja mencari nafkah sekaligus menjadi ibu rumah tangga. Penelitian ini bertujuan untuk merekonstruksi pembagian harta bersama melalui analisis jurimetri untuk memperoleh hasil lebih objektif dan teruji karena berbasis data empiris. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan deskriptif. Data dalam penelitian ini adalah Kompilasi Hukum Islam, dan konsep-konsep, serta peraturan perundangan lainnya yang terkait dengan pembagian harta bersama dianalisis dengan jurimetri untuk mendapatkan formulasi dan skala pembagian yang ideal. Hasil yang diperoleh meliputi beberapa model pembagian harta bersama bagi istri pencari nafkah beserta skala perumusannya yang terbagi dalam dua kelompok yaitu pembagian harta bersama dengan bagian seperdua bagi mantan suami istri dan pembagian harta bersama dengan bagian selain seperdua bagi mantan suami istri sesuai peran yang diambil keduanya. Penelitian ini dapat dijadikan referensi oleh hakim dalam memutuskan perkara harta bersama khususnya terkait pada kondisi istri sebagai pencari nafkah.

**Kata Kunci:** breadwinner; jurimetri; harta bersama; istri pencari nafkah

## Introduction

Marriage creates both physical and spiritual bonds between a husband and wife.<sup>1</sup> Furthermore, marriage can give rise to legal relationships between husband and wife, between parents and children, and even in the event of death, inheritance laws come into play among them.<sup>2</sup> As a bond, marriage can also end through separation or divorce between the two parties.<sup>3</sup> As a consequence of such separation, issues arise between them—for example, the division of shared assets (marital property). According to the marriage laws in Indonesia, both spouses have the authority to act with the mutual agreement of both parties;<sup>4</sup> moreover, both parties have been granted the freedom to arrange the division of shared assets according to their respective laws. Since marital property is acquired during the marriage, it cannot be divided as long as the marital bond persists. Instead, it is meant to be jointly utilized and only becomes eligible for division in the event of separation and/or divorce.<sup>5</sup>

Previous researchers have studied the problem of the joint property division. Based on the research that has been carried out, studies related to joint property can be grouped into the following three categories: first, the concept of joint

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<sup>1</sup> Mahkamah Agung RI, *Himpunan Peraturan Perundang-Undangan yang Berkaitan dengan Kompilasi Hukum Islam serta Pengertian dalam Pembahasannya* (Jakarta: Mahkamah Agung RI, 2011), 64, <https://perpustakaan.mahkamahagung.go.id/read/ebook/23>, Book I, Chapter 2, concerning the Basics of Marriage; Fauzan Muhammadiyah, Eva Wulandari, and M. Hajir Susanto, 'Islamic Triangle Concept of Marital Age: Indonesian Experience', *Legality: Jurnal Ilmiah Hukum* 29, no. 2 (2021): 161–72, <https://doi.org/10.22219/ljih.v29i2.14162>; Lawal Mohammed Bani and Hamza A. Pate, 'The Role of Spouses under Islamic Family Law', *International Affairs and Global Strategy* 37 (2015): 104–11, <https://www.iiste.org/Journals/index.php/IAGS/article/view/26388/0>.

<sup>2</sup> Andi Sukmawati Assaad et al., 'Gender Equity in Inheritance System: The Collaboration of Islamic and Bugis Luwu Customary Law', *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 17, no. 2 (2022): 458–79, <https://doi.org/10.19105/al-ihkam.v17i2.6761>.

<sup>3</sup> Ermi Suhasti Syafei and Siti Djazimah, 'Mediation in Settlement of Joint Marital Property Disputes: Study at Tanjung Karang Religious Court, Lampung', *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 2 (2021): 867–91, <https://doi.org/10.22373/sjhk.v5i2.9039>; Nurunnisa Nurunnisa et al., 'Implications of Annulment of Marriage on the Distribution of Joint Assets according to the Compilation of Islamic Law and National Law', *Syariah: Jurnal Hukum dan Pemikiran* 23, no. 1 (2023): 1–23, <https://doi.org/10.18592/sjhp.v23i1.9523>.

<sup>4</sup> Muhamad Subhi Apriantoro et al., 'Comparing KHI and KHES in Marital Property Grant Disputes: An Analysis of Judges' Views', *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 (2023): 37–52, <https://doi.org/10.29240/jhi.v8i1.6464>.

<sup>5</sup> Setiawan Budi Utomo, *Fiqih Aktual Jawaban Tuntas Masalah Kontemporer* (Jakarta: Gema Insani Press, 2003), 127.

property, such as the research of Ilham Akbar Syarif<sup>6</sup> and Arso.<sup>7</sup> Ilham et al. concluded that the property in the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) was in accordance with the principles of Islamic law legislation. Meanwhile, Arso explained the provisions of joint property based on the perspective of Marriage Law No. 1 of 1974 and the Compilation of Islamic Law. Second, confusion in the concept of joint property, such as the study conducted by Layyin Mahfiyana<sup>8</sup> and Ongky Alexander.<sup>9</sup> Layyin stated that the law in Indonesia still causes multiple interpretations among legal practitioners, as evidenced by the judge's decision, which is still gender biased. Ongky reinforced this conclusion in his study, criticizing Article 85 of the KHI. According to him, the article has multiple interpretations of the joint property division.

Third, the practice of joint property division, namely a study conducted by Muhyidin,<sup>10</sup> Melia,<sup>11</sup> Elimartati and Elfia,<sup>12</sup> and Rouf et al.<sup>13</sup> Muhyidin stated that the practice of dividing joint property was still textual following Article 97 of the

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<sup>6</sup> Ilham Akbar Syarif, Shindu Irwansyah, and Ilham Mujahid, 'Analisis Hukum Islam terhadap Harta Bersama dalam Kompilasi Hukum Islam', in *Prosiding Hukum Keluarga Islam*, vol. 6 (Bandung: Universitas Islam Bandung, 2020), 10–12, [https://doi.org/10.29313/islamic\\_family.v0i0.20514](https://doi.org/10.29313/islamic_family.v0i0.20514).

<sup>7</sup> Arso Arso, 'Hak atas Kekayaan Intelektual (HAKI) sebagai Harta Bersama Perspektif Kompilasi Hukum Islam', *Al-Daulah: Jurnal Hukum dan Perundangan Islam* 7, no. 1 (2017): 28–56, <https://doi.org/10.15642/ad.2017.7.1.28-56>.

<sup>8</sup> Layyin Mahfiana, 'Penyelesaian Harta Bersama yang Memberikan Perlindungan bagi Hak Perempuan', *Doctoral Thesis* (Pascasarjana Ilmu Hukum - UNS Surakarta, 2019); Layyin Mahfiana, 'Keterlibatan Perempuan dalam Penyelesaian Konflik Harta Bersama (Studi di Kabupaten Ponorogo)', *Kodifikasi: Jurnal Penelitian Islam* 10, no. 1 (2016): 229–55, <https://doi.org/10.21154/kodifikasi.v10i1.809>.

<sup>9</sup> Ongky Alexander, 'Efektivitas Pembagian Harta Gono-Gini Pasca Perceraian dalam Perspektif Yuridis Sosiologis', *EL-Ghiroh* 16, no. 1 (2019): 113–29, <https://doi.org/10.37092/elghiroh.v16i01.70>.

