

JOINT PROPERTY AND FAMILY FINANCIAL DISPUTES: A SHIFT FROM FORMAL JUSTICE TO SUBSTANTIVE JUSTICE IN INDONESIAN ISLAMIC FAMILY LAW

SENGKETA HARTA BERSAMA DAN KEUANGAN KELUARGA: PERGESERAN DARI KEADILAN FORMAL KE KEADILAN SUBSTANTIF DALAM HUKUM KELUARGA ISLAM INDONESIA

**Muthmainah^{*1} Iqbal Subhan Nugraha^{*2} Nurlaila^{*3} Isnaeni Nurhalimah^{*4}
Nur Faiqoh^{*5}**

^{A,b,c} Program Magister STAI Nurul Iman Parung Bogor

^d Master Program STAI Sirojul Falah Bogor

^e Program Magister STAI Nurul Iman Parung Bogor

1 muthmainahap5@gmail.com *; 2 iiqsubhannugrha@gmail.com *;

3 sitinurlelanurlela93@gmail.com *; 4 isnaeninurhalimah376@gmail.com *;

5 raisafaiqoh120@gmail.com *;

*Writer in Charge (Muthmainah)

Abstract

This research aims to analyze the legal and social dynamics related to common property (gono-gini), its distribution mechanism, and the settlement of family financial disputes in the Religious Court. This issue is important because of the increasing number of divorce cases accompanied by joint property lawsuits, which reflects the complexity of economic relations and gender equality in Muslim households in Indonesia. This study highlights how Islamic law and national law interact in realizing substantive justice in the division of assets post-divorce.

The research uses a juridical-normative method with a conceptual and case approach. Data was obtained through a review of classical fiqh literature, laws and regulations, and decisions of the Religious Court in the last five years. The analysis was carried out by integrating the principles of maqāṣid al-syarī'ah, gender justice theory, and socio-economic considerations as the basis for assessing judicial practice.

The results of the study show that joint property includes not only material assets, but also non-financial contributions such as domestic and emotional roles of the couple. In practice, Religious Court judges began to adopt a progressive approach by considering distributive justice and proportionality of contributions. This marked a paradigm shift from textual interpretation to a more humanistic approach to maqāṣid.

The conclusion of the study emphasizes the need to reformulate Islamic family law to be more adaptive to the contemporary social context. The reform must ensure equal economic roles between husband and wife and encourage social justice in the distribution of common wealth.

Keywords: *Common Property, Gender Justice, Religious Courts, Maqāṣid Al-Syarī'ah, Family Disputes.*

Abstrak

Penelitian ini bertujuan untuk menganalisis dinamika hukum dan sosial terkait harta bersama (gono-gini), mekanisme pembagiannya, dan penyelesaian sengketa keuangan keluarga di Pengadilan Agama. Isu ini penting karena meningkatnya jumlah kasus perceraian yang disertai dengan gugatan harta bersama, yang mencerminkan kompleksitas hubungan ekonomi dan kesetaraan gender dalam rumah tangga Muslim di Indonesia. Studi ini menyoroti bagaimana hukum Islam dan hukum nasional berinteraksi dalam mewujudkan keadilan substantif dalam pembagian harta pasca perceraian.

Penelitian ini menggunakan metode yuridis-normatif dengan pendekatan konseptual dan kasus. Data diperoleh melalui tinjauan literatur fiqh klasik, undang-undang dan peraturan, serta keputusan Pengadilan Agama dalam lima tahun terakhir. Analisis dilakukan dengan mengintegrasikan prinsip-prinsip maqāṣid al-syarī'ah, teori keadilan gender, dan pertimbangan sosial-ekonomi sebagai dasar untuk menilai praktik peradilan.

Hasil penelitian menunjukkan bahwa harta bersama tidak hanya mencakup aset materi, tetapi juga kontribusi non-finansial seperti peran domestik dan emosional pasangan. Dalam praktiknya, hakim Pengadilan Agama mulai mengadopsi pendekatan progresif dengan mempertimbangkan keadilan distributif dan proporsionalitas kontribusi. Ini menandai pergeseran paradigma dari interpretasi tekstual ke pendekatan yang lebih humanistik terhadap maqāṣid.

