

The Position of the Wife as the Primary Breadwinner in the Division of Joint Property: A Legal Review of Decision No. 2388/Pdt.G/2023/PA.Im

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Abstract

The shifting role of wives as primary breadwinners within families has become increasingly evident, yet this reality remains insufficiently recognized in the division of joint property upon divorce. Article 97 of the Compilation of Islamic Law (KHI), which mandates equal division, often fails to reflect actual economic contributions, particularly when the wife plays a dominant financial role. Addressing this gap, this normative legal research adopts a qualitative approach through a literature study, utilizing primary legal sources (court decisions, the Marriage Law, KHI, the Qur'an, Hadith, and fiqh principles) and secondary sources (fiqh texts, legal theories, and academic journals). The findings from the Religious Court Decision of Indramayu No. 2388/Pdt.G/2023/PA.Im show that the judges took a progressive stance by allocating 60% of the joint property to the wife and 40% to the husband, though the proportion still falls short of representing the wife's significant economic contribution as she worked in Hong Kong and financed most of the home construction. From an Islamic legal perspective, justice implies proportionality rather than mere equality, aligning with the concept of *syirkah* (partnership) and the principles of *maqāṣid al-syarī'ah*, which emphasize the protection of property and women's rights. This study contributes to the reinterpretation of Article 97 of the KHI to be more responsive to contemporary social realities and calls for progressive *ijtihād* among judges to realize substantive justice in the division of joint property.

INTRODUCTION

The social and economic transformation of modern Indonesian society has reshaped family structures and dynamics, particularly in the division of gender roles.¹ Economic pressures and urban living demands have driven many women to participate actively in productive activities outside the home to support family welfare.² This shift marks a paradigm change from traditional patriarchal systems toward more egalitarian family structures, in which the economic roles of husbands and wives are increasingly equal.³

The improvement of women's education and their participation in the workforce have strengthened their position as economic actors. Studies by Hidayanti and Wulandari show that modern women are no longer confined to domestic roles and often become the financial backbone of their families.⁴ However, social and legal recognition of women's economic contributions remains limited. This inequality becomes evident during domestic conflicts or divorce cases, where wives who have significantly contributed to the accumulation of family assets often do not receive a fair share of joint property.

Under Indonesia's legal system, Article 97 of the Compilation of Islamic Law (KHI) stipulates that "a widow or widower is entitled to half of the joint property," without considering the proportion of each party's economic contribution. This arithmetical provision often leads to substantive injustice, especially for wives who serve as the primary breadwinners. Studies by Giyoto et al.⁵ dan Kaunang et al.⁶ affirm that although women contribute substantially to family finances, domestic responsibilities continue to rest upon them. As a result, this dual contribution is not reflected in legal distribution outcomes.

This issue is clearly illustrated in the Religious Court Decision of Indramayu No. 2388/Pdt.G/2023/PA.Im. The case originated from a divorce suit filed by YA, a migrant worker in Hong Kong, against her husband KDH. YA claimed that while working abroad, she was the primary earner and sent money to build their house, supplementing

¹ Sri Wahyuni, Nikodemus, Niko, dan Marisa Elsera, Self-Agency Perempuan Nelayan di Kampung Bulang Kota Tanjungpinang Kepulauan Riau, *BESTARI*, Vol. 3 No. 1, 2022. h. 48-59.

² Nor Hidayanti dan Yanti Wulandari, Peran Perempuan dan Tantangannya. *Jurnal Gender*, Vol. 10, No. (2), h. 15-29.

³ Fitriyani, Nunung Nurwati dan Sahadi Humaedi, Peran Ibu yang Bekerja dalam Pemenuhan Kebutuhan Dasar Anak. *Prosiding KS: Riset & PKM* Vol.3, No.1, 2016, h. 52-58

⁴ Sulaiman Ibrahim, *Hukum Domestikasi dan Kepemimpinan Perempuan dalam Keluarga*. Al-Ulum: *Jurnal Studi Islam*, Vol. 13 No. (1), 2013, h. 88-105.

⁵ Giyoto, *Konflik Peran Gender Ibu Rumah Tangga yang Bekerja di Pabrik Tekstil dengan Rolling Shift*. Laporan Penelitian IAIN Surakarta, 2019

⁶ Pesik Angelina, Barolej Jenny, & Rine Kaunang, *Pola Alokasi Waktu dan Kontribusi Pendapatan Perempuan Pedagang Sayuran di Pasar Pinasungkulan*. *Agri-Sosioekonomi: Jurnal Ilmiah Sosial Ekonomi Pertanian*, Vol. 12, No. (2), 2016, h. 18-29.

it with her own assets such as bricks, river stones, and land. Meanwhile, her husband allegedly made little economic contribution and was involved in moral misconduct, including neglect, gambling, and infidelity. The main dispute arose when the house – clearly financed by the wife – was still claimed as joint property.