<sup>10</sup> Muhyidin Muhyidin, 'Rekonstruksi Kedudukan Harta Pencarian Isteri dalam Konsep Harta Bersama di Indonesia dari Perspektif Hukum Islam', *Doctoral Thesis* (Fakultas Hukum, Unissula Semarang, 2017).

<sup>11</sup> Melia Melia, Muzakkir Abubakar, and Darmawan Darmawan, 'Pembagian Harta Bersama setelah Perceraian (Studi terhadap Putusan Mahkamah Agung Nomor 597K/Ag/2016)', *Jurnal IUS Kajian Hukum dan Keadilan* 7, no. 3 (2019): 506–18, <https://doi.org/10.29303/ius.v7i3.665>.

<sup>12</sup> Elimartati Elimartati and Elfia Elfia, 'Kritik terhadap Kompilasi Hukum Islam tentang Ketentuan Harta Bersama dalam Perkawinan', *Juris (Jurnal Ilmiah Syariah)* 19, no. 2 (2020): 231–43, <https://doi.org/10.31958/juris.v19i2.2283>.

<sup>13</sup> Abd Rouf, Mufidah Ch, and Zaenul Mahmudi, 'Joint Property Division in Indonesia: A Gender Equality Viewpoint', *De Jure: Jurnal Hukum dan Syariah* 15, no. 2 (2023): 230–50, <https://doi.org/10.18860/j-fsh.v15i2.23050>.

KHI. A different statement was made by Melia et al., namely that the judge divided the joint property based on the principles of justice and *social justice* by considering that the ex-wife contributed more to finding joint property. It causes the wife to get  $\frac{2}{3}$  and the husband  $\frac{1}{3}$  share. This shows that KHI has not been able to cover all problems in the joint property division as discussed by Elimartati and Elfia in their study. This statement is strengthened by a study conducted by Rouf et al which concluded that the value of justice in the distribution of joint property as stated in the KHI cannot be fulfilled when viewed from a gender justice perspective. Because if viewed from a gender perspective, the joint property division is related to the roles played by husband and wife during marriage, which always experience shifts in roles from time to time.

Several studies have mentioned that there is no composition of regulations on the joint property division that definitively solves the problem. If observed, the concept of joint property will not be separated from how much the husband and wife contribute to the family during their marriage. It is because the family has a division of obligations, roles, and functions.<sup>14</sup> As the head of the family, the husband is obligated to guide, protect, and provide religious education to his wife and household and provide a living according to his income.<sup>15</sup> The wife, as a housewife, has a filial obligation outwardly and mentally to her husband. She is responsible for organizing and managing daily household needs as well as possible<sup>16</sup> to become a happy household. However, in some cases, the role and function of wives have shifted namely many of the wives who work<sup>17</sup> professionally to make a living to help meet the family's needs. On the other

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<sup>14</sup> Eka Ristianawati, 'Joint Property Distribution upon Divorce Reviewed from the Contribution of Husband and Wife in the Household', *Walisono Law Review (Walrev)* 3, no. 1 (2021): 1–20, <https://doi.org/10.21580/walrev.2021.3.1.8078>.

<sup>15</sup> Kementerian Agama RI, *Kompilasi Hukum Islam di Indonesia* (Jakarta: Kementerian Agama RI, 2018), article 80 concerning the obligations of husbands; Harn Shian Boo, 'Gender Norms and Gender Inequality in Unpaid Domestic Work among Malay Couples in Malaysia', *Pertanika Journal of Social Sciences and Humanities* 29, no. 4 (2021): 2353–69, <https://doi.org/10.47836/pjssh.29.4.14>.

<sup>16</sup> Kementerian Agama RI, *Kompilasi Hukum Islam di Indonesia*, Article 83 concerning the permission of wives.

<sup>17</sup> Misbah Zulfa Elizabeth et al., 'Gender Relation in Family in Post-COVID-19 Era: Study among Working Couple in Semarang, Indonesia', *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (2023): 937–58, <https://doi.org/10.22373/sjhk.v7i2.17007>; Lubna Lubna and Dwini Handayani, 'Working Women and Household Expenditures on Food Away from Home in Indonesia', *Pertanika Journal of Social Sciences and Humanities* 27, no. 3 (2019): 1573–92.

hand, they also act as housewives, so wives will be a double burden on the family.

Based on the division of obligations, roles, and functions in the family, the application of the joint property division through existing regulations still causes multiple interpretations if submitted to the judge.<sup>18</sup> Therefore, this study is here to provide a definite picture related to the joint property division through jurimetrics analysis with the application of scientific methods to analyze legal issues. Jurimetrics is a method for judges to interpret empirical data for a fair verdict. However, justice will not only be formed by using jurimetrics but must also comply with applicable norms.<sup>19</sup> The norm in question is the division of obligations, roles, and functions contained in the KHI as a reference in formulating a model of joint property division.

This research includes normative law research with a descriptive approach. Data sources taken in form of KHI, books, journals, and articles related to this research. The technique used is a document or literature study to obtain these data. After receiving the desired data, the data is analyzed using deductive logic, which explains something still general and then draws a more specific conclusion. In addition, this study also used jurimetrics analysis with the following steps: first, choose the domain (determine the domain or subject of the problem). Secondly, retrieve the case. Third, read the case. Fourth, define legal items (determine the legal issues to be tried). Fifth, build a list of factors. Sixth, process data.

## Concept of Jurimetrics

Jurimetrics is a combination of two basic syllables: jurisprudence, which means the science of law, and metrics, which means the science of calculation or metrics. The meaning of the word metrics in jurimetrics is identical to its use in various disciplines such as econometrics, psychometrics, and sociometrics. In a contextual sense, the word metrics refers to the “scientific method” or scientific

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<sup>18</sup> Musfira Musfira et al., 'The Concept of Joint Property Ownership of Husband and Wife', in *Proceedings of International Conference on Multidisciplinary Research*, vol. 4, 2022, 15–19, <https://doi.org/10.32672/pic-mr.v4i1.3733>.

<sup>19</sup> Fathur Rahman, 'Konsep Jurimetri dalam Menentukan Nilai-nilai Keadilan (Perspektif Maqâshid Syarîah)', *Doctoral Thesis* (UIN Antasari, Banjarmasin, 2022).

method of analyzing a problem.<sup>20</sup> Another definition of jurimetrics is the study of law and science. This definition contains the understanding that jurimetrics has a scientific mechanism in the form of empirical testing (empirical examining) of various topics or subjects in law that are interrelated to obtain valid and objective conclusions.<sup>21</sup>

The term jurimetrics was first coined by Lee Loevinger in *a legal inquiry* by defining jurimetrics as follows:

“The term jurimetrics has been suggested, and is gaining some use as a designation for the activities involving the scientific investigation of legal problems.”<sup>22</sup>

It became clear that Loevinger’s goal in proposing jurimetrics ideas was to introduce legal science’s scientific and experimental dimensions. In this regard, Kees van Noortwijk and Richard de Mulder define jurimetrics as follows:

“Jurimetrics is concerned with the empirical study of the law in the widest sense, not only the meaning (the semantics) but also the form and the pragmatic aspects of law. Law is defined here as the demands and authorizations issued from state organizations.”<sup>23</sup>

Jurimetrics, according to Kees van Noortwijk and Richard de Mulder, is defined as the use of empirical methods in reviewing law. The use of jurimetrics in legal studies is intended to provide an overview or description of a state or legal phenomenon more objectively and measurably. Jurimetrics emphasizes the importance of obtaining complete and consistent empirical data to conduct a legal review of one subject matter under study.<sup>24</sup>

Ronny Hanitijo stated that as a model in legal studies, jurimetrics is focused on three main problems, one of which is the implementation of quantitative methods in legal analysis and decision-making. In the context of such

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<sup>20</sup> M. Natsir Asnawi, *Pengantar Jurimetri dan Penerapannya dalam Menyelesaikan Perkara Perdata: Pendekatan Kualitatif dan Kuantitatif terhadap Hukum* (Jakarta: Prenada Media, 2020), 9.