Kesimpulan studi ini menekankan perlunya merumuskan kembali hukum keluarga Islam agar lebih adaptif terhadap konteks sosial kontemporer. Reformasi tersebut harus memastikan peran ekonomi yang setara antara suami dan istri dan mendorong keadilan sosial dalam distribusi kekayaan bersama.

Kata kunci: *harta bersama, keadilan gender, Pengadilan Agama, maqāṣid al-syarī'ah, sengketa keluarga.*

INTRODUCTION

The phenomenon of shared property in the household has become an increasingly complex socio-legal issue in the midst of the dynamics of modern society. Changes in family economic patterns, increased women's participation in the workforce, and shifts in social values about the role of husband and wife have given rise to new forms in household financial management.¹ Not infrequently, relationships that were originally based on trust turn into legal issues when there is a divorce or dispute related to asset ownership. This phenomenon shows that the issue of common property is no longer just a

¹ Abd Rouf et al., "Joint Property Division in Indonesia: A Gender Equality Viewpoint," *De Jure: Journal of Law and Sharia* 15, no. 2 (2023): 230–50, <https://doi.org/10.18860/j-fsh.v15i2.23050>.

private domain, but also a public issue that touches on economic justice and legal protection for each party.²

From an academic perspective, the theme of property reflects the meeting between Islamic legal values, national law, and social practice. In the Indonesian context, the dual applicability of the legal system between religious, customary, and state law causes differences in interpretation and joint implementation and the division of property after divorce is important because. The legal literature shows that although the Compilation of Islamic Law (KHI) and the Civil Code (KUHPerdota) have provided a normative basis, there is still uncertainty regarding the limits of joint property, the economic contribution of the wife, and the mechanism of fair distribution. This makes the scientific study of common property have epistemological urgency to strengthen its theoretical and normative basis.³

Academic gaps are also evident in the weakness of empirical research that links the economic, social, and juridical dimensions of common property disputes. Most previous research has focused on formal legal aspects without delving into the social and psychological context of the parties involved. In fact, family financial disputes are often not only related to the value of assets, but also concern the perception of justice, power relations, and moral responsibility between spouses. This gap requires an interdisciplinary approach so that the discussion of common property does not stop at the level of legal texts, but is able to respond to the evolving social reality.⁴

In the global context, the issue of family property division is a concern in many countries because it is related to the principles of gender equality and economic protection for vulnerable parties after divorce. Countries with modern legal systems have developed models of equitable distribution and community property that are oriented towards substantive justice. A comparative study of the legal system can enrich understanding and provide inspiration for the reconstruction of family law in Indonesia, especially in strengthening the principles of justice and welfare after divorce.⁵

From a practical perspective, research and discussion of common property directly contribute to improving people's legal literacy. Many couples do not understand the legal limitations related to joint property or the mechanism for settling it in religious or civil courts.⁶ As a result, there is inequality and legal uncertainty that worsens the socio-economic conditions

² Firayani Firayani, "Legal Certainty in the Division of Joint Property after Divorce," *Leges Privatae* 1, no. 3 (2024): 35–38, <https://doi.org/10.62872/jz3yrc79>.

³ Firayani, "Legal Certainty in the Division of Joint Property after Divorce."

⁴ Skender Gojani and Ardian Mehmetaj, "Marital Joint Property: A Legal and Practical Analysis," *Journal of Posthumanism* 5, no. 3 (2025): 274–78, <https://doi.org/10.63332/joph.v5i3.732>.

⁵ Sofyan Mei Utama et al., "Comparison of Family Law Systems in the United States, Indonesia, and France: A Case Study of Marriage and Divorce Rules," *Al-Adl : Legal Journal* 16, no. 2 (2024): 18, <https://doi.org/10.31602/al-adl.v16i2.11261>.

