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UNRAVELING PHILOSOPHICAL JUSTICE IN JUDGES' DECISIONS ON MARITAL PROPERTY DISPUTES: A JURIMETRIC ANALYSIS

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Abstract: This study is aimed at analyzing the Jurimetrics of the decision Number: 0420/Pdt.G/2017/PA.Mt dealing with marital property disputes suspected of failing to fulfill the sense of justice of the disputing couple. The method used in this study is qualitative content analysis, analyzing documents and texts of court judge decisions. Qualitative content analysis identifies, processes, and describes the judge's decision, then relates it to society's social and cultural context. The analysis of this study revealed that the judge's decision was only guided by the Compilation of Islamic Law article 97; if a husband and wife divorced, each of them would get half of the marital property, without considering the wife's position as the main breadwinner and the portion of duties and obligations in the family. Jurimetric analysis of the decision is considered to create a sense of justice. In the context of distributing marital property in Indonesia, Jurimetrics can assist judges in determining the value of the share of joint property for each husband and wife after an equitable divorce.

Keywords: marital property; Jurimetrics; justice

Abstrak. Penelitian ini bertujuan untuk menganalisis jurimetri terhadap putusan Nomor: 0420/Pdt.G/2017/PA.Mt tentang sengketa harta bersama yang diduga belum memenuhi rasa keadilan dari para pihak yang bersengketa. Metode yang digunakan dalam penelitian ini adalah metode analisis isi kualitatif, yakni menganalisis dokumen dan teks putusan hakim pengadilan. Analisis isi kualitatif digunakan untuk mengidentifikasi, mengolah, dan menguraikan putusan hakim yang kemudian menghubungkannya dengan konteks sosial dan budaya masyarakat. Hasil analisis penelitian ini mengungkapkan bahwa putusan hakim hanya berpedoman pada Kompilasi Hukum Islam pasal 97, yakni jika pasangan suami istri bercerai, masing-masing akan mendapatkan seperdua dari harta bersama. Tanpa mempertimbangkan posisi istri sebagai pencari nafkah utama maupun porsi tugas dan kewajiban dalam keluarga. Analisis jurimetri terhadap putusan tersebut dinilai dapat mewujudkan rasa keadilan. Dalam konteks pembagian harta bersama di Indonesia, jurimetri dapat membantu hakim dalam menentukan nilai bagian harta bersama pada masing-masing suami dan istri setelah terjadi perceraian yang

berkeadilan.

Kata Kunci: harata bersama; jurimetri; keadilan

Introduction

The provisions on marital property ownership, half for the husband and half for the wife, will fulfil a sense of justice if they carry out their respective roles, duties and responsibilities in maintaining the integrity and maintaining family life. The consideration is that the husband or wife has the right to separate the marital property based on the role played by the husband or wife as partners who complement each other to foster family unity and sustainability.¹

Legal uniformity in the distribution of marital assets is a commitment from legal unification efforts to overcome conflicts that may arise between parties due to legal pluralism. However, the question arises: to what extent can the concept of sharing marital assets fulfil the sense of justice in heterogeneous Muslim families? It affects the decision on the distribution of marital assets; parties are still dissatisfied with the distribution in each half or half. Either because of domination and stereotype thinking that the husband has a higher position than the wife so that the wife should have fewer rights over joint property or the idea of who produces more joint property.

In Decision number: 0420/Pdt.G/2017/PA.Mt, each husband and wife gets half of the joint property. However, this is considered to be less than fulfilling the sense of justice that exists in society.² It is when viewed from

¹Etty Rochaeti, "ANALISIS YURIDIS TENTANG HARTA BERSAMA (GONO GINI) DALAM PERKAWINAN MENURUT PANDANGAN HUKUM ISLAM DAN HUKUM POSITIF," *Wawasan Yuridika* 28, no. 01 (2013): 650–61, <https://doi.org/10.25072/jwy.v28i1.61>; M. Djamil Latif, *Aneka Hukum Perceraian Di Indonesia* (Jakarta: Ghalia Indonesia, 1982); Jayusman Jayusman, "The Decision on Joint Properties in Bengkulu High Religious Court Jurisdiction," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 1 (June 30, 2021): 99–118, <https://doi.org/10.18326/ijtihad.v21i1.99-118>; Zuhri Imansyah, Erina Pane, and Iim Fahimah, "TINJAUAN MAQASID SYARIAH TERHADAP PERKARA HARTA BERSAMA DAN KONTRIBUSINYA DALAM PEMBARUAN HUKUM KELUARGA ISLAM DI INDONESIA (Studi Kasus di Wilayah Hukum Pengadilan Tinggi Agama Bengkulu)," *Ijtima'iyah* 14, *Jurnal Pengembangan Masyarakat Islam* 13, no. 1 (2020), <https://doi.org/10.24042/ijpmi.v13i1.6344>; Analiensyah Analiensyah and Rudanto Rudanto, "Perlawanan Eksekusi Pihak Ketiga Terhadap Perkara Harta Bersama (Analisis Putusan Mahkamah Syar'iyah Banda Aceh Nomor 0257/Pdt. G/2015/MS. Bna)," *Samaras* 15, *Jurnal Hukum Keluarga Dan Hukum Islam* 1, no. 2 (2017): 372–96, <https://doi.org/10.22373/sjkh.v1i2.2386>.