<sup>21</sup> Asnawi, 9.

<sup>22</sup> Lee Loevinger, ‘Jurimetrics: The Methodology of Legal Inquiry’, *Law and Contemporary Problems* 28, no. 1 (1963): 5–35, <https://doi.org/10.2307/1190721>.

<sup>23</sup> Kees Van Noortwijk and Richard De Mulder, ‘A Quantitative Analysis of Legal Word Use’, in *2007 Annual Conference BILETA, 2007*, 1–10, <https://www.bileta.org.uk/wp-content/uploads/A-quantitative-analysis-of-legal-word-use.pdf>.

<sup>24</sup> M. Natsir Asnawi, ‘Implementasi Jurimetri dalam Penentuan Jumlah Nafkah Anak’, *Jurnal Hukum Dan Peradilan* 5, no. 3 (2016): 331–50, <https://doi.org/10.25216/jhp.5.3.2016.331-350>.

application, jurimetrics uses statistical-based analytical instruments, simple mathematical models, and simulations.<sup>25</sup>

As a method in legal analysis, there are several stages or steps in the implementation of jurimetrics, namely: first, choose domain, is to determine the domain or subject of the problem to be analyzed. For example, in determining the joint property division, the subject of the issue (domain) of the jurimetrics is "the amount of fair division of property for ex-wives and ex-husbands". Secondly, retrieving cases is called case tracing, which is done by studying facts related to the subject matter. For example, in determining the joint property division, Article 97 of the KHI states that joint property after divorce is divided equally; both ex-husband and ex-wife get  $\frac{1}{2}$  shares. But in reality, several facts need to be considered, namely if there is excessive responsibility for one party, neglect of responsibility that is not replaced, and there is neglect of responsibility but replaced, which of course, has legal effects for the perpetrator.

Third, reading cases is to study the facts that have been collected and try to analyze them one by one, then make an initial description (introduction) about the position, legal relationship, and legal consequences on the parties. The results of this reading will later determine which things will be analyzed further. Fourth, define legal items. After an intensive reading of the problem profile and a series of evidence, the next stage is determining the legal issues to be tried. For example, in determining the joint property division, the legal issue that will be tried is the value of the fair division of property for the ex-wife and ex-husband. Fifth, build a list of factors. To determine the fair joint property division, for example, several factors need to be considered, namely paying attention to the rights and obligations of husbands and wives based on the prevailing determination in Indonesia.

Sixth, process data. The next stage is to process the data obtained by relating it to the factors stated. This data processing uses statistical review models, both simple statistics and more complex statistics, depending on the case construction. The data that has been processed earlier is then analyzed quantitatively, which is descriptive. The results of this analysis, in some cases, will be linked again to more qualitative concepts, for example in the joint property division in data processing and analysis, there is a process of

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<sup>25</sup> Ronny Hanitijo, *Metode Penelitian Hukum dan Jurimetri* (Jakarta: Ghalia Indonesia, 1990), 135.

quantifying subjective and abstract legal concepts such as the concept of conjugal obligations into an arrangement of numbers to actualize these concepts.<sup>26</sup>

## **Jurimetrics in the Context of Joint Property Division**

The discussion of law will not be separated from many things, including legal dogma (normative), legal theory, and legal philosophy. The three sub-studies of law are related to each other. If legal dogma talks about the normative side of law (what should and should not be done and its sanctions), then legal theory talks about how law is understood and applied in a dynamic social landscape with all the dynamics intertwined in it. In a further context, the philosophy of law talks about the essence or essence of law; a conversation that brings us to the deepest dimension of law that contains the vision of law, the mind of law, and the interrelation of law with human beings.<sup>27</sup>

In reality, in deciding the issue of joint property, judges can use various basic legal instruments, namely principles, norms, and various legal doctrines that are considered relevant. One of the concepts that is often raised is the concept of justice, where the judge makes Article 97 of the KHI an argument in deciding cases because only the KHI clearly states how much of the joint property is shared between a divorced husband and wife.<sup>28</sup> Many experts define justice, but the author concludes that there is no one standard definition of justice. All of them have their points of view on justice. So it is not surprising then that there is a view that justice is a subjectivity of judges built from various legal considerations. Even if considered fair, the judge's fairness is still perceived as "subjective". Then, is the justice given by the judge always subjective? Is there no objective value to the justice that the judge gives through his ruling?

A few of these problems and questions have been sought answers for a long time. Various approaches are taken in analyzing the values of justice, which are

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<sup>26</sup> Asnawi, *Pengantar Jurimetri dan Penerapannya dalam Menyelesaikan Perkara Perdata: Pendekatan Kualitatif dan Kuantitatif terhadap Hukum*, 12–13.

<sup>27</sup> Asnawi, 15-16.

<sup>28</sup> Jayusman Jayusman, 'The Decision on Joint Properties in Bengkulu High Religious Court Jurisdiction', *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 21, no. 1 (2021): 99–118, <https://doi.org/10.18326/ijtihad.v21i1.99-118>; Abd Rouf, Mufidah Ch, and Zaenul Mahmudi, 'Joint Property Division in Indonesia: A Gender Equality Viewpoint'.



ontologically abstract and idealized values that want to be displayed more empirically and measurably to build understanding. Jurimetrics is one embodiment of that. Jurimetrics intends to produce a method or approach to analyze law based on empirical data that is considered more objective and tested.<sup>29</sup>

## Paradigm Development in Jurisprudence on Joint Property in Indonesia and Other Countries

Law always develops along with society's social development. It means that the law will always move dynamically according to changes in situations and conditions in society. Rashid Riḍā stated that a legal provision can change due to changes in place, time, conditions, and social situation of the community. If a legal provision is no longer needed, it can be replaced by a new legal provision in accordance with the latest time and situation.<sup>30</sup>

The development of law as stated in the rules of jurisprudence is mentioned "*taghayyur al-ahkām (al-fatwā) bi taghayyur al-azminah wa al-amkinah wa al-aḥwāl*" which means a legal provision (*fatwā*) can change due to changes in time, place and situation (conditions).<sup>31</sup> This rule explicitly provides space for establishing a legal provision to answer new problems in accordance with the development of social conditions in the community. Therefore, legal norms will also develop based on society's need for law. In joint property, for example, several recent jurisprudence have shown a shift or development in the basic norms of joint property.

The legal shift implemented can be seen in the following decisions: first, the Decision of the Supreme Court of the Republic of Indonesia No. 266 K/AG/2010 dated July 12 2010. This decision constitutes permanent jurisprudence of the Supreme Court in the field of joint property law, which contains legal rules:

"The wife gets  $\frac{3}{4}$  of the joint property because the wife and the husband produced the joint property did not provide support for the children and wife for 11 years."