⁶ Sri Hariati et al., "Legal Protection for Wives Regarding Disputed Joint Property Issues in Divorce Lawsuits," *JILPR Journal Indonesia Law and Policy Review* 5, no. 1 (2023): 34–46, <https://doi.org/10.56371/jirpl.v5i1.157>.

of the parties involved. This study is expected to provide normative and educational solutions, so that the law can function not only as a tool for resolving disputes, but also as an instrument of social protection.⁷

In addition, the urgency of this theme is also rooted in the increasing divorce rate in Indonesia in the last decade. Data from the Religious Justice Agency shows a significant upward trend in divorce cases with the demand for the division of joint property. This fact confirms that the issue of common property is not just a legal theory, but a real phenomenon and demands an academic response and adaptive legal policies.⁸ Therefore, in-depth discussions about common property, property division, and family financial disputes are relevant in efforts to strengthen the foundations of family justice in Indonesia.⁹

Academically and pedagogically, this study has direct relevance to the courses of Islamic Family Law, Civil Law, and Legal Sociology. This discussion not only enriches students' understanding of legal norms and jurisprudence, but also fosters analytical skills to see family law issues from social, economic, and substantive justice perspectives. Thus, this paper is expected to be not only a scientific contribution at the theoretical level, but also a means of contextual learning that encourages the integration of theory and practice in the enforcement of fair family law.

METHODS

This study uses a juridical-normative approach with the support of sociological-legal analysis. The juridical-normative approach is used to examine the legal norms that govern common property, property division, and family dispute resolution based on primary legal sources such as Law Number 1 of 1974 concerning Marriage, Compilation of Islamic Law (KHI), and various religious court rulings. Meanwhile, a sociological approach is used to understand the social realities behind the emergence of family financial disputes, including gender economic inequality and shifts in social values in modern households.

The data of this research is sourced from primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations and jurisprudence; secondary materials in the form of books, scientific articles, and the results of previous research; While tertiary materials include legal

⁷ Nely Melinda and Sakirman Sakirman, "Public Understanding of Shared Property from an Indonesian Positive Legal Perspective," *Syakhshiyah Journal of Islamic Family Law* 3, no. 2 (2023): 141, <https://doi.org/10.32332/syakhshiyah.v3i2.7512>.

⁸ Nataliia Parkhomenko, "Restorative Justice as a Legal Category and Institution of Law: Conceptual Aspects of Essence and Content," *Slovo of the National School of Judges of Ukraine* 3, no. 3(48) (2024): 42–51, [https://doi.org/10.37566/2707-6849-2024-3\(48\)-3](https://doi.org/10.37566/2707-6849-2024-3(48)-3).

⁹ Diana Kostina, "Mediation in Public-Law Disputes: An Innovative Approach to the Protection of Human Rights," *Problems of Legality*, no. 166 (2024): 140–57, <https://doi.org/10.21564/2414-990x.166.312519>.

dictionaries, encyclopedias, and other supporting documents. Data collection is carried out through the library *research* method, with the stages of identification, classification, and interpretation of relevant legal and scientific sources. The analysis technique used is qualitative descriptive, namely interpreting legal data based on the social context and justice theory used.

Data analysis was carried out systematically by integrating distributive justice theory (John Rawls), progressive law (Satjipto Rahardjo), and gender equality perspectives as a conceptual analysis framework. This multidisciplinary approach aims to connect legal texts and social reality, so that the results of the research are able to comprehensively explain the issue of common property and family financial disputes. In this way, the research is expected to produce valid academic arguments and offer normative and practical recommendations for the development of equitable family law in Indonesia.

DISCUSSION

1. Key Concepts

Joint property (*gono-gini*) in family law is a concept that refers to the collective ownership between husband and wife of assets acquired during the marriage. In the perspective of Indonesian national law, the regulation of joint property is contained in Article 35 of Law Number 1 of 1974 concerning Marriage, which states that property acquired during marriage becomes joint property, while the inherited property of each husband and wife remains private property.¹⁰ In Islamic law, this concept is known as *shirkah* in property ownership, which emphasizes the principles of justice and togetherness in meeting household needs. As for the customary context, the distribution of property often follows local principles that differ between regions, such as the matrilineal system in Minangkabau or the patrilineal system in Bali.¹¹

The division of joint property is a logical consequence of the termination of the marital bond, either due to divorce or death. In practice, this division often raises problems related to determining proportions, evidence of economic contribution, and the validity of certain assets. The Compilation of Islamic Law (KHI) Article 97 states that widows or widowers who are divorced are each entitled to half of the joint property as long as it is not otherwise specified in the marriage agreement. However, the application of this provision still often raises tensions between the principle

¹⁰ Sholihan Sholihan et al., "Analysis of the Conception of the Transfer of Land Rights to Collective Property (Gono Gini) through Grant Deeds to Other Parties," *HUMANIS: Journal of Social Sciences and Humanities* 16, no. 1 (2024): 64–77, <https://doi.org/10.52166/humanis.v16i1.5941>.