²Azmil Fauzi Fariska, "PERTIMBANGAN PUTUSAN HAKIM PERKARA HARTA BERSAMA NO. 0233/PDT. G/2018/PA. TBH DI PENGADILAN AGAMA TEMBILAHAN," *Jurnal Hukum Islam* 21, no. 1 (2021): 114–32, <https://doi.org/10.24014/jhi.v21i1.9549>; Mizaj Iskandar and Liza Agustina, "Penerapan Asas Peradilan Sederhana, Cepat Dan

the rights and obligations they carry in the family. In this case, the wife earns a living, even as the primary breadwinner.³ Efforts to realize the value of justice in the distribution of joint assets need to be carried out using the Jurimetric theory. The application of Jurimetric analysis in the distribution of marital assets can be carried out by determining the determining rights factors, then quantifying each obligation into a particular value weight, and finally measuring the share of joint investments with a balance sheet.

The research related to marital property disputes, for instance, Siddiki's study entitled *Prinsip Keadilan Dalam Pembagian Harta Bersama Akibat Perceraian Pada Pengadilan Agama* (Principles of Justice in the Distribution of Marital Assets Due to Divorce in the Religious Courts), concluded that determining the qualifications of joint assets should be based on the income earned by the husband. In contrast, the revenue the wife earns should not be included in the category of communal property. Then regarding the distribution of shared assets, married couples with offspring divide the joint assets among the children. If you don't have biological children but have adopted children, the rights should be transferred to the adopted children.⁴ In addition, Muhyidin's research entitled *Rekonstruksi Kedudukan Harta Pencaharian Isteri dalam Konsep Harta Bersama di Indonesia Dari Perspektif Hukum Islam* (Reconstruction of the Position of the Wife's Livelihood Assets in the Concept of Marital Belonging in Indonesia from the Perspective of Islamic Law). The focus of this study on national regulations includes the compilation of Islamic law of assets acquired in marriage to become joint property so that in the event of a divorce or death, each one gets half a share. Ironically, in the reality of living in society, many wives work to earn a living, so it is interesting to study the different proportions in the distribution of assets;

Biaya Ringan Dalam Kumulasi Cerai Gugat Dan Harta Bersama Di Mahkamah Syar'iyah Banda Aceh," *SAMARAH: Jurnal Hukum Keluarga Dan Hukum Islam* 3, no. 1 (2019): 241–65.

³Lailatul Arofah, "Konstruksi Pembagian Beban Pembuktian Dalam Penyelesaian Sengketa Harta Bersama Di Pengadilan Agama" (PhD Thesis, Universitas Brawijaya, 2014); 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 (December 5, 2019): 506, <https://doi.org/10.29303/ius.v7i3.665>; 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 (December 25, 2021): 867, <https://doi.org/10.22373/sjhk.v5i2.9039>; Zikri Darussamin, "Hak Harta Bersama bagi Istri yang Bekerja Perspektif Maqāṣid al-Asy-Syarī'ah," *Asy-Syarī'ah: Jurnal Ilmu Syariah dan Hukum* 51, no. 2 (2017), <https://doi.org/10.14421/ajish.v51i2.292>.

⁴Siddiki, *Prinsip Keadilan Dalam Pembagian Harta Bersama Akibat Perceraian Pada Pengadilan Agama* (Universitas 17 Agustus 1945 Surabaya: Ph.D Thesis, 2017).

for instance, a divorce occurs.⁵

Zahrowati's research entitled *Nilai Keadilan Dalam Putusan Pembagian Harta Bersama Pada Peradilan Agama* (The Value of Justice in Decisions on the Distribution of Joint Assets in the Religious Courts) concluded that the value of justice to be achieved and realized in the decision to distribute joint assets is justice oriented towards legal, moral, and social justice, which has yet to be optimally actualized. In deciding matters regarding the distribution of marital assets, Religious Courts tend to prioritize the principle of legal justice.⁶ Arso examines different things regarding *Hak Atas Kekayaan Intelektual Sebagai Harta Bersama (HAKI) dalam Perspektif Undang-Undang Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam*: Intellectual Property Rights as Common Property in the Perspective of Law Number 1 of 1974 and the Compilation of Islamic Law. Laws and regulations on HAKI do not provide firmness and explanation regarding the status of IPR as joint property of husband and wife. Still, through the theory of benefit and a sense of justice and referring to UUP and KHI, unconstitutional HAKI can be categorized as joint property and is still relevant to the division of rights of each husband–wife in equal shares.⁷