In Decision No. 2388/Pdt.G/2023/PA.Im, the 50:50 rule for joint property division was not applied absolutely. The panel of judges decided that 60% of the joint property should go to the wife (plaintiff in reconvention) and 40% to the husband (defendant in reconvention). In fact, the wife's work abroad in Hong Kong was motivated by economic hardship, as noted in the case description and supported by evidence of the husband's gambling habit. During the trial, it was also proven that the wife owned 5,000 bricks, two truckloads of river stones, and the land on which the house was built as her premarital assets. The total joint property was valued at IDR 140,300,000 (one hundred and forty million three hundred thousand rupiahs), consisting of the house and its furnishings. The question arises whether this division proportion truly reflects fairness.

From an Islamic perspective, justice (*'adl*) is the foundational principle of family law, as emphasized in Surah An-Nisa (4:135):

Translation:

"O you who believe! Be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or your parents and relatives. Whether one is rich or poor, Allah is more worthy of both. So do not follow [your personal] inclinations, lest you not be just. And if you distort [your testimony] or refuse [to give it], then indeed Allah is ever acquainted with what you do." (Qur'an 4:135).

This verse underscores that every legal decision must rest upon the principle of justice, not merely formal equality. The thoughts of Harahap⁷ and Siti Musdah Mulia⁸ also emphasize that Islam provides broad space for women's participation in the economic sphere, and their contributions should be legally acknowledged. Therefore, when a wife serves as the primary breadwinner, a reinterpretation of legal norms – including Article 97 of KHI – is needed to make them more contextual to social realities and aligned with the principle of distributive justice.

This research is significant because few studies have explicitly examined the inequality in joint property division when the wife is the main income earner. Previous

⁷ Rois Hamid Harahap dan Alwi Padly Harahap, Keseimbangan Peran Perempuan sebagai Ibu dan Pekerja: Tinjauan Komprehensif dalam Perspektif Al-Qur'an dan Hadis. *Ibn Abbas : Jurnal Ilmu Al-Qur'an dan Tafsir*, Vol. 7, No. 2, 2024, h. 133-150.

⁸ Rahmawati dan Sunuwati. *Transformasi Wanita Karir Perspektif Gender dalam Hukum Islam. An Nisa'*, 12(2), 2017, h. 67-81.

studies, such as those by Euis Nurlaelawati⁹ dan and Irawati Budiarti,¹⁰ tend to focus on the formal and conservative aspects of KHI implementation without considering gender justice and the substantive economic contributions of wives. Hence, this study offers novelty in the form of a juridical analysis of the application of Article 97 of KHI through the lens of substantive justice and *maqāṣid al-syarī'ah* within a gender-sensitive context.

Based on this background, the study seeks to answer the question: How does the judicial reasoning in Decision No. 2388/Pdt.G/2023/PA.Im reflect the principle of substantive justice toward a wife as the primary breadwinner? The purpose of this research is to analyze the legal basis and judicial considerations in the division of joint property and to assess their conformity with the principles of Islamic justice and their relevance to the reform of family law in Indonesia.

METHODS

This study employs a normative legal approach with qualitative analysis, as the focus lies on written legal norms and the principles of justice in Islamic law. The research data consist of primary legal materials—including the Indramayu Religious Court Decision No. 2388/Pdt.G/2023/PA.Im, Law No. 1 of 1974, Article 97 of the Compilation of Islamic Law, the Qur'an, hadith, and fiqh maxims—and secondary legal materials in the form of academic literature and previous studies. Data collection was carried out through library research, while data analysis was conducted using content analysis to interpret legal norms and Islamic texts, as well as comparative analysis to examine the relationship between Islamic law and positive law regarding the division of joint property. The use of these two analytical methods aims to reveal the alignment between normative provisions and the application of substantive justice. To ensure the validity of the findings, comparisons were made with fiqh principles, the theory of distributive justice, and other relevant court decisions.

⁹ Siti Musdah Mulia dalam *Muslimah Reformis: Perempuan Pembaru Keagamaan* (Jakarta: Mizan, 2005)

¹⁰ Irawati Budiarti, *Perlindungan Hukum Istri dalam Harta Bersama* (Jakarta: Prenadamedia Group, 2017), h. 64–66

RESULT AND DISCUSSIONS

1. The Legal Status of a Wife as the Primary Breadwinner in the Division of Joint Property under Islamic Law

In Islamic law, providing for the family is the husband's obligation.¹¹ He is responsible for fulfilling the family's basic needs—such as food, clothing, and shelter—according to his financial capacity, while also serving as the family's guide and protector. The wife's primary duty is to care for and educate the children, and she is not required to earn a living unless the husband is unable to do so. If a wife contributes to the family income, it must be with her husband's consent, without neglecting her primary responsibilities, and she must observe proper hijab when leaving the home.¹²