This decision applies the joint property division, which differs from several previous decisions. In previous decisions, joint property was divided equally

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<sup>29</sup> Asnawi, 15-16.

<sup>30</sup> Muḥammad Rāshid Riḍā, *Tafsīr al-Manār*, Juz 1 (Beirut: Dār al-Fikr, n.d.), 414.

<sup>31</sup> Mukhsin Nyak Umar, *Kaidah Fiqhiyyah dan Pembaharuan Hukum Islam*, 2nd ed. (Banda Aceh: Yayasan WDC Banda Aceh, 2017).

between the ex-husband and ex-wife, regardless of the legal facts proven at trial. In that case, this decision determines the joint property division based on the roles and responsibilities the ex-husband and ex-wife factually carry out. One of the considerations put forward by the Supreme Court in its decision was:

“That based on the evidence and facts at the trial, it turns out that the husband did not provide a living from the results of his work, and the wife obtained all joint property from the results of her work, so for the sake of justice it is appropriate for the plaintiff to receive joint property amounting to stipulated in the decision.”

Based on these considerations, the Supreme Court determined the share of joint property between the ex-wife (plaintiff) and ex-husband (defendant) in one of the dictums which read:

“Determining that the plaintiff is entitled to  $\frac{3}{4}$  (three quarters) of the joint property as stated in the ruling above, and the defendant is entitled to own  $\frac{1}{4}$  (a quarter) of the joint assets as stated in the decision above.”

Second, the Decision of the Supreme Court of the Republic of Indonesia No. 78 K/Ag/2021, dated March 26, 2021. This decision constitutes permanent jurisprudence of the Supreme Court in the field of joint property law, with the following legal rules:

“If the wife performs two functions at once, namely to try/work to meet the needs of the household and also take care of the household and take care of children as in the case of a quo, then the joint property is unfair if each gets  $\frac{1}{2}$  part; therefore the joint property division as determined by *Judex Facti* is 70 (seventy) percent for the Reconvension Plaintiff/Convention Defendant and 30 (thirty) percent for the Reconvension Defendant/Convention Plaintiff is appropriate”.

This decision provides several considerations, including Article 31, Paragraph (3) and Article 34 of Law No. 1 of 1974 concerning Marriage as amended by Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage and 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 and provide shelter for his children and wife, while the wife is a housewife who is obliged to take care of the household and take care of the children. If both parties perform their respective functions, the joint property will each have the right to a share of  $\frac{1}{2}$  (one-half) to  $\frac{1}{2}$  (one-half).

Apart from changes in time, laws can also change according to place. It means that the law in Indonesia will not be the same as in other countries, especially in regulating joint property during marriage and after divorce. In Malaysia, for example, joint assets are termed “*harta sepencarian*”, namely assets acquired jointly by husband and wife during a legal marriage. Regulations

regarding property sequestration in Malaysia are contained in Enakmen Islamic Family Law, which exists in each state (federal territories). The 1984 Islamic Family Law Deed stipulates that shared assets are assets obtained from joint efforts during marriage and in accordance with the conditions determined under *Sharak* (shari'a) law.<sup>32</sup>

In deed 303, the Islamic Family Law (federal territories) deed 1984 part V on the Dissolution of Marriage<sup>33</sup> explains that if the assets obtained during their marriage are assets resulting from their joint business, then the assets may be divided according to their original form, or the assets may be sold first. The proceeds are divided equally between both parties. The division must also consider factors such as assistance from each party, debts for mutual benefit, and the child's needs. The regulations also state that assets obtained by one party's sole business, the party carrying out the sole business, are entitled to a larger share of the assets. This kind of division will also consider indirect assistance provided by the party who does not obtain the property, such as the efforts of one party in taking care of the household, looking after the house, educating children, and so on.<sup>34</sup>

Based on the provisions above, when a divorce occurs, the court divides marital assets, taking into account each husband and wife's assistance (contribution) towards acquiring assets during the marriage. The assistance in question can be in the form of direct assistance or indirect assistance.<sup>35</sup> Direct assistance is mutual assistance that each husband and wife provide in obtaining property. In other words, direct assistance is when the husband and wife work or try to obtain property or assets. Usually, direct assistance can be financial

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<sup>32</sup> Norazlina Abdul Aziz, Irini Ibrahim, and Mohd Norhusairi Mat Hussin, 'Harta Sepencarian/Aset Perkahwinan bagi Pembubaran Perkahwinan di bawah Seksyen 51 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 serta Akta Undang-Undang Keluarga Islam (Wilayah-wilayah Persekutuan) 1984', *Journal of Shariah Law Research* 4, no. 1 (2019): 1-26, <https://doi.org/10.22452/JSLR.vol4no1.1>.

<sup>33</sup> Lembaga Penyelidikan Undang-Undang, "Akta Undang-Undang Keluarga Islam 1984, Wilayah Persekutuan," (Akta 303), 2001.

<sup>34</sup> Abdul Aziz, Ibrahim, and Mat Hussin, 'Harta Sepencarian/Aset Perkahwinan bagi Pembubaran Perkahwinan di bawah Seksyen 51 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 serta Akta Undang-Undang Keluarga Islam (Wilayah-wilayah Persekutuan) 1984'.

<sup>35</sup> Norliah Ibrahim and Nora Abdul Hak, 'Division of Matrimonial Property in Malaysia: The Legal Historical Perspective', *Sejarah: Journal of the Department of History* 15, no. 15 (2007): 143-60, <https://doi.org/10.22452/sejarah.vol15no15.8>.

assistance (capital) and labor assistance (claims/responsibilities) in obtaining an asset during the marriage.

Indirect assistance, especially for wives who do not work, there are several levels of division, such as  $\frac{1}{2}$ ,  $\frac{1}{3}$ ,  $\frac{1}{4}$ , and  $\frac{2}{3}$ , depending on the indirect assistance provided by the wife. Usually, women still play an important role in a family, such as looking after the house, taking care of the household, educating children, and so on. It means that women do not have the opportunity to acquire property during the marriage period. Even so, the law still respects the role played by women so that women can obtain their rights in community property.

This form of direct or indirect assistance can be divided in the form of money, such as income, salary, bonuses, and savings, which can be used to obtain an asset. Non-monetary assistance can take the form of working together, carrying out their duties as husband and wife well, maintaining household honor, and increasing the value of assets acquired during the marriage. This assistance will entitle each party to the property or assets obtained during the marriage period.<sup>36</sup>

Property obtained “together” or from the efforts and cooperation of husband and wife can be divided or requested for division by one of them to the competent court when they divorce. By provisions indeed 303 of the 1984 Islamic Family Law (federal territories) Act, part V concerning the Dissolution of Marriage, in deciding on the division of joint assets, several aspects need to be considered by the court. First, assistance for each husband and wife in obtaining property during the marriage. Secondly, debt is based on family interests. Third, consideration of the child’s needs. Fourth, the separation of personal assets. Fifth, consideration of indirect contributions. Sixth, Increase in asset value during marriage.<sup>37</sup>

Almost the same as Malaysia, the arrangement of joint property in Australia is regulated by family law, and its provisions are regulated by the Family Law Act 1975. The principle of dividing joint property in Australia is “each spouse retains ownership of the property legally theirs,” namely each ex-husband and

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<sup>36</sup> Mohd Anuar Ramli, Mohd Norhusairi Mat Hussin, and Mohammad Aizat Jamaludin, ‘Elemen Sumbangan dalam Pembahagian Harta Sepencarian: Pengalaman Kaum Wanita Melayu di Malaysia’, *Esteem Academic Journal* 8, no. 2 (2012): 77–92.