Lailatul Arofah reported in her research entitled *Konstruksi Pembagian Beban Pembuktian dalam Penyelesaian Sengketa Harta Bersama di Peradilan Agama*—Construction of Sharing the Burden of Proof in Settlement of Disputes on Marital Assets in the Religious Courts—that the arrangement for sharing the burden of proof in resolving marital property disputes in the Religious Courts so far, referring to the provisions of civil procedural law that apply to General Courts, is not following a sense of justice because joint assets are part of a marriage dispute based on Shari'a Islam has different specifications from civil conflicts in the economic field which are regulated in Civil Law.⁸ Anis Mohamad found that the arrangement of assets acquired according to marriage law was inconsistent with joint purchases registered in one

⁵ Muhyidin Muhyidin, "REKONSTRUKSI KEDUDUKAN HARTA PENCAHARIAN ISTERI DALAM KONSEP HARTA BERSAMA DI INDONESIA DARI PERSPEKTIF HUKUM ISLAM" (PhD Thesis, Fakultas Hukum UNISSULA, 2017).

⁶ Zahrowati, *RINGKASAN DISERTASI NILAI KEADILAN DALAM PUTUSAN PEMBAGIAN HARTA BERSAMA PADA PERADILAN AGAMA* (Makasar: Ph.D Thesis Universitas Hasanudin, 2017).

⁷ Arso Arso, "Hak Atas Kekayaan Intelektual (HAKI) Sebagai Harta Bersama Dalam Perspektif Undang-Undang Nomor 1 Tahun 1974 Dan Kompilasi Hukum Islam" (PhD Thesis, Pascasarjana UIN-SU, 2016).

⁸ Arofah, "Konstruksi Pembagian Beban Pembuktian Dalam Penyelesaian Sengketa Harta Bersama Di Peradilan Agama"; Linda Firdawaty, "Filosofi Pembagian Harta Bersama," *ASAS* 8, no. 1 (2016).

person's name.⁹ Meanwhile, Farid Kristata Putra and Elimartati's research found that the primary breadwinner's wife understands common property. His actions did not contradict the Compilation of Islamic Law and Marriage Laws.¹⁰

The following exciting study is the findings of Menuk Sukma Prabawati entitled *Pembagian Harta Bersama Akibat Perceraian Bagi Istri yang Bekerja (Studi Analisis Putusan Pengadilan Agama Banjarnegara Nomor: 1372/ Pdt.G/2011/PA. Ba)*: Distribution of Marital Assets as a Result of Divorce for Working Wives (Analytic Study of Decisions of the Banjarnegara Religious Court Number: 1372/Pdt.G/2011/PA.Ba). In this study, it was revealed that judges had thought more advance in deciding a case. He ruled out the applicable provisions, but in line with the principles of balance, equal rights and non-discrimination, Mamat Ruhimat's research entitled "Shirkah Theory in the Distribution of Joint Assets for Career Wives Based on Law Number 1 of 1974 and the Compilation of Islamic Law and its Practice At the Religious Court. The findings of this study reveal that Islamic law does not recognize rules for mixing between the husband's and wife's assets due to marriage. Such a thing only exists in a positive direction. Joint ownership in Islamic law is regulated in syirkah. All of the studies mentioned above have not explicitly discussed the judge's decision; the focus is on how is the Jurimetric analysis in the decision 0420/Pdt.G/2017/PA.Mt?

Jurimetrics is a combination of two syllables; jurisprudence which means law, and metrics which means arithmetic or metrics. The word metrics in jurimetrics is identical to its use in various disciplines such as econometrics, psychometrics, and sociometrics. Contextually, the word metrics refers to the scientific method of analyzing a problem.

Jurimetrics in the Meriam Webster Dictionary is defined as applying the scientific method to legal problems. Another definition is the study of law and science. This definition implies that jurimetry has a scientific mechanism in the form of empirical testing (empirical examining) of various topics or subjects in law that are interconnected to obtain valid and objective conclusions. Lee Loevinger, who sparked the idea of using jurimetry in legal inquiry, defines jurimetry is *the term jurimetrics has been*

⁹Anis Mohamad, "Pengaturan Harta Yang Diperoleh Dalam Undang-Undang Perkawinan", Disertasi: Program Doktor Ilmu Hukum Fakultas Hukum Universitas 17 Agustus 1945 Surabaya, 2014

¹⁰Farid Kristata Putra and Elimartati Elimartati, "PERSEPSI MASYARAKAT DAN PEMANFAATAN TERHADAP HARTA BERSAMA BAGI ISTRI YANG BEKERJA TINJAUAN HUKUM KELUARGA ISLAM (Studi Jorong Padang Kecamatan Mungka)", *JISRAH: Jurnal Integrasi Ilmu Syariah* 1, no. 1 (January 7, 2021): 1, <https://doi.org/10.31958/jisrah.v1i1.2699>.