In practical household life, however, the husband does not always fully perform his economic role. Social and economic factors, as well as the husband's inability to meet financial obligations, often compel wives to take on a greater share of responsibility—especially amid rising living costs and expanding employment opportunities for women. This reality is evident in the Indramayu Religious Court Decision No. 2388/Pdt.G/2023/PA.Im, where the joint property, consisting of a house valued at Rp120,000,000 and furnishings worth Rp20,300,000, was largely financed by the wife's earnings as an Indonesian migrant worker in Hong Kong. Before her departure, the wife also possessed personal property consisting of 5,000 red bricks and two truckloads of river stones, which were used for the construction of the house. The husband acknowledged that all of the wife's remittances were used for building the house, although he still provided daily living expenses and supported the wife's child from her previous marriage. From an Islamic legal perspective, although financial maintenance is primarily the husband's duty, this situation reflects the principle of *tahammul al-mas'uliyah* (shared responsibility), wherein the wife assumes a central role in sustaining the family's well-being.¹³

Classical scholars established that the husband is responsible for financial maintenance based on Qur'an Surah An-Nisa' [4]: 34. However, contemporary scholars consider a wife's role in earning an income as a legitimate form of social *ijtihad*, provided it does not contradict Sharia. In positive law, Article 35(1) of Law No. 1 of 1974 states that all property acquired during marriage constitutes joint property, regardless of who

¹¹ Hendro Risbiyantoro, Fitri Mutiah Salsa Bela, dan Delpa Firdaus, Peran Istri Sebagai Pencari Nafkah Utama Dalam Perspektif Maqashid Al-Syari'ah (Studi Kasus di Cinere Depok), *Sahaja: Journal Shariah And Humanities*, Volume 2 Issue 2 (2023), h. 198-211

¹² *Ibid.*

¹³ Muhammad Mutawalli Al-Sya'rawi, *Hak-Hak Perempuan Relasi Jender Menurut Tafsir Al-Syairawi*, (Jakarta: Mizan, 2004), Cet. Ket-1, h. 163.

contributes more. Nevertheless, judges may still consider the actual contributions of each party as an application of the principle of justice.

In the case of the Indramayu Religious Court Decision No. 2388/Pdt.G/2023/PA.Im, the wife—an Indonesian migrant worker in Hong Kong—served as the primary breadwinner. She financed the construction of a house worth Rp120,000,000 and purchased household furnishings worth Rp20,300,000 from her own income, in addition to owning 5,000 red bricks and two truckloads of stones before her departure. The husband's contribution amounted to only about Rp20,000,000, along with daily support of approximately Rp20,000 and monthly expenses of Rp800,000–1,000,000. Based on the principle of *al-ajru biqadri'l masyaqqah* (reward according to effort) and John Rawls' theory of justice as fairness, a wife who bears a greater economic burden deserves a more proportionate share. This view aligns with the *maqāṣid al-sharī'ah*, particularly the objective of preserving wealth (*ḥifẓ al-māl*). Therefore, the division of joint property should not be equal (50:50) but rather grant the wife a larger portion—potentially up to three-fourths—as a manifestation of substantive justice and recognition of her significant contribution.

2. Legal Considerations Applied by the Panel of Judges in Decision No. 2388/Pdt.G/2023/PA.Im Regarding the Division of Joint Property

In positive law, it is stated that the husband bears the responsibility for the family's economic needs, and his primary role is to earn a living. Conversely, the wife is responsible for domestic affairs—such as cooking, cleaning, and childcare—and she is entitled to financial maintenance (*nafkah*) from her husband. This division of roles implies that both parties, in principle, contribute equally to the household's well-being. On this basis, the assets acquired by the husband are regarded as joint property, whose legal position is explicitly regulated under positive law.¹⁴ However, this traditional provision has experienced a significant shift. Today, many Muslim women no longer live in a restricted domestic space. The growing aspiration for women's emancipation has fostered greater awareness among Muslim women to work and contribute to their family's economic needs. Sociologically, this marks a major transformation in the position of women within the family—from being solely housewives to becoming active economic agents who share financial responsibilities with their husbands.¹⁵

This participation of wives in the workforce has given rise to new legal questions, particularly concerning proportionality in the distribution of joint property. Numerous

¹⁴ Zikri Darussamin, *Penyelesaian Harta Bersama Pasca Perceraian Bagi Istri Yang Bekerja Pada Masyarakat Melayu-Riau* (Pekanbaru: LPPM UIN Suska Riau, 2016), h. 72.

¹⁵ *Ibid.*, h. 78.

court cases have highlighted situations where wives earn an income while their husbands fail to provide financial support.¹⁶ A notable example is Decision No. 2388/Pdt.G/2023/PA.Im. The legal considerations of the panel of judges in this case are as follows:

The legal reasoning in Decision No. 2388/Pdt.G/2023/PA.Im demonstrates the judges' effort to balance the normative provisions of the *Compilation of Islamic Law* (KHI) with the empirical facts revealed during trial. The evidence established that most of the joint property – namely, a house valued at Rp120,000,000 and household furniture worth Rp20,300,000 – was funded by the wife's earnings during her employment in Hong Kong as an Indonesian migrant worker. Furthermore, before her departure, the wife already owned personal property consisting of 5,000 red bricks and two truckloads of stones that were used for the construction of the house. Meanwhile, the husband's material contribution amounted to approximately Rp20,000,000.