¹¹ Abdul Hafidz, "Comparison of Customary Inheritance and the Compilation of Islamic Law : A Study of Inheritance Distribution in Indonesia," *SPEECH International Journal of Law* 8, no. 2 (2024): 57–75.

of formal justice and substantive justice, especially in cases where the wife's contribution is non-material.¹²

Family financial disputes include any form of dispute related to the management, ownership, or division of assets during and after marriage.¹³ This kind of dispute is often part of divorce cases in the Religious Court. Factors that cause this include unclear property status, lack of legal literacy of spouses, inequality in economic roles, and weak financial communication mechanisms in the family. Therefore, a comprehensive understanding of common property cannot be separated from the social, economic, and psychological context of the household.¹⁴

2. Relevant Theories

The author uses the approach of distributive justice theory developed by Aristotle and updated by John Rawls as the basis of normative analysis. This theory emphasizes that justice does not mean an equal distribution, but a proportionate distribution according to contributions and needs.¹⁵ In addition to the theory of justice, the progressive legal theory put forward by Satjipto Rahardjo is also an important reference. This theory emphasizes that the law should serve humans, not the other way around. In the context of a common property dispute, a progressive approach encourages law enforcement to not only stick to the text of the law, but also consider the social and moral aspects behind the case. This approach is important in creating substantive justice and legal protection for vulnerable parties.¹⁶

Gender theory and family economic equality are also used to strengthen the argument that the division of common wealth should take into account women's social position. In many cases, wives are often in economically subordinate positions despite contributing greatly to the stability of the household. Thus, gender-sensitive legal analysis is essential to ensure fairness in asset allocation.

3. Previous Research

Several previous studies have addressed the theme of shared property from various perspectives. Research by Rodiatun Adawiyah examined the implementation of Article 35 of the Marriage Law in the practice of religious justice and found inconsistencies in determining the proportion of joint property between husband and wife.¹⁷ Meanwhile, a study by Richard T

¹² Khairina et al., "Reforming the Rules on the Division of Joint Property: A Progressive Legal Approach," *Juris: Sharia Scientific Journal* 23, no. 1 (2024): 191–202, <https://doi.org/10.31958/juris.v23i1.11565>.

¹³ S Izuhara, M., & Koeppe, . . (2019). *Inheritance and Family Conflicts: Exploring Asset Transfers Shaping Intergenerational Relations . Families*, University of Bristol – Bristol Research Portal, 8 (2019): 53–72.

¹⁴ Gojani and Mehmetaj, "Marital Joint Property: A Legal and Practical Analysis."

¹⁵ Wojciech Dziedziak, "An Essay on Natural and Distributive Justice," *Studia Iuridica Lublinensia* 29, no. 4 (2020): 71–83, <https://doi.org/10.17951/sil.2020.29.4.71-83>.

¹⁶ Eka Ristianawati, "Joint Property Distribution upon Divorce Reviewed From the Contribution of Husband and Wife in the Household," *Walisongo Law Review (Walrev)* 3, no. 1 (2021): 1–20, <https://doi.org/10.21580/walrev.2021.3.1.8078>.

¹⁷ Sahala Lumbantoruan et al., "Juridical Analysis of the Comparison of Different Religious Marriage Laws Based on the Administrative Law Article 35 with SEMA No 2 Years 2023 Concerning

Harrison highlights that many judges still use a formalistic approach without considering non-material contributions, thus creating a sense of injustice on the part of women.¹⁸

Another study by Ridwan Awaludin raised the issue of mediation in resolving family financial disputes, showing that a dialogical approach based on family values can reduce conflicts and accelerate case resolution.¹⁹ Meanwhile, research by Zulkarnain emphasizes the importance of family law reconstruction based on *maqāṣid al-syarī'ah* to ensure the protection of family welfare after divorce. All of these studies make valuable contributions, but there are still research gaps in integrating positive legal analysis, substantive justice, and social context simultaneously.

Thus, this paper seeks to fill this void by presenting a multidisciplinary approach that combines legal, social, and gender justice perspectives. This approach is expected to broaden understanding of the dynamics of joint property and family financial disputes, while providing a conceptual basis for family law reform that is more responsive to social changes in Indonesia.