*suggested, and is gaining some use as a designation for the activities involving scientific investigation of legal problems.*¹¹ As the originator of jurimetry, Lee Loevinger realized that it is pretty challenging to formulate a complete and precise definition regarding the scope of jurimetry.¹²

Ronny Hanitijo Soemitro argued that as a model in legal studies, the scope and mechanism of jurimetrics analysis are centered on three main issues: (1) storing and retrieving legal data electronically, (2) electronic analysis of legal documents in handling cases, and (3) implementation of quantitative methods in the performance and legal decision-making analysis. In this context of the application, jurimetrics uses statistical analysis instruments, simple mathematical models, and simulations.¹³ Quantitative methods in jurimetrics are only sometimes related to quantitative data. However, specific qualitative data can be used in practice, such as on specific legal categories or observable components of particular properties.¹⁴

Method

This type of study is qualitative-normative research aimed only at written regulations or other legal materials. The object of research on marital property case decisions is the Religious Courts. This research approach uses the case approach in normative legal analysis in which researchers try to build legal arguments from the perspective of concrete cases in the field.¹⁵ The cases studied are closely related to legal events in the area. The main thing studied in each of these decisions is the judge's consideration or ratio decidendi to decide so that it can be used as an argument in solving the legal issues at hand.¹⁶ Meanwhile, the primary data of this research is decision number: 0420/Pdt.G/2017/PA.Mt.

The analysis used is content analysis because what is observed is

¹¹ M. Natsir Asnawi, *Pengantar Jurimetri Dan Penerapannya Dalam Penyelesaian Perkara Perdata: Pendekatan Kuantitatif Dan Kualitatif Terhadap Hukum* (Jakarta: Prenada Media, 2020), 6.

¹² Giuseppe Contissa, Francesco Godano, and Giovanni Sartor, "Computation, Cybernetics and the Law at the Origins of Legal Informatics," in *Italian Philosophy of Technology: Socio-Cultural, Legal, Scientific and Aesthetic Perspectives on Technology*, ed. Simona Chiavetta and Viola Schiaffonati (Cham: Springer International Publishing, 2021), 91–110, https://doi.org/10.1007/978-3-030-54522-2_7.

¹³ Ronny Hanitijo, *Metodologi Penelitian Hukum Dan Jurimetri* (Jakarta: Ghalia Indonesia, 1990), 135.

¹⁴ Asnawi, *Pengantar Jurimetri Dan Penerapannya Dalam Penyelesaian Perkara Perdata*, 13.

¹⁵ Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif*, vol. 57 (Malang: Bayu Media Publisng, 2006), 97.

¹⁶ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2013), 93.

the result of the decisions of religious court judges. Following Krippendorff's opinion¹⁷, this study examines written documents containing information to be analysed using case analysis and qualitative research methods. Content analysis is a research tool used to determine the presence of certain words or concepts within a text or set of texts. Text can be broadly defined as books, essays, interviews, discussions, newspaper headlines and articles, historical documents, speeches, conversations, advertisements, theatres, and judgment documents. This analysis employs research techniques to make conclusions that can be replicated by interpreting and coding textual material.¹⁸

The content analysis method framework begins with determining the sample to be studied. The next step is the unit of analysis; the research units are the minor components of the text where the events and characterization of the variables are examined. Next is category and reliability; the core of the content analysis activity is the category system; each unit of analysis must be coded or, in other words, allocated to one or more categories.

Decision on Marital Assets of Number 0420/Pdt.G/2017/PA.Mt

This study focuses on the Plaintiff and the defendant, a married couple who married in 2001. They divorced according to the Deed of Divorce dated May 24, 2016. The Plaintiff filed a lawsuit registered on March 8, 2017, and decided by the PA on December 19, 2017. After the trial, the judge's decision was issued:

- a. granted the plaintiff's claim in part;
- b. declare the legal and valuable marital confiscation that the bailiff of PA Metro has carried out;
- c. determine the property that consists of:
 - (1) A plot of land with an area of 600 m² was purchased in July 2005 from Sarbini through Marji; now, a permanent house has been built on this land. The house is located in Labuhan Ratu VIII Village, Labuhan Ratu District, East Lampung Regency, which has a certificate of ownership number: 163 BPN Lampung Timur An. Hadi Prayitno. The position of the land is to the north with Marji's land, to the west with Sugeng's land, to the east with Marji's land, and the south with roads. The Certificate of Property Rights

¹⁷ Klaus Krippendorff, *The Content Analysis Reader* (Singapore: Sage, 2009), 22.

¹⁸ Naorem Binita Devi, "Understanding the Qualitative and Quantitative Methods in the Context of Content Analysis," in *Qualitative and Quantitative Methods in Libraries, International Conference Organised by International Federation of Library Associations*, 2009, 26–29.