In her lawsuit, the wife demanded a $\frac{3}{4}$ share of the joint property for herself and $\frac{1}{4}$ for her husband, arguing that her contribution was dominant and that the land on which the house was built was her premarital property. The husband, on the other hand, argued that he provided financial support and managed the wife's remittances during the house construction. Considering the facts, the judges decided to divide the property 60% for the wife and 40% for the husband, rather than an equal 50:50 division as stipulated in Article 97 of the KHI.

This decision reflects a progressive step by the judges, who dared to depart from the literal text of the law in favor of achieving substantive justice. Nevertheless, the decision remains somewhat compromising, as it does not fully embody the principle of distributive justice, which requires that the division be based on each party's actual contribution. Compared with Supreme Court jurisprudence – such as Decision No. 78 K/Ag/2021, which granted 70% of the property to a wife who was also the primary breadwinner – the 60:40 ratio in this case appears less reflective of proportional fairness.

Therefore, the judicial consideration in this case demonstrates the judges' awareness of the wife's crucial economic role and the need for contextual interpretation of the law. However, the ruling still reveals a gap between the wife's actual contribution and the portion awarded to her, inviting further reflection on the application of proportional justice in joint property disputes. When analyzed through the lens of Satjipto Rahardjo's *progressive law theory*,¹⁷ the decision falls short of its transformative potential.

¹⁶ Zikri Darussamin dan Armansyah, Hak Harta Bersama bagi Istri yang Bekerja Perspektif Maqashid asy-Syari'ah, *Asy-Syir'ah Jurnal Ilmu Syari'ah dan Hukum*, Vol. 51, No. 2, 2017, h. 769-789.

¹⁷ Satjipto Rahardjo, *Hukum Progresif: Hukum yang Membebaskan...*, h. 24-25.

Although the judges' reasoning shows a progressive orientation, it remains conservative in outcome. The 60:40 division, despite clear evidence of the wife's dominant contribution, does not fully reflect the objectives of Islamic law (*maqāṣid al-sharī'ah*), particularly in preserving wealth (*ḥifẓ al-māl*) and ensuring justice (*al-'adl*). The justice envisioned in *maqāṣid al-sharī'ah* is not merely procedural or legally safe but rather substantive—one that protects those who bear greater burdens and make significant contributions to the household. In this case, the wife not only served as the primary breadwinner but also carried the dual responsibility of working abroad and managing domestic duties, warranting greater legal recognition.

From the perspective of Islamic justice theory, the principles of *al-musāwāh* (equality) and *al-'adl* (justice) demand that property division be proportional rather than formalistic. Given the wife's overwhelming contribution, a 70:30 division—as reflected in Supreme Court Decision No. 78 K/Ag/2021 and several similar rulings by the Religious Courts in Bandung and Sidoarjo—would better represent substantive justice. These precedents affirm that a wife who becomes the family's main financial supporter deserves a substantially larger share, not merely a symbolic addition. Hence, the 60:40 ruling suggests that the judges were cautious not to deviate too far from Article 97 of the KHI, even though sociological realities and jurisprudence provide strong justification for doing so.

From Satjipto Rahardjo's *progressive law* perspective, the judges should have taken a bolder step toward achieving substantive justice for women. The wife's hard work abroad, her role in supporting the family's economy, and her continued fulfillment of domestic duties illustrate a structural imbalance requiring stronger legal protection. The judges' reluctance to grant a larger share indicates adherence to procedural rather than substantive justice. Practically, this ruling has implications for the reform of Islamic family law in Indonesia. It calls for a reinterpretation of Article 97 of the KHI—moving away from rigid textualism toward flexibility that acknowledges modern social realities, where women often serve as key economic providers. Thus, this study underscores the urgency of shifting from formal justice to *substantive justice* grounded in *maqāṣid al-sharī'ah* and *progressive legal theory*, ensuring that Islamic family law truly protects women as active, contributing legal subjects.

3. The Relevance of the Principle of Justice in Islamic Law to the Division of Joint Property in Cases Where the Wife Is the Primary Breadwinner

In classical *fiqh*, the concept of joint property was not specifically discussed. This is understandable because *fiqh* adheres to the norm that the obligation to provide for the

family rests solely upon the husband.¹⁸ The Qur'an assigns the responsibility of financial maintenance (*naḥāqah*) to the husband, even if the wife possesses her own wealth and income. The husband's duty to provide for his wife begins at the time of marriage, after which the woman becomes bound by her responsibilities as a wife – to obey and bring comfort to her husband, manage the household, care for the children, and oversee their upbringing. In return, Islam obliges the husband to provide for his wife's needs.¹⁹

Haya bint Mubarak al-Barik holds that, in principle, it is *haram* (forbidden) for women to earn a living by working outside the home. She argues that this prohibition is rooted in the natural limitations of women, such as menstruation, pregnancy, childbirth, postpartum recovery, breastfeeding, and childrearing. Moreover, based on physiological differences, women are viewed as distinct from men.²⁰ According to al-Barik, women working outside the home may result in more harm than benefit, including neglecting children, moral decline, weakened religiosity, and the loss of feminine nature. In contrast, Sayyid Qutb interprets the Qur'anic verse not as a prohibition against women working, but as a statement that Islam does not encourage it since providing for the family is the husband's responsibility. Nonetheless, Islam allows women to work under pressing circumstances and with the husband's permission.²¹