<sup>37</sup> M. Natsir Asnawi, *Hukum Harta Bersama: Kajian Perbandingan Hukum, Telaah Norma, Yurisprudensi dan Pembaharuan Hukum* (Jakarta: Prenada Media, 2020), 165.

ex-husband. The wife still owns her personal property, including other assets obtained from inheritance and/or gifts from third parties, and is not a joint gift.

Australia is a country with common law that adheres to the separation of property between husband and wife. However, the Family Court, as an institution that has the authority to resolve cases in family law, has the right to determine the joint property division according to considerations of justice between divorced husband and wife. They determine the division of assets in a fair and balanced manner (make such orders as they consider and equitable) by considering the role of each party, including both financial contributions and non-financial contributions. Both forms of contribution have the same grade towards acquiring joint assets. It means that both financial and non-financial contributions are equally valuable in the eyes of the law and cannot be ignored when determining each individual's share of joint property.<sup>38</sup>

The Australian family law system places joint property under the general principle of "separation of property with division by the courts," meaning that before the court decision, there was no legal mixing of property in marriage. The court will later determine these assets' ownership status and division based on several considerations, as stated above. Thus, the Australian family law system prioritizes the division of assets to each divorcing couple fairly and provides more benefits to them, not only when the court decides it, but in the period afterward.<sup>39</sup>

Another country that adheres to common law is Japan, which stipulates the separation of property between husband and wife. Family law in Japan is clearly regulated in the Civil Code of 1896 which is the main law in the field of Japanese family law. In the Japanese family law system, the court (Family Court) has the authority to decide divorce cases and the property division between husband and wife. There are two options for resolving the division of marital assets. First, it is resolved together with a divorce suit. Second, it is submitted after the divorce occurs within a maximum period of two years after the divorce occurs.<sup>40</sup>

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<sup>38</sup> Wiwin Sutini and Putu Eka Trisna Dewi, 'Pembagian Harta Bersama Pasca Perceraian terhadap Kontribusi Isteri sebagai Pencari Nafkah (Studi Komparasi di Australia, Malaysia dan Jepang)', *Aktual Justice* 6, no. 2 (2021): 121-39, <https://doi.org/10.47329/aktualjustice.v6i2.768>.

<sup>39</sup> Asnawi, *Hukum Harta Bersama: Kajian Perbandingan Hukum, Telaah Norma, Yurisprudensi dan Pembaharuan Hukum*.

<sup>40</sup> Mikiko Otani and Masami Kittaka, 'Family Law in Japan: Overview', Thomson Reuters Practical Law, 2020, [https://uk.practicallaw.thomsonreuters.com/w-009-5907?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-009-5907?transitionType=Default&contextData=(sc.Default)&firstPage=true).

Article 762, Paragraph (1) of the Civil Code contains provisions regarding property owned by one of the spouses before the marriage, which was acquired in the name of the person concerned during the marriage period and remains the personal property of the person concerned. Then, paragraph (2) confirms that property whose ownership or owner's name is not clear as belonging to one of the husband or wife is determined to be jointly owned. So it can be concluded that the legal norms for marital property in the family law system in Japan include the separation of husband and wife's assets. Secondly, limited joint ownership. Third, the marriage agreement on the husband and wife's property (contract on the property of the husband and wife) is also important. and fourth, division of the burden of living expenses and subsistence.<sup>41</sup>

The legal system in Japan prioritizes amicable settlements (peace) between divorced husbands and wives in resolving the joint property division. This is done because it is more beneficial for both parties. Apart from that, in terms of procedures, the implementation is considered more efficient without providing evidence in a court trial which would take up a lot of time and energy. Each party can freely try alternative solutions that are considered most beneficial. However, if no agreement is found between the two of them, in this situation each of them can file a lawsuit with the court (family court) to demand a fair division of assets.

In making a decision, the Family Court in Japan must consider the following two things: first, which assets can be divided and which assets remain the property of each. Second, the amount of property being distributed and the method to divide the property appropriately and fairly. Thus, the assets that will be divided after divorce are assets resulting from joint business between husband and wife. It means that both husband and wife actively carry out joint business. Each husband and wife work together to carry out activities or business activities directly, generating certain income or assets.<sup>42</sup>

It can be concluded that the jurisprudential paradigm in settling joint property in Indonesia still uses existing regulations, namely that each husband and wife get a half share of joint property in accordance with Article 97 KHI and Article 128 of the Civil Code. However, in reality, the judge can decide the share

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<sup>41</sup> Otani and Kittaka.

<sup>42</sup> Asnawi, *Hukum Harta Bersama: Kajian Perbandingan Hukum, Telaah Norma, Yurisprudensi dan Pembaharuan Hukum*.

of joint assets outside of existing regulations by looking at the roles played by husband and wife when married. In contrast to Indonesia, the joint property division in Malaysia is more dynamic because the determination is left entirely to the judge's judgment and discretion in weighing the contribution of each husband and wife to the acquisition of property during the period of their marriage. It is in accordance with existing regulations in Malaysia that the division of joint assets is adjusted to the contribution made by husband and wife to the household directly or indirectly.

Australian family law prioritizes the division of joint assets to each divorcing couple fairly and gives them more benefits, not only when the court decides it, but in the period afterward. Meanwhile, the legal system in Japan prioritizes amicable settlements (peace) between divorced husbands and wives to resolve the joint property division.

## **Implementation of Jurimetrics in the Joint Property Division in Indonesia**

Article 37 of the Marriage Law states that if the marriage breaks up due to divorce, joint property is regulated according to their respective laws. The meaning of the "laws" in the article is that each has religious law, customary law, and other laws that apply to the marriage. If the husband and wife divorce and they want the joint property division based on deliberation, the division follows the agreement between the two parties (according to their respective laws). This method is considered valid and is the best solution. In such a settlement, it is permissible for one party to get a larger or smaller share than the other in accordance with the agreement and without any element of coercion.<sup>43</sup> When the deliberation path does not find results, the husband and wife can submit it to the judge through the court. This option is considered more appropriate in terms of obtaining justice so that it can be done.<sup>44</sup>

In the KHI, there is a normal situation in the joint property division between the former husband and wife, which is one second  $\frac{1}{2} : \frac{1}{2}$ . This applies in general conditions, namely that the husband has carried out the role of the head of the

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<sup>43</sup> Abdul Manan, *Aneka Masalah Hukum Perdata Islam di Indonesia*, 5th ed. (Jakarta: Prenada Media, 2017), 129.

<sup>44</sup> Besse Sugiswati, 'Konsepsi Harta Bersama dari Perspektif Hukum Islam, Kitab Undang-Undang Hukum Perdata dan Hukum Adat', *Perspektif* 19, no. 3 (2014): 201-11, <https://doi.org/10.30742/perspektif.v19i3.22>.

family well and the wife has carried out the role of housewife well as well. However, there are some conditions that the author cannot use the division. For example, when one party does not fulfill its family obligations. The husband does not participate in building the family economy, for example, hence the wife can get a greater share of the joint property when she gives more role in the family economy.