Number: 163 BPN Lampung Timur and it is owned by the Plaintiff recently;

- (2) A plot of land with an area of 8,540 m² purchased in September 2005 from Jazuli is located in the village of Rain Mas, the village of Labuhan Ratu VIII, sub-district of Labuhan Ratu, East Lampung Regency with Certificate of Ownership Number: 102 BPN Lampung Timur in the name of Hadi Prayitno (defendant). The land is located to the north by Riswan's land, east by Yanto's land, south by Jazuli's land, and west by road. The Certificate of Property Rights Number: 102 BPN Lampung Timur. It is owned by the Plaintiff right now;
- (3) A plot of land with an area of 15,900 m² purchased in October 2007 from Hasan Bintang is located in Pakuan Aji Village, Sukadana District, Central Lampung Regency with a Deed of Grant Number: 593/PA/VI/1996 in the name of Guruh Putra Aji. This land is located to the north by the land of Guruh Putra Aji, to the east by the land of Seman Bakar, to the south by the land of Surdi, and to the west by the land of Typhoon Tornado Aji. The land has a Deed of Grant number 593/PA/VI/1996, and the Plaintiff now owns it.
- (4) A plot of land with an area of 12,500 m² which was purchased in March 2008 from Hasan Bintang, located in Pakuan Aji Village, Sukadana District, Central Lampung Regency, with the Sale Purchase Deed Number: 185/AJB/01/2008, belonging to Hadi Prayitno (Defendant). The land is located north by Hadi Prayitno's land, east by Reni's land, south by Romli's, and west by Village Road. The land has a sale and purchase deed number: 185/AJB/01/2008 and is currently owned by the Plaintiff.
- (5) A plot of land with an area of 10,000 m² which was purchased in July 2013 from Mulyadi/Basli, is located in Pakuan Aji village, Sukadana sub-district, East Lampung district, which has the Letter of Sale and Purchase Deed Number: 4493/PK.Ai/2013 in the name of Hadi Prayitno (Defendant). This land is located to the north by Tukiman land, to the east by Herwan land, to the south by Makruf Land, and the west by Muhadi. This land has a sale and purchase deed number 4493/PK.Aji/2013, the land is currently owned by the Plaintiff.
- (6) A plot of land with an area of 2,500 m² purchased in January 2015 from Mulyadi is located in Pakuan Aji Village, Sukadana District, East Lampung Regency. It is bordered on the north by Farm Road, on the east by Musamid land, on the south by Hadi Prayitno Land,

- and on the west by Hadi Prayitno land. The Defendant owns the land certificate recently;
- (7) A 2,500 m² plot of land purchased in October 2015 from Legiran is located in Subing Putra Cihedeung Talangsari III Hamlet, Raja Basa Lama Village, Labuhan Ratu District, East Lampung Regency with boundaries: north and south with Legiran's land, east with Rawa, to the west with Nanang's land. The Defendant now owns the land certificate;
 - (8) 1 unit store measuring 3.5 x 7 m² located in Pasar Gunung Terang, Labuhan Ratu District, East Lampung Regency, which was purchased in September 2012 with Letter Number 510/20/Ket/LR/2012 and the letter is owned by the Plaintiff;
 - (9) There is one unit shop measuring 3.5 x 7 m located in Pasar Gunung Terang, Labuhan Ratu District, East Lampung Regency, purchased in July 2015, and the Defendant currently owns the shop certificate.
 - (10) One unit of white Avanza, police number: BE 2438 NG, in the name of Hadi Prayitno (Defendant) purchased in December 2014, and Defendant owns it.
 - (11) There was money from selling one unit of red Honda Beat motorbike, police number BE 3090 PK, which Defendant sold around April 2014 in Rp. 10,000,000.00, which was shared as marital property between Plaintiff and Defendant;
- d. to punish and order the plaintiff and the defendant to divide the joint assets equally and equally in value as stated in decision number three of this decision. If it cannot be done naturally, the marital property will be auctioned in public;
 - e. rejecting the plaintiff's claim; and
 - f. ordered the plaintiff to pay the costs of this case in Rp. 7,567,000.00 (seven million five hundred sixty-seven thousand rupiahs).

Justice Consideration on Judge Decisions According to Jurimetric Analysis

In the case being analyzed in this study, it is known that the panel of judges handed down the confiscation of marital assets. Still, in the confiscation procedure, three purchases and a sum of money in savings could not be confiscated because they had been transferred. Meanwhile, the property, like a car, cannot be moved because it has been transferred to another person; the judge's decision must still be implemented; that is,

the property that has been decided as marital property must still be divided in half even though it is no longer there because for the sake of realizing a sense of justice that has been punished based on the judge's decision in court.