Since neither the Qur'an nor the Hadith explicitly regulates joint property, Muslim jurists (*fuqahā'*) have differed in opinion regarding its legal foundation. Some scholars argue that Islam does not provide specific provisions on joint property, and thus, the matter should be left to mutual agreement between the spouses. Others contend that it is inconceivable for Islam to remain silent on such a matter, given that even minor issues are addressed in detail within Islamic law.²²

Scholars in the latter group maintain that the concept of joint property can be analogized (*qiyās*) to *shirkah* (partnership), as the wife may also be considered a partner in the household's production of wealth, even if she does not engage in paid labor in the conventional sense. In this context, the wife's work includes managing the home, cooking, washing, raising children, and performing other domestic responsibilities. Because joint property is defined as assets acquired by both spouses during marriage, it may be categorized as *shirkah mufāwāḍah* or *shirkah abdan*. It is termed *shirkah mufāwāḍah* because the partnership between husband and wife encompasses all income generated

¹⁸ Muhammad Abu Zahrah, *Al-Aḥwāl Asy-Syakhshiyyah* (Kairo: Dar al-Fikr al-Arabi, 1957), h. 269.

¹⁹ Sayyid Sabiq, *Fiqh al-Sunnah* (Beirut: Dar al-Fikr, 1977), Vol. II, h. 148.

²⁰ Haya Binti Mubarak Al-Barik, *Ensiklopedi Wanita Muslimah* (Jakarta: Darul Falah, 1424 H), h. 159-61.

²¹ *Ibid.*, h. 21.

²² Muhammad Anshari MK, *Hukum Perkawinan di Indonesia Masalah-Masalah Krusial* (Yogyakarta: Pustaka Pelajar, 2010), h. 153

during marriage, except inheritance and gifts. It may also be viewed as *shirkah abdan* since, in Indonesian society, both spouses often work to sustain the family.²³

Ibn Qayyim states that all rulings in Islamic law must embody *justice* ('*adl*), *mercy* (*rahmah*), *welfare* (*maṣlahah*), and *wisdom* (*ḥikmah*). If any ruling deviates from these four values, it cannot be considered part of Islamic law.²⁴ W. Friedman similarly asserts that a standard of justice not grounded in religion cannot attain the ideal essence of justice. Abdul Ghofur Anshori further explains that the fundamental value of justice is inherently divine, as human justice is a reflection of God's will. To grant humans absolute freedom without divine guidance would constitute a denial of submission to God's sovereignty.²⁵

Justice, welfare, mercy, and wisdom are not always explicitly expressed in legal texts; sometimes, they are implicit and can only be understood through the framework of *maqāṣid al-sharī'ah* (the higher objectives of Islamic law). Hence, *maqāṣid al-sharī'ah* serves as a conceptual tool for uncovering the explicit and implicit values contained in the Qur'an and Hadith—values established by Allah for the benefit and well-being of humanity in this world and the Hereafter. Ahmad al-Raysuni defines legal reasoning through *maqāṣid al-sharī'ah* as the process of deriving Islamic law based on the purposes for which the *sharī'ah* was revealed, aimed at realizing human welfare (*maṣlahah*).²⁶ Likewise, Nuruddin Mukhtar al-Khadimi defines *maqāṣid al-sharī'ah* as a set of meanings and objectives embedded in the *sharī'ah*—whether in partial rulings, general welfare, or universal goodness (*ṣifāt ijmāliyyah*)—all of which share a common goal: to affirm servitude to Allah and achieve human well-being in both worlds.²⁷ In some literature, *maqāṣid al-sharī'ah* is also referred to as *maqāṣid al-tashrī'*.²⁸ Classical *uṣūl* scholars have formulated five primary objectives of *maqāṣid al-sharī'ah*: the preservation of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasl*), and wealth (*ḥifẓ al-māl*).²⁹ These are further classified into three levels of necessity: primary (*darūriyyāt*), secondary (*ḥājīyyāt*), and tertiary (*taḥsīniyyāt* or *kamāliyyāt*).

²³ Ismuha, *Pencapaian Bersama Suami Istri di Indonesia* (Jakarta: Bulan Bintang: 1978), h. 79.

²⁴ Ibn Qayyim, *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin* (Beirut: Dar al-Jayl, t.th.), Jilid III: h. 3. Lihat juga Izzuddin Ibn Abd al-Salam, *Qawa'id al-Ahkam fi Mashalih al-Anam* (Beirut: Dar al-Jail, t.th), jilid II: h. 72 dan Wahbah alZuhaili, *Ushul al-Fiqh al-Islami* (Beirut: Dar al-Fikr, 1986), Jilid II: h. 1017.