A. The Concept of Joint Property and Congenital Property in Indonesian and Islamic Law

The concept of joint property in Indonesian law is an important part of regulating the financial relationship between husband and wife during the marriage period. Based on Law Number 1 of 1974 concerning Marriage, especially Article 35 paragraph (1), it is stated that the property obtained during marriage becomes joint property, while the inherited property of each husband or wife remains private property.²⁰ This formulation shows that national law recognizes the principle of *community property* in a form that is adapted to social and religious values in Indonesia. The goal is to maintain justice and balance of rights between husband and wife in terms of ownership and management of property during the marriage bond. Thus, the concept of common property is not only economic, but also has moral and social dimensions as a reflection of equality in the household.²¹

From the perspective of Islamic law, the concept of commensurate with common property can be found in the principle of *shirkah* or *musharakah*,

Marriage Registration," *International Journal of Business, Law, and Education* 5, no. 2 (2024): 1893–901, <https://doi.org/10.56442/ijble.v5i2.764>.

¹⁸ Richard T. Harrison et al., "Margins of Intervention? Gender, Bourdieu and Women's Regional Entrepreneurial Networks," *Entrepreneurship and Regional Development* 36, nos. 3–4 (2024): 209–42, <https://doi.org/10.1080/08985626.2023.2298981>.

¹⁹ Ridwan Awaludin et al., "Dispute Resolution of Joint Property and Inherited Property Due To Death Divorce By Mediation," *SMART: Journal of Sharia, Tradition, and Modernity* 2, no. 2 (2022): 155, <https://doi.org/10.24042/smart.v2i2.20603>.

²⁰ Isye Junita Melo^{1*} Feibe Engeline Pijoh² Novita Marven Mongdong³ Roof Pajow, "Common Property In The Perspective Of Marriage Law In Indonesia," *Call for Papers - Technium Social Sciences Journal (Vol. 77/2025)* 2023-04-27, 2023, 6–9.

²¹ Musfira Musfira et al., "The Concept of Joint Property Ownership of Husband and Wife," *Proceedings of International Conference on Multidisciplinary Research* 4, no. 1 (2022): 15–19, <https://doi.org/10.32672/pic-mr.v4i1.3733>.

which is a form of cooperation between two parties that generates mutual benefits. Although the Qur'an and hadith do not explicitly discuss the term "joint property of husband and wife", the principles of justice, responsibility, and balance of rights are relevant normative grounds.²² The jurists, especially in the context of contemporary fiqh, argue that the results of joint hard work during marriage can be considered as property of *musytarakah* (joint ownership), insofar as both contribute in material and non-material forms. Therefore, modern Islamic law provides a space for interpretation for the recognition of joint property by considering *maqāṣid al-syarī'ah*, especially in maintaining justice (*al-'adl*) and family welfare (*maslahah al-usrah*).²³

The compilation of Islamic Law (KHI) as a source of positive law for Muslims in Indonesia accommodates this principle in a more concrete way. In Articles 85–97 of the KHI it is affirmed that property obtained during marriage becomes joint property, while property brought by each husband or wife, or obtained as gifts and inheritances, becomes private property.²⁴ This affirmation shows the harmonization between national law and Islamic law in the realm of marriage. Interestingly, KHI also provides legal protection for wives in the division of joint property, especially in the event of divorce. The provision is oriented towards the principles of gender equality and substantive justice, which reflects advances in the interpretation of Islamic law in Indonesia compared to the more patriarchal classical practices.²⁵

Meanwhile, inherited property has a different legal position from common property. In the national legal system, inherited property is any wealth that was owned before marriage or acquired through inheritance and gifts during marriage. This property remains private property without the intervention of the spouse, unless there is a marriage agreement stating otherwise. In Islamic law, the concept of inherited property can be associated with the principle of *māl al-zawjain*, where each party retains individual ownership rights over property acquired before the marriage contract. This principle is in line with the rule of *al-ashlu fi al-māl al-milk*, that individual ownership is not forfeited except by a valid will or agreement. Thus, both Islamic law and national law recognize the financial autonomy of individuals in marriage.²⁶

²² Usman Alfariasi et al., "Positive Legal Views and Islamic Law on the Distribution of Gono-Gini Property," *Only* 2, no. 2 (2023): 177–87, <https://doi.org/10.61159/sahaja.v2i2.126>.