During the trial, the defendant admitted that property in marriage was more of an asset that the plaintiff obtained when he was an outside worker. Meanwhile, the defendant had sold it for his own needs. In this case, the panel of judges believes that the joint property must still be divided equally even though the marital property no longer exists. The defendant is obliged to pay the amount of the value of the marital property because it is a debt that must be borne.

The basis for material legal considerations in case number: 0420/Pdt.G/2017/PA.Mt is (1) An-Nisa: 32, (2) Articles 35 and 37 of Law number 1 of 1974 concerning marriage, and (3) article 97 of the Compilation of Islamic Law. All decisions are granted. Part of the lawsuit filed by the plaintiff, namely the marital property granted, was then divided in half. The judge's decision regarding the marital property is to "punish the plaintiff and the defendant to divide the joint property into two equal parts with the provision that half of the share is for the plaintiff and half is for the defendant."

In the object of this research, case number 0420/Pdt.G/2017/PA.Mt, the plaintiff stated that the existing assets came from the plaintiff's hard work as a migrant worker, and the defendant also acknowledged this. The defendant had sold the joint assets for his interests, but in their decision, the panel of judges believed that the joint assets were still divided equally and the value of the joint assets was equal.

In this study, researchers tried to simulate case number: 0420/Pdt.G/2017/PA.Mt, which differs from the general norm, namely fifty%: fifty%. In the sitting case, the plaintiff stated that the existing assets came from the plaintiff's hard work as a migrant worker, and the Defendant also acknowledged this. Defendant has sold the joint property to finance himself. The simulation mechanism for the application of the jurimetric analysis can be put forward by (1) determining the determinants of rights, namely the implementation of each obligation during the marriage period by the provisions of the syara' and legislation, and (2) calculating each obligation into a specific value weight.

At this stage, the researcher determines the weight of the value of each item of the couple's obligations with a checklist as follows.

Table 1
Husband's Obligations

The obligation	Cheklis
protecting his wife and children	X
leading his wife and children	✓
providing for his wife and children	X
providing a living home for his wife and children	X
obtaining religious education for the family	X

Tabel 2
Wife's Obligation

The Obligation	Cheklis
devoted to husband physically and mentally according to what Syara justifies.	✓
managing household affairs as well as possible (birth services to husband and children)	X
protecting herself from actions in the social environment that cause slander.	✓
maintaining property acquired during the marriage	✓
Unaccepted guests of the opposite sex without the husband's permission.	✓

After requesting this checklist, scaling is carried out with the weighted value obtained by multiplying each factor by the standard part that belongs to the husband and wife. The value of each factor is determined according to the number of existing liability items. Because the items of obligation include five things, each husband's obligation is worth $1/5$, multiplied by $1/2$ of the general share of the joint property. Since the wife's liability items are worth $1/5$, the result is multiplied by $1/2$ of the general share of the joint property. The scaling can be seen in the following matrix:

Table 3
Scaling Husband's obligation

Husband's obligation	Scoring item
protecting his wife and children	$1/5 \times 1/2 = 1/10$
leading his wife and children	$1/5 \times 1/2 = 1/10$
providing for his wife and children	$1/5 \times 1/2 = 1/10$
providing a living home for his wife and children	$1/5 \times 1/2 = 1/10$
obtaining religious education for the family	$1/5 \times 1/2 = 1/10$

Table 4
Scaling wife's obligation

Wife's obligation	Scoring item
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devoted to husband physically and mentally according to what Syara justifies.	$1/5 \times 1/2 = 1/10$
managing household affairs as well as possible (birth services to husband and children)	$1/5 \times 1/2 = 1/10$
protecting herself from actions in the social environment that cause slander.	$1/5 \times 1/2 = 1/10$
maintaining property acquired during the marriage	$1/5 \times 1/2 = 1/10$
Unaccepted guests of the opposite sex without the husband's permission.	$1/5 \times 1/2 = 1/10$

Based on this scaling, it can be concluded that the value or share of marital property for husband and wife is $5/10$ or $1/2$ part. This section is then tested using a balance sheet based on the facts revealed at trial. This determination using a balance sheet is flexible and accommodative because it can easily be implemented in various configurations of joint property cases. One positive thing from the application of this model is its consistency in ensuring the realization of the distribution of rights and obligations of husband and wife to the share of marital property.

The next step is to determine the value of the shared assets using the balance sheet. The simple illustration is that each liability item is placed entirely on the balance sheet. Against the facts proven at trial, the judge assessed what obligations were carried out in good faith by the husband and wife. If, for example, it is proven that the husband does not provide for his wife and children so that the wife then works to earn a living and can buy a house and meet their daily needs, the husband has neglected his two primary obligations, namely providing a living and providing a place to live. Thus, the weight of the two obligations of $4/10$ goes to the ex-wife, so the total weight for the ex-wife is $4/10 + 4/10 = 8/10$ part. Meanwhile, the weight of the husband's marital property after deducting the $4/10$ earlier is $1/10$ plus the ex-wife's obligation of $1/10$ to go to the ex-husband so that the husband's share is $2/10$.