²⁵ Abdul Ghofur Anshori, *Filsafat Hukum Kewarisan Islam* (Yogyakarta: UII Press, 2005), h. 191

²⁶ Ahmad al-Raysuni, *Nazhariyyah al-Maqashid 'Inda al-Imam al-Syathibi* (Virginia: The International Institute of Islamic Thought, 1995), h. 19

²⁷ Nur al-Din Mukhtar al-Khadimi, *al-Ijtihad al-Maqashidi Hujjiyatuhu wa Dhawabituhu wa Majalatuhu* (Qatar: Wazarah al-Awqaf wa asy-Syu'un al-Islamiyyah, 1998), h. 52.

²⁸ Ahmad al-Raysuni, *Nazhariyyah al-Maqashid ...*, h. 17.

²⁹ Abu Hamid Muhammad bin Muhammad al-Ghazali, *al-Mustashfa min 'Ilm al-Ushul* (Beirut: Dar al-Fikr, t.th), h. 20.

Regarding wealth, *maqāṣid al-sharī'ah* emphasizes that the preservation of property (*ḥifẓ al-māl*) is one of the essential objectives under the *ḍarūriyyāt* category. Islam affirms that all wealth ultimately belongs to Allah, and humans merely serve as trustees entitled to make lawful use of it. Nevertheless, Islam recognizes individual ownership, provided that property is acquired through legitimate means. This is affirmed in the Qur'an, among others, in:

"And do not covet what Allah has given some of you more than others. For men is a share of what they have earned, and for women is a share of what they have earned. And ask Allah of His bounty. Surely Allah has full knowledge of all things." (Q.S. An-Nisā' [4]: 32).

And also in:

"O you who believe! Do not consume one another's wealth unjustly, except through lawful trade by mutual consent among you. And do not kill yourselves. Indeed, Allah is ever Merciful to you." (Q.S. An-Nisā' [4]: 29).

These verses affirm that both men and women have rightful claims over what they earn, and that property must be used and distributed justly. Accordingly, the principle of justice in Islamic law is deeply relevant to cases where the wife becomes the primary breadwinner, ensuring that her economic contribution receives proper recognition under the objectives of *maqāṣid al-sharī'ah*, especially the preservation of wealth (*ḥifẓ al-māl*) and the realization of substantive justice (*al-'adl*).

The series of Qur'anic verses above leads to a conclusion regarding the importance of protecting property and distributing it according to rightful ownership. It can thus be inferred that ownership rights over wealth earned through one's labor are classified as *dharuriyyat* (primary necessities). In other words, violating these rules would threaten the very existence of property rights. Yusuf al-Qaradhawi asserts that Islam sets two main conditions for private ownership: first, that the property must be obtained through lawful means and permissible channels, and second, that such ownership must not conflict with public and societal interests.³⁰

In the context of marital property, Arsyad al-Banjari was the first to issue a *fatwa* acknowledging the existence of joint marital assets within society and advocating for their recognition in legal frameworks. His intention was to protect the wife's rights: although she might not engage in external work like her husband, she is still entitled to half of the wealth accumulated during marriage in the event of divorce, given her substantial domestic contribution. However, this early social context differs significantly

³⁰ Zikri Darussamin dan Armansyah, *Hak Harta Bersama...*, h. 769-789.

from the modern era, where wives often participate in the workforce and may even serve as the family's main income earners.³¹

This shift reflects a broader transition from husband-centered traditions toward a balance of rights and responsibilities. The previous norm that designated men as sole providers has evolved as more women contribute economically. Consequently, existing legal norms on marital property division no longer fully embody justice in contemporary circumstances.

Social transformations and evolving customs must therefore be carefully examined, as they directly influence the concept of justice itself. Within the framework of *maqāṣid al-sharī'ah*, the legal maxim *taghayyur al-ḥukm bi taghayyur al-'urf az-zamānī* (legal rulings change with time and custom) becomes particularly relevant. This principle asserts that variations in place, custom, situation, and condition play a decisive role in shaping *ijtihādī* (interpretative) rulings. Consequently, any legal decision founded upon *'urf* (custom), *maṣlaḥah* (public interest), or local conditions may rightfully change as these factors evolve.³²

If a legal provision no longer fulfills the requirements of justice, judges should not rigidly adhere to it. In this regard, *maqāṣid al-sharī'ah* also emphasizes the principle *taṣarruf al-imām 'alā al-ra'īyah manūṭun bi al-maṣlaḥah* — that a ruler's or leader's decisions must prioritize the welfare of the people. In other words, leaders — including judges — act as representatives of the people's interests, not their own. Therefore, every policy or ruling must aim to realize public benefit and justice.³³

Regarding marital property, the blanket rule that all assets acquired during marriage are joint property warrants reconsideration to uphold proportionality and ensure fairness. While recognizing the husband's role in providing for the household, it is equally important to examine which spouse actually generated the wealth during the marriage. If the husband earned the income, the assets can be considered joint property, as the wife's domestic work indirectly contributes to the husband's ability to earn. However, if the assets were acquired through the wife's independent labor, their classification as joint property should not be automatic. One must determine whether the wife's employment resulted from the husband's inability to work — thus representing a balanced role reversal — or from his negligence or unwillingness to work. If the husband

³¹ Ma'ruf Amin, —Pemikiran Syekh Arsyad Al-Banjari, dalam Jurnal Pesantren, Edisi II, Tahun 1989, h. 42.