Thus, the joint property division can be adjusted to suit the rights and obligations of the husband and wife. It means that the principle of joint property division is based on the concept of harmony between the obligations carried out and the rights to be obtained. Through the provisions in the KHI, the obligations of husband and wife are explained in Table 1.

Based on the obligations of husband and wife, know that the obligations of a husband have four points, while the obligations of a wife have two points. Referring to the principle of justice, it can be categorized that one wife's obligations are equal to two husband's obligations. So basically fair means equating something with another, both in terms of size, so that something is not biased and does not differ from each other. But justice is more focused on understanding, and putting things in their place.<sup>45</sup>

The proof that justice does not have to be the same is in the Qur'an Surah al-Infithār [82]: 7, which means "Who created you and perfected your events and brought your (body structure) into balance." The above verse informs man that his body as a whole is arranged according to the principles of balance. In this case, it can be formulated that if one part of the human body is excess or reduced from the level or conditions that should be, then there will be an imbalance (justice).<sup>46</sup>

Another example of "justice" in the sense of "balance" is the universe with its ecosystem as stated in the Qur'an Surah al-Mulk [67]: 3, which means "Who created the seven multi-layered heavens. You will not see anything unbalanced in the creation of God Almighty. Then look again, do you see anything flawed?" This verse shows that justice is synonymous with conformity or proportionality,

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<sup>45</sup> Abdul Aziz Dahlan, ed., *Ensiklopedi Hukum Islam*, 1st ed., vol. 1 (Jakarta: Ichtiar Baru Van Hoeve, 1996), 25.

<sup>46</sup> M. Quraish Shihab, *Wawasan al-Qur'an Tafsir Tematik atas Pelbagai Persoalan Umat* (Bandung: Mizan Pustaka, 2007), 115; M. Dawam Raharjo, *Ensiklopedi al-Qur'an: Tafsir Sosial berdasarkan Konsep-konsep Kunci*, 1st ed. (Jakarta: Paramadina, 1996), 373.



so the balance does not require equality of levels and conditions for all parts of the unit to be balanced. It can be that one piece is small or large, while its size and magnitude are determined by the function expected of it.<sup>47</sup>

Table 1  
Husband and Wife Obligations

No.	Husband's Obligations	Wife's Obligations
1.	The husband acts as a guiding figure for his wife and the household, ensuring that both spouses collectively make significant decisions regarding household affairs.	The primary obligation of a wife, as justified by Islamic law, is to show outward and inward respect and devotion to her husband.
2.	The husband is responsible for safeguarding his wife and providing all essential elements required for their married life to the best of his capabilities.	The wife efficiently organizes and oversees the day-to-day requirements of the household to the best of her abilities. <sup>48</sup>
3.	The husband is responsible for offering religious guidance to his wife and facilitating opportunities for her to acquire beneficial and valuable knowledge for their faith, the local community, and the nation.	
4.	The husband is responsible, in line with his income, for the following: a) Providing the essentials such as bread, kiswa, and shelter (residence) for his wife; b) Covering household expenditures, medical treatment expenses for wives and children, and overall medical costs; c) Supporting the educational expenses for the children. <sup>49</sup>	

<sup>47</sup> Shihab, *Wawasan al-Qur'an Tafsir Tematik atas Pelbagai Persoalan Umat*, 115.

<sup>48</sup> Kementerian Agama RI, *Kompilasi Hukum Islam di Indonesia*, Chapter XII, Article 83, Paragraphs 1-2 concerning wife's obligations.

<sup>49</sup> Kementerian Agama RI, *Kompilasi Hukum Islam di Indonesia*, Chapter XII, Article 83, Paragraphs 1-2 concerning husband's obligations.

## Proportion of Husband and Wife's Joint Property Sharing based on the Obligations

Based on the rights and obligations of husband and wife as stated in the KHI, their respective shares of joint property can be formulated. The sections in question are indicated in Table 2.

Table 2  
Conjugal Obligations of Husband and Wife and Their Respective Proportion

No.	Husband's Obligations	Proportion
1.	The husband acts as a guiding figure for his wife and the household, ensuring that both spouses collectively make significant decisions regarding household affairs.	$\frac{1}{4} \times \frac{1}{2} = \frac{1}{8}$
2.	The husband is responsible for safeguarding his wife and providing all essential elements required for their married life to the best of his capabilities.	$\frac{1}{4} \times \frac{1}{2} = \frac{1}{8}$
3.	The husband is responsible for offering religious guidance to his wife and facilitating opportunities for her to acquire beneficial and valuable knowledge for their faith, the local community, and the nation.	$\frac{1}{4} \times \frac{1}{2} = \frac{1}{8}$
4.	The husband is responsible, in line with his income, for the following: a) Providing the essentials such as bread, kiswa, and shelter (residence) for his wife; b) Covering household expenditures, medical treatment expenses for both wives and children, and overall medical costs; c) Supporting the educational expenses for the children.	$\frac{1}{4} \times \frac{1}{2} = \frac{1}{8}$
No.	Wife's Obligations	Proportion
1.	The primary obligation of a wife, as justified by Islamic law, is to show outward and inward respect and devotion to her husband.	$\frac{2}{4} \times \frac{1}{2} = \frac{2}{8}$
2.	The wife efficiently organizes and oversees the day-to-day requirements of the household to the best of her abilities.	$\frac{2}{4} \times \frac{1}{2} = \frac{2}{8}$

The general formula for the joint property division is that the husband gets half of the joint property as well as the wife gets half the share, but in some cases, the formula cannot be used. Therefore, the author can formulate the following formulation based on the rights and obligations of the husband and wife contained in the KHI.

The husband has four obligations, and the wife has two. Since the wife's obligations are considered heavier than the husband's, one wife's obligations are equal in value to the husband's two obligations, so the total of all husband and wife's obligations is eight obligations. If the husband performs one of his obligations then he is entitled to  $\frac{1}{4} \times \frac{1}{2} = \frac{1}{8}$  of the joint property division where  $\frac{1}{2}$  is the original formula of division of joint property and  $\frac{1}{2} \times \frac{1}{4}$  is the scale of the joint property division in terms of the rights and obligations carried out by the husband. Whereas if the wife does her duty, then she is entitled to get  $\frac{1}{2} \times \frac{2}{4} = \frac{1}{4}$  where  $\frac{1}{2}$  is the formula from which the joint property division and  $\frac{2}{4}$  is the scale of the joint property division in terms of the rights and obligations carried out by the wife  $\frac{2}{4}$ .

To calculate the division of the joint property the author can do it using the following simple mathematical formula:

General formula:

$$H_s = P_{ss} \times H_b$$

$$H_i = P_{si} \times H_b$$

$H_s$  = husband's property (*harta suami*)

$H_i$  = wife's property (*harta istri*)

$P_{ss}$  = comparison of the scale of property obtained by the husband

$P_{si}$  = comparison of the scale of property obtained by the wife

$H_b$  = joint property

## Reconstruction of the Joint Property Division Model for Wage-Earner Wives

Legal reconstruction is defined as a process of rebuilding or rearranging ideas or concepts about law. Each legal formulation must be interpreted according to its respective context.<sup>50</sup> Based on existing provisions, a divorced

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<sup>50</sup> Kiki Handoko Sembiring, Teguh Prasetyo, and Sri Endah Wahyuningsih, 'Reconstruction of Legal Protection Regulations for Teachers Who Commit Acts of Violence in an Educational Environment

husband and wife will get half of the joint assets when each performs their role in the household. This condition is a normal household condition, so the division in half cannot be applied in a household that experiences role inequality between husband and wife. Therefore, there is a need for reconstruction in the distribution of joint assets when gender inequality exists in the household. Ultimately, the one-half share of joint assets acquired can decrease and increase according to household contributions. The resulting reconstruction includes several models for dividing joint property based on the division of roles in the household. The following is a model of joint property division along with the phenomenon of division of roles in the household.