The next step is to determine the value of the shared assets using the balance sheet. The simple illustration is that each liability item is placed entirely on the balance sheet. Against the facts proven at trial, the judge evaluates what obligations the husband and wife have carried out in good faith. In determining the share of joint assets, if the legal norms governing the legal relationship between husband and wife in marriage are

understood again, the law requires equality and decency in the relationship between husband and wife. Equality includes equality of rights and obligations in the household. Meanwhile, decency concerning how each fosters a sense of mutual love, mutual understanding, and mutual support for one another in carrying out duties and responsibilities towards the family.¹⁹

Articles 30 and 31 of Law Number 1 of 1974 concerning Marriage explicitly emphasize the equal position of husband and wife. It is emphasized in Article 30 that husband and wife bear a noble obligation to uphold the household, which is the basis of the structure of society. Then Article 31 states that (1) the rights and position of the wife are in balance with the husband's position in household life and social life together in society; (2) each party has the right to take legal action; and (3) the husband is the head of the household, and the wife is the housewife.

The relationship between husband and wife in marriage is emphasized in this norm, which is balanced and carried out according to decency. In constructing the relationship between husband and wife, each has a proportional obligation. Here, the good faith of the husband and wife is to carry out these duties and responsibilities. It is only invalidated if factual circumstances allow or become justification grounds, such as a person experiencing a physical disability that causes him to be unable to carry out his usual activities.²⁰

The formulation of the distribution of joint assets in a just dispute resolution is as follows:

- (1) divide the marital property into two equal parts, half for the ex-wife and half for the ex-husband, following the general norms which form the basis of legal considerations such as Article 97 of the Compilation of Islamic Law, and
- (2) divide the marital property into two parts, but different sizes. The size of the share of husband and wife depends on the contribution of each in producing assets or specific circumstances, such as the basis for applying jurisprudence in determining the share of joint assets.

In determining whether certain circumstances may affect the determination of the distribution of marital property, the consideration of

¹⁹ Departemen Agama, *Proyek Pembinaan Prasarana Dan Sarana Perguruan Tinggi Agama, Ilmu Fiqh*, vol. 2 (Jakarta: Direktorat Jenderal Pembinaan Kelembagaan Agama Islam Departemen Agama, 1984), 62.

²⁰ Ibnu Elmi As. Pelu and Ahmad Dakhoir, "Marital Property within the Marriage Law: A Debate on Legal Position and Actual Applications," *Al-Jami'ah: Journal of Islamic Studies* 9, no. 2 (November 11, 2021): 287-316, <https://doi.org/10.14421/ajis.2021.592.287-316>.

the Supreme Court in Decision Number 266 K/AG/2010 dated 12 July 2010 needs to be reconsidered, namely "*That based on evidence and facts in court it turns out that the husband does not provide a living from the results of his work and all joint assets are obtained by the wife from the proceeds of his monkey work, so for the sake of a sense of justice the plaintiff deserves to obtain joint assets as much as stipulated in the verdict*".

Two facts identified from these considerations later became the basis for the Supreme Court in determining the share of the marital property of the plaintiff (ex-wife) $\frac{3}{4}$ and the defendant (ex-husband) $\frac{1}{4}$. These facts can be qualified as follows:

1. First Fact: Unresponsibility

A husband has responsibilities as regulated in the law. The husband's obligation as the most important head of the household is to provide a living for his wife in particular and all members of the family in general. The obligations of a husband are emphasized in Article 34, paragraph 1 of the Marriage Law: The husband is obliged to protect his wife and provide everything necessary for household life according to his means of life. Meanwhile, the husband's obligations are emphasized in more detail and include matters as stated in KHI Article 80 as follows:

- a. The husband is the guide for his wife and household. However, regarding matters of household affairs that are important to be decided by the husband and wife together;
- b. The husband is obliged to protect his wife and provide everything necessary for household life according to his means;
- c. The husband is obliged to provide religious education to his wife and provide opportunities to learn knowledge that is beneficial to religion, homeland, and nation;
- d. According to his income, the husband bears:
 - 1) livelihood, clothing, and residence for the wife;
 - 2) household expenses, care costs, and medical expenses for wife and children; and
 - 3) education costs for children;
- e. The husband's obligation to his wife, as referred to in paragraph (4) letters a and b above, comes into force after the wife's perfect appearance;
- f. The wife can free her husband from the obligation towards herself as referred to in paragraph (4) of letter a and b;
- g. The husband's obligations, as referred to in paragraph (5), fall if the wife is a cuckold.