³² Mustafa Ahmad Rizka, Syarah al-Qawa'id al-Fiqhiyah (Damaskus: Dar al-Qalam, 1996), Vol. I: h. 42 dan Abdul Mudjib, Kaidah-kaidah Ilmu Fiqh (Jakarta: Kalam Mulia, 2001), h. 24.

³³ *Ibid.*

deliberately neglected his duty, Islamic law would deem him *ẓālim* (unjust), and any wealth earned by the wife under such conditions should be recognized as her sole property under the principle of *ḥifẓ al-māl* (protection of property). Conversely, if the wife's work was motivated by a shared desire to enhance family welfare, her contribution would fall under the *taḥsīniyyāt* category (commendable needs), justifying classification of the earnings as joint property – provided that proportional justice is observed in their division.³⁴

In classical *fiqh*, the concept of joint marital property (*al-amwāl al-musytarakah*) was not explicitly discussed, as financial responsibility was fully assigned to the husband. However, in modern societies such as Indonesia, social and economic changes have led many wives to enter the workforce, sometimes even becoming the main breadwinners. This new reality presents fresh juridical challenges, as reflected in the Religious Court Decision No. 2388/Pdt.G/2023/PA.Im, where the wife, working as a migrant laborer in Hong Kong, made the dominant contribution to the family's wealth. In Islamic legal reasoning, this situation aligns with the concept of *shirkah* (partnership), in which profits are shared proportionally to each partner's contribution. This principle resonates with Aristotle's theory of distributive justice and the *maqāṣid al-sharī'ah* framework, both of which emphasize fairness, compassion, and public benefit.

In this particular case, the wife financed most of the house construction and furnishings, while the husband's contribution was minimal and marred by immoral behavior, including gambling. Applying the *ḥifẓ al-māl* principle, an equal division of property without considering actual contributions would contradict Islamic justice. Therefore, Article 97 of the *Kompilasi Hukum Islam* (KHI), which stipulates a 50:50 division, should not be applied rigidly. The Qur'an (Q.S. an-Nisā' [4]:32) clearly states that men and women each have a right to what they have earned, implying that property division must reflect the real contributions of each spouse.

Although the judge in this case took a progressive stance by awarding 60% of the property to the wife, this proportion still falls short of achieving substantive justice. Drawing upon John Rawls's theory of justice, inequality is justified when it benefits the party who contributes the most and is most vulnerable. In this context, the wife rightfully deserves a larger share – potentially 75%. This view aligns with *maqāṣid al-sharī'ah*, which prioritizes the protection of property (*ḥifẓ al-māl*) and the welfare of the family. Thus, the division of marital property must uphold the principles of proportional justice and

³⁴ Zikri Darussamin dan Armansyah, *Hak Harta Bersama...*, h. 769-789.

recognition of the wife's labor so that Islamic law truly serves as an instrument of social justice and protection for those who contribute most within the family.

CONCLUSION

The findings show that the wife's position as the primary breadwinner is legitimate and normatively recognized within Islamic law. Her dominant contribution to the accumulation of marital assets requires a proportional division based on the principles of distributive justice and *maqāṣid al-sharī'ah*. The judge's decision to grant 60% of the assets to the wife is considered progressive, as it departs from the rigid application of Article 97 of the *Kompilasi Hukum Islam* (KHI), yet it still falls short of achieving substantive justice given the wife's significantly greater contribution. Therefore, a theoretical reinterpretation of Article 97 KHI is needed to ensure a more flexible and proportionate distribution of assets. In practical terms, this emphasizes the need for judges to exercise contextual *ijtihād* when addressing similar cases that reveal imbalanced contributions between spouses. Legal reform should also aim to explicitly recognize women's economic roles within households, ensuring that positive law aligns with the principles of Islamic justice and human rights. Future research may include comparative analyses of similar rulings across Religious Courts to reinforce the urgency of reformulating the concept of marital property in Indonesia's Islamic family law.

REFERENCES

- Al-Barik, Haya Binti Mubarak. *Ensiklopedi Wanita Muslimah*. Jakarta: Darul Falah, 2012.
- al-Ghazali, Abu Hamid Muhammad bin Muhammad. *al-Mustashfa min 'Ilm al-Ushul*. Beirut: Dar al-Fikr, t.th.
- al-Khadimi, Nur al-Din Mukhtar. *al-Ijtihad al-Maqashidi Hujjiyatuhu wa Dhawabituhu wa Majalatuhu*. Qatar: Wazarah al-Awqaf wa asy-Syu'un al-Islamiyyah, tt.
- al-Qayyim, Ibn. *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin*. Beirut: Dar al-Jayl, t.th.
- al-Raysuni, Ahmad. *Nazhariyyah al-Maqashid 'Inda al-Imam al-Syathibi*. Virginia: The International Institute of Islamic Thought, 1995,
- al-Sya'rawi, Muhammad Mutawalli. *Hak-Hak Perempuan Relasi Gender Menurut Tafsir Al-Syairawi*. Jakarta: Mizan, 2004.
- Anshari, Muhammad MK. *Hukum Perkawinan di Indonesia Masalah-Masalah Krusial*. Yogyakarta: Pustaka Pelajar, 2010.
- Anshori, Abdul Ghofur. *Filsafat Hukum Kewarisan Islam*. Yogyakarta: UII Press, 2005, h. 191.