First, the division of the joint property by a one-half share ( $\frac{1}{2}$ ). For ex-husband and wife, with the following details: first working husband, housewife (normal case). The husband, the leader of the household, is responsible for guiding and protecting his wife, providing for the necessities of domestic life according to his capabilities. Moreover, he must ensure his wife receives religious education and opportunities to gain knowledge beneficial to both faith and the nation. Financially, in accordance with his income, he is obligated to cover basic needs like bread, kiswah, and shelter for his wife, as well as household expenses, medical costs, and education fees for children.

On the other hand, as a homemaker, the wife is expected to show both outward and inward devotion to her husband as justified by Islamic law. Additionally, she manages and tends to the household's daily needs to the best of her abilities. In certain circumstances, she might take on the additional responsibility of earning a living while not neglecting her duties as a homemaker, thereby contributing to the family's financial needs.

If the husband and wife have done all their obligations and one day both divorce by leaving the joint property in the amount of IDR. 150,000,000 then both get equal rights in the joint property division. Each will get a share  $\frac{1}{2}$  from the joint property with the following details:

$$H_s = H_i = \frac{H_b}{2}$$
$$H_s = \frac{1}{2} \times 150,000,000 = 75,000,000$$

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Based on the Value of Dignified Justice', *International Journal Reglement & Society (IJRS)* 4, no. 1 (2023): 47-53, <https://jurnal.bundamedia grup.co.id/index.php/ijrs/article/view/309>.

$$H_i = \frac{1}{2} \times 150,000,000 = 75,000,000$$

Secondly, the husband does not work but does household chores, and the wife works by leaving the household work (exchanging roles). If the division of roles in the previous household was in accordance with the roles listed in the KHI, there is also a household model by exchanging roles between husband and wife. This means that the husband performs the role of the wife in the household and the wife performs the role of the husband to work in fulfilling the needs of the household and leaves his role in the management of the household. Based on this phenomenon when the two separated and left a joint property in the amount of IDR.150,000,000, and it was proven in the trial that the husband did not work but replaced the wife's duty to take 'care of the household, while the wife was proven to leave her duties as a housewife and replace her husband in earning a living. From the above cases can be formulated the following solution:

The husband performs two of his duties and replaces one of the wife's duties, then his part is  $\frac{1}{8} + \frac{1}{8} + \frac{2}{8} = \frac{4}{8}$ . While the wife performs one of her obligations and replaces the husband's two obligations, then she gets a share  $\frac{2}{8} + \frac{1}{8} + \frac{1}{8} = \frac{4}{8}$ . From this formula, the husband gets  $\frac{4}{8}$  from the joint property division and the wife also gets  $\frac{4}{8}$  from the joint property division with the following settlement:

$$H_s = \frac{4H_b}{8}$$

$$H_i = \frac{4H_b}{8}$$

$$H_s = \frac{4}{8} \times 150,000,000 = 75,000,000$$

$$H_i = \frac{4}{8} \times 150,000,000 = 75,000,000$$

Third, the husband works, the wife works, and household work is done together. The division of roles in the household has recently begun to be equalized so that a husband is found working, his wife is also working, and household chores are done together. In this phenomenon, when the two separated and left behind joint property worth IDR.150,000,000 and in the trial it was proven that the husband carried out all his obligations and the wife also

carried out all his obligations. In addition, both help each other in carrying out obligations which means the husband assists the wife in taking care of household chores and the wife assists the husband in earning a living. Thus, the scale of the initial division of the joint property is  $\frac{1}{8}$  for a husband who performs one duty and  $\frac{2}{8}$  for the wife who performs one of her obligations is changed to  $\frac{1}{12}$  for a husband who performs one duty and  $\frac{2}{12}$  for wives who do one obligation because the husband gets an additional task, namely household work, while the wife gets an additional task, namely work.

When the husband does all his obligations plus doing household chores, then he gets the following section:  $\frac{1}{12} + \frac{1}{12} + \frac{1}{12} + \frac{1}{12} + \frac{2}{12} = \frac{6}{12}$ . Likewise, the wife who performs all her duties plus performs the husband's two obligations will get the following part:  $\frac{2}{12} + \frac{2}{12} + \frac{1}{12} + \frac{1}{12} = \frac{6}{12}$ . So, the husband gets  $\frac{6}{12}$  from the division of joint property while the wife gets  $\frac{6}{12}$  from the division of joint property, with the following calculation:

$$H_s = \frac{6H_b}{12}$$

$$H_i = \frac{6H_b}{12}$$

$$H_s = \frac{6}{12} \times 150,000,000 = 75,000,000$$

$$H_i = \frac{6}{12} \times 150,000,000 = 75,000,000$$

Based on several models of role division in the household above and the resolution of joint property cases can be presented in Table 3.

The established formula explicitly recognizes the role and position of the wife as equal to the husband in the household. A wife who acts as a housewife and the fulfillment of income is fully carried out by the husband. When the two divorce, the joint property is divided equally, it indicates that the role and responsibility of the wife in taking care of the interests of the household is as important as the husband's role in meeting the household's needs and expenses. Without good household management, a husband cannot carry out his obligation to earn a decent living and livelihood for all family members. This means that in a husband and wife relationship, a mutualism symbiosis or mutually beneficial relationship with each other has been established and no one feels burdened by that role.

Table 3  
Joint Property Formula

No.	Husband's Criteria	Wife's Criteria	Formula
1.	Carry out all obligations	Perform all its obligations	$H_s = H_i = \frac{H_b}{2}$
2.	Switch roles	Switch Roles	$H_s = \frac{4}{8}H_b$ $H_i = \frac{4}{8}H_b$
3.	Multiple Roles	Multiple Roles	$H_s = \frac{6}{12}H_b$ $H_i = \frac{6}{12}H_b$

The provisions also apply when husband and wife exchange or share roles in the household, as mentioned in the Qur'an Surah al-Baqarah [2]: 187, "... *hunna libāsun lakum wa antum libāsun lahunn ...* (they are clothes to you and you are clothes to them)." Both are created in pairs and complement each other, in the condition that exchanging roles or dividing roles is natural in a household, if both carry out their obligations as they should, then there is no different division.

A Javanese philosophy that is the belief of some Javanese people call their life partner *garwa* which stands for *sigarane nyawa* (half of his/her life or soulmate). The term *garwa* to one of these couples shows that their positions are equal and balanced. Even this mention hints that a husband is "dependent" on his wife because it is part of his soul. Without a wife, the husband is nothing, and vice versa. The concept of *garwa* is not only understood to unite two hearts but more broadly can also be realized in determining obligations in the household so that the two can cooperate in carrying out their duties.

Thus, if both perform their respective obligations/roles optimally in fulfilling the needs of their household when a divorce occurs, the joint property can be divided with equal shares between the ex-husband and ex-wife. Thus, neither party will feel disadvantaged by the other party.