Meanwhile, the wife, as the person in charge of household affairs, has several obligations/responsibilities that are regulated in Islamic law and legislation. In the provisions of Islamic law, the wife's obligations cover at least three cases, namely:

- a. filial piety to husband inside and outside, which is justified by Islamic law;
- b. able to look after themselves and their husband's property, maintaining household harmony, keeping things in the house, and keeping household secrets. The wife's obligation is emphasized in the word of Allah swt., QS. Al-Nisa: 34, which means "Men are the caretakers of women, as men have been provisioned by Allah over women and tasked with supporting them financially. And righteous women are devoutly obedient and, when alone, protective of what Allah has entrusted them with.¹ And if you sense ill-conduct from your women, advise them "first", "if they persist," do not share their beds, "but if they still persist," then discipline them "gently. But if they change their ways, do not be unjust to them. Surely Allah is Most High, All-Great;
- c. not leaving the house without husband's permission and not fasting the sunnah without husband's permission. It is based on the words of the Prophet Muhammad, which Ibn Umar narrated; he said that a woman met Rasulullah SAW and asked him, "O Messenger of Allah, what are the obligations of a wife to her husband?" The Messenger of Allah replied: "Do not give charity anything from the house unless the husband's permission. If he does, the wife will sin." He repeated his question: "O Rasulullah, what is a wife's obligation to her husband?" the Messenger of Allah replied: He is not allowed to leave his house unless he gets permission and is not allowed to fast sunnah except with his permission.

Meanwhile, article 34, paragraph 2 of Law Number 1 of 1974 emphasizes the wife's obligations: "The wife is obliged to manage household affairs as well as possible." Then Article 83 KHI stipulates two general obligations of a wife: (1) The primary obligation for a wife is to be physically and mentally devoted to her husband in what is justified by Islamic law, and (2) The wife organizes and manages daily household needs by the best.

Suppose the husband neglects one of his primary obligations, supports or provides a decent living for his wife and children. In that case, this can have implications for reducing the share of the husband's marital assets in the event of a divorce.

2. Second Fact: Dual Responsibility

Neglecting the husband's obligations, as in jurisprudence, will cause a wife to bear a double burden; earn a living for himself and his children. It is where there is a strange situation. Therefore, the application of the law against it must also be adjusted to the facts and the quality of the resulting legal consequences. Furthermore, with the dual responsibilities of the wife, assets obtained entirely from the wife's income will have implications for the transfer or reduction of several husbands' legal rights. It is because the party carrying out and carrying out the obligations is the wife, so the husband does not have the right to get the distribution of joint assets. Here what is called distributive justice is realized fairly and proportionally.

Suppose you look at the considerations of the Supreme Court in the decision above. In that case, the Supreme Court determines that there is a basis for reducing the share of joint assets on the ex-husband's part based on two facts cumulatively. First, some obligations are neglected by the husband. Second, this fact is an essential variable in applying jurimetry to analyze the determination of the share of joint property for husband and wife. Based on the facts in the trial, the judge can start a jurimetric analysis by identifying important facts to construct a structure for assessing the final value of husband and wife.

The application of jurimetric analysis in the distribution of marital assets can be stated in (a) ensuring the determinants of rights; (b) classifying each obligation into a specific value weight, and (c) measuring the share of joint assets with the balance sheet.

In the process, to be able to provide fair legal services to the parties, the elements in joint property cases must be proven, namely:

- a. there is a marriage bond between the parties as husband and wife;
- b. there is cooperation between husband and wife in building a household to produce joint assets;
- c. the existence of joint assets acquired during the marriage, which is the main element in the case;
- d. there is a balance of the contribution of each party in upholding the household to determine a fair distribution between the contribution in upholding the household and the distribution of joint assets;
- e. it must be known how the management of joint assets; who is responsible if there is a loss caused by negligence;
- f. is there still a wife's maintenance that is owed so that it must be paid from the joint property before the distribution is carried out?

If the judge has tried to mobilize all his abilities to make a decision that satisfies a sense of justice for justice seekers, the duties and functions of the judge have been fulfilled because the judge is a person who upholds truth and justice. There needs to be a satisfactory definition of the meaning of justice itself. Justice is something other than what can be seen. Someone knows what is fair not from the results of reasoning but the product of conscience. Therefore, according to Bagir Manan, justice in a case is justice for the parties to the case, not for others. There is never a single case in the same court because justice will always differ from one case to another.

The decision the judge annulled could only be limited to the formal truth, according to the facts in the trial. However, the formal truth that was annulled has gone through a good examination with maximum effort, so it is no longer possible to find more substantive legal facts. Searching for and finding the ultimate truth and then upholding civil law based on that essential truth is ideal and coveted, not only by the search for justice but all of society and humanity. The ultimate truth is universal; all common sense can accept it.

Conclusion

This study concludes that the decision number: 0420/Pdt.G/2017/PA.Mt regarding marital property is considered not to fulfill a sense of justice. Jurimetric analysis of the decision is considered to create a sense of justice. In the context of sharing marital property in Indonesia, jurimetry can assist judges in determining the value of the share of marital property for husband and wife after an equitable divorce.

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