- Darussamin, Zikri. *Penyelesaian Harta Bersama Pasca Perceraian Bagi Istri yang Bekerja Pada Masyarakat Melayu-Riau*. Pekanbaru: LPPM UIN Suska Riau, 2016.
- Darussamin, Zikri dan Armansyah. "Hak Harta Bersama bagi Istri yang Bekerja Perspektif Maqashid asy-Syari'ah." *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum*, Vol. 51, No. 2, 2017, h. 769-789.
- Fitriyani, Nunung Nurwati dan Sahadi Humaedi. "Peran Ibu yang Bekerja dalam Pemenuhan Kebutuhan Dasar Anak." *Prosiding KS: Riset & PKM*, Vol. 3, No. 1, 2016, h. 52-58.
- Giyoto. *Konflik Peran Gender Ibu Rumah Tangga yang Bekerja di Pabrik Tekstil dengan Rolling Shift*. Laporan Penelitian. Surakarta: IAIN Surakarta, 2019.
- Harahap, Rois Hamid dan Alwi Padly Harahap. "Keseimbangan Peran Perempuan sebagai Ibu dan Pekerja: Tinjauan Komprehensif dalam Perspektif Al-Qur'an dan Hadis." *Ibn Abbas: Jurnal Ilmu Al-Qur'an dan Tafsir*, Vol. 7, No. 2, 2024, h. 133-150.
- Hidayanti, Nor dan Yanti Wulandari. "Peran Perempuan dan Tantangannya." *Jurnal Gender*, Vol. 10, No. 2, h. 15-29.
- Ibrahim, Sulaiman. "Hukum Domestikasi dan Kepemimpinan Perempuan dalam Keluarga." *Al-Ulum: Jurnal Studi Islam*, Vol. 13, No. 1, 2013, h. 88-105.
- Instruksi Presiden Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam.
- Jahar, J. *Islamic Legal Reform in Indonesia*. Jakarta: UIN Syarif Hidayatullah Press, 2010.
- Manan, Abdul. *Aneka Masalah Hukum Perdata Islam di Indonesia*. Jakarta: Kencana, 2008.
- Mulia, Siti Musdah. *Muslimah Reformis: Perempuan Pembaru Keagamaan*. Jakarta: Mizan, 2010.
- Mulia, Siti Musdah. *Muslimah Reformis: Perempuan Pembaru Keagamaan*. Bandung: Mizan, 2005.
- Nurlaelawati, Euis. *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practices of the Indonesian Islamic Courts*. Amsterdam: Amsterdam University Press, 2010.
- Pesik, Angelina, Jenny Barolej, & Rine Kaunang. "Pola Alokasi Waktu dan Kontribusi Pendapatan Perempuan Pedagang Sayuran di Pasar Pinasungkulan." *Agri-Sosioekonomi: Jurnal Ilmiah Sosial Ekonomi Pertanian*, Vol. 12, No. 2, 2016, h. 18-29.
- Ramulyo, M. Idris. *Hukum Perkawinan Islam*. Jakarta: Bumi Aksara, 2002.
- Rahmawati dan Sunuwati. "Transformasi Wanita Karir Perspektif Gender dalam Hukum Islam." *An Nisa'*, Vol. 12, No. 2, 2017, h. 67-81.
- Risbiyantoro, Hendro, Fitri Mutiah Salsa Bela, dan Delpa Firdaus. "Peran Istri Sebagai

- Pencari Nafkah Utama Dalam Perspektif Maqashid Al-Syari'ah (Studi Kasus di Cinere Depok)." *Sahaja: Journal Shariah and Humanities*, Vol. 2, No. 2, 2023, h. 198-211.
- Rizka, Mustafa Ahmad. *Syarah al-Qawa'id al-Fiqhiyah*. Damaskus: Dar al-Qalam, 1996.
- Rofiq, Ahmad. *Hukum Islam di Indonesia*. Jakarta: Rajawali Pers, 2013.
- Sabiq, Sayyid. *Fiqh al-Sunnah*. Beirut: Dar al-Fikr, 1977.
- Taufiq, M. *Putusan Hakim dalam Sengketa Keluarga Muslim*. Jakarta: Sinar Grafika, 2020.
- Wahyuni, Sri, Nikodemus, Niko, dan Marisa Elsera. "Self-Agency Perempuan Nelayan di Kampung Bulang Kota Tanjungpinang Kepulauan Riau." *BESTARI*, Vol. 3, No. 1, 2022, h. 48-59.
- Yasmirah. *Hukum Keluarga Islam Kontemporer*. Jakarta: Prenadamedia, 2011.
- Zahrah, Muhammad Abu. *Al-Ahwal Asy-Syakhshiyah*. Kairo: Dar al-Fikr al-Arabi, 1957.