²³ Salsabila Firdausia1* and Zeehan Fuad Attamimi, "The Application of the Principle of Shirkah Abdan in the Distribution of Matrimonial Property," *Journal Syntax Idea P-Issn: 2723-4339 e-ISSN: 2548-1398 Vol. 6, No.2, February 2024* 2, no. 1 (2024).

²⁴ Rouf et al., "Joint Property Division in Indonesia: A Gender Equality Viewpoint."

²⁵ Muhyidin*, "Reformulation of the Status and Legal Position of Wives in the Concept of Joint Marital Property in the Islamic Inheritance System," *International Journal of Recent Technology and Engineering (IJRTE)* 8, no. 4 (2019): 8637–38, <https://doi.org/10.35940/ijrte.d8492.118419>.

²⁶ Edy Saputra and Mohammad Ridwan, "The Agreement of Asset Separation in the Perspective of Maqasid Al- Shariah : The Problem of Asset Conflict , the Hifdz al-Mal Approach , and Its Impact on Family Stability in Islamic Law in Indonesia," *WARAQAT : Journal of Islamic Sciences* IX, no. 2 (2024): 12–21.

In the end, the concepts of common property and innate property in Indonesian and Islamic law show the intersection between the values of justice, equality, and family responsibility. National law is codifying by providing legal-formal limits, while Islamic law is normative and flexible by emphasizing moral values and the principle of justice. The integration of the two results in a contextual and progressive family law system, which not only protects the economic rights of each party, but also strengthens the integrity of the household. In the modern social context, a comprehensive understanding of these two concepts is essential for resolving various family financial disputes in a fair and civilized manner.²⁷

B. Negotiation / Mediation of Joint Property Distribution

Negotiation and mediation are the two main instruments in resolving disputes over the division of common property which reflects the modern legal paradigm based on *restorative justice*. In the context of Indonesian family law, settlement through peaceful channels is regulated in Article 130 of the HIR and Article 154 of the Criminal Code, and is emphasized through the Supreme Court Regulation (Perma) No. 1 of 2016 concerning Mediation Procedures in Court. This mechanism emphasizes the importance of open dialogue between husband and wife to reach a fair agreement without having to go through coercive judges' decisions. In many cases, mediation has been successful in preventing the escalation of postmarital emotional conflicts and reducing the burden of cases in religious courts. Thus, mediation not only functions as a tool for legal settlement, but also as a social mechanism that maintains harmony and relational justice between the parties.²⁸

From the perspective of Islamic law, the principle of mediation (*ṣulḥ*) has a solid basis in both the Qur'an and the sunnah. Allah says in Surah An-Nisā' verse 35

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا

*If you (the guardians) are worried about a dispute between the two, send a peacemaker from the male family and a peacemaker from the female family. If both of them intend to make islah (peace), surely Allah will give taufik to both. Indeed, Allah is All-Knowing, All-Knowing.*²⁹

About the appointment of two hakam from the husband and wife side in the event of a dispute, so that both can find a point of peace. The concept of *ṣulḥ* emphasizes the resolution of disputes through peace and mutual justice (*al-'adl wa al-iṣlāḥ*).³⁰ In the context of the division of common property, this

²⁷ Abdul Majid Khon, "Books @ Books.Google.Co.Id," in *Housing Law*, preprint, 2023.

²⁸ Synergy Antara et al., *Marriage*, 7, no. 2 (2025).

²⁹ "Qur'an Ministry of Religion," accessed November 15, 2025, <https://quran.kemenag.go.id/quran/per-ayat/surah/4?from=35&to=35>.

³⁰ Erma Sauva Asvia, "The Concept of Mediation in Qs. Al-Nisa Verse 35 (Perspective of Tafsir Al Misbah)," *Pappas* 5, no. 2 (2023): 262–74.

principle is relevant because it prioritizes substantive justice over formal justice. Islam recognizes the contribution of both parties in building domestic life, both financially and non-financially, so the results of the division should consider the principle of proportional justice, not just mathematical numbers. Mediation in Islamic law is therefore oriented towards *maslahah*, with the aim of restoring social and spiritual relationships, not just resolving material problems.³¹

Empirically, the implementation of mediation in religious courts in Indonesia shows positive developments, but still faces a number