Second, division of the joint property by parts other than one-half ( $\frac{1}{2}$ ). For ex-husband and wife, with the following details: First, working husband, working wife, and housewife (multiple roles). In this scenario, the husband fulfills his role as the head of the family while the wife, in addition to her responsibilities as a homemaker, takes on an additional role by working to financially support both her personal needs and those of the family. This dual role showcases her commitment to assisting her husband in fulfilling the household's financial requirements without neglecting her duties as a homemaker.

From the above phenomenon, it can be taken an overview of the joint property division, for example, the resulting joint property is as large as IDR. 150,000,000. For example, in court, the husband performs all his obligations and so does the wife carry out all obligations, but in addition to carrying out all these obligations, the wife also works. Hence the scale of the original joint property division. For example, in court, the husband performs all his obligations, and the wife carries out all obligations, but the wife also works in addition to carrying out all these obligations. Hence, the scale of the original joint property division is  $\frac{1}{8}$  for a husband performing one of his obligations and  $\frac{2}{8}$  for wives who carry out one of their obligations the author replace with  $\frac{1}{10}$  for a husband performing one of his obligations and  $\frac{2}{10}$  for wives who carry out one of their obligations because the wife also works as an additional task, namely work.

When the husband performs all his obligations then he gets a share:  $\frac{1}{10} + \frac{1}{10} + \frac{1}{10} + \frac{1}{10} = \frac{4}{10}$ . The wife performs all her obligations plus performs the husband's two obligations, namely working and meeting the needs of the household to get a share:  $\frac{2}{10} + \frac{2}{10} + \frac{2}{10} = \frac{6}{10}$ . So, the husband gets  $\frac{4}{10}$  from the joint property division while the wife gets  $\frac{6}{10}$  from the joint property division with the following calculation:

$$H_s = \frac{4H_b}{10}$$

$$H_i = \frac{6H_b}{10}$$

$$H_s = \frac{4}{10} \times 150,000,000 = 60,000,000$$

$$H_i = \frac{6}{10} \times 150,000,000 = 90,000,000$$



Secondly, husband does not work, the wife works and the household is done together. Another phenomenon is that couples are found in the household frame where the husband does not work, but the wife works and meets the household's needs while the household management is carried out together. This division of roles in the household is very burdensome for a wife, so the wife will have more share when there is a divorce between the two. For example, the resulting joint property is IDR.150,000,000. The trial proved that the husband did not work, while the wife replaced the husband in work while the household duties were done together. Because it is done together, homework has a scale of  $\frac{2}{8}$  divided into two so that the husband gets a share  $\frac{1}{8}$ , and the wife gets a share  $\frac{1}{8}$ .

Based on the above phenomenon, it can be formulated the part of the husband who performs only two of his obligations and helps one wife's obligation whose value is  $\frac{1}{8}$  that is  $\frac{1}{8} + \frac{1}{8} + \frac{1}{8} = \frac{3}{8}$ . While the wife who performs all her obligations and replaces the husband's obligations in work then gets a share  $\frac{2}{8} + \frac{2}{8} + \frac{1}{8} = \frac{5}{8}$ . From this formula, the husband gets  $\frac{3}{8}$  from the division of joint property and the wife gets  $\frac{5}{8}$  from the division of joint property to the settlement of joint property as follows:

$$H_s = \frac{3}{8} \times 150,000,000 = 56,250,000$$

$$H_i = \frac{5}{8} \times 150,000,000 = 93,750,000$$

Third, the husband works, the wife works, and the household work is done by the maid (paid by husband). Later, there are often households that hire maids to take care of household chores because the husband as the head of the household does his obligation to work. On the other hand, the wife also works and does not do household chores because the maid has done it, but the husband bears the maid's salary. If so, when there is a divorce between the two, in the settlement of joint property, the husband will get more shares than the wife.

For example, the joint property generated amounted to IDR.150,000,000. and in the trial it was proven that the husband worked, the wife also worked while the household duties were done by the maid and the one who paid her was the husband. Thus the scale of the initial division of the joint property is  $\frac{1}{8}$

for a husband who performs one duty and  $\frac{2}{8}$  for wives who do one of their obligations, the author changes them to  $\frac{1}{10}$  for a husband who performs one duty and  $\frac{2}{10}$  for a wife who does one of her obligations because the husband hires a maid to replace the wife in taking care of the household.

In detail, the husband who performs all his obligations plus hires a maid to replace his wife in taking care of the household will get the following part:  $\frac{1}{10} + \frac{1}{10} + \frac{1}{10} + \frac{1}{10} + \frac{2}{10} = \frac{6}{10}$ , while the wife who does one of her obligations and helps the husband in work will get a share  $\frac{2}{10} + \frac{2}{10} = \frac{4}{10}$ . So, the husband gets  $\frac{6}{10}$  from the joint property division while the wife gets  $\frac{4}{10}$  from the division of the joint property with the following calculations:

$$H_s = \frac{6H_b}{10}$$

$$H_i = \frac{4H_b}{10}$$

$$H_s = \frac{6}{10} \times 150,000,000 = 90,000,000$$

$$H_i = \frac{4}{10} \times 150,000,000 = 60,000,000$$

The division of roles in the household above related to the settlement of joint property cases can be presented in Table 4.

Explicitly the household model described shows roles and responsibilities that are not carried out properly by one husband or wife which has implications for reducing the rights or shares of the husband or wife to joint property. In the household, each husband and wife must carry out their duties, roles, and responsibilities as well as possible. Therefore, existing regulations are made to strengthen the division of duties, roles, and responsibilities of each so that neglect of the matters in question will lead to legal consequences for those concerned.

Table 4  
Formula of Join Property Division

No.	Husband's Criteria	Wife's Criteria	Formula
1.	Carry out all obligations	Perform all obligations and participate in work (multiple roles)	$H_s = \frac{4H_b}{10}$ $H_i = \frac{6H_b}{10}$
2.	Just doing housework	Perform all obligations and participate in work (multiple role)	$H_s = \frac{3H_b}{8}$ $H_i = \frac{5H_b}{8}$
3.	Carrying out all obligations and household work expenses are borne by the husband (maid)	Get to work	$H_s = \frac{6H_b}{10}$ $H_i = \frac{4H_b}{10}$

## Conclusion

Based on the discussion above, it can be concluded that the joint property division for women breadwinners using jurimetrics concerning the rights and obligations of husband and wife in *Kompilasi Hukum Islam* (KHI) produces several models of division which are divided into two groups, namely, first, the joint property division with one-half share ( $1/2$ ) for ex-husband and wife. This provision applies when each performs obligations with equal portions. Second, the division of the joint property with the share of one is greater. This provision applies when one of the husband and wife performs more obligations so that they are entitled to get more shares as well.

The results of this study can make it easier for judges of religious courts in Indonesia to calculate and decide cases of joint property, especially in the condition of women breadwinners. In addition, future researchers, especially information technology (IT) experts, can also use this paper as reference material for making applications to support judges in deciding cases of joint

property division in Religious Courts. Thus, the plaintiff and defendant in the case of joint property division will get a sense of justice because the division has been adjusted to the conditions and contributions of each party.[a]

### **Author Contribution Statement**

The author confirms sole responsibility for the following: study conception and design, data collection, analysis and interpretation of results, and manuscript preparation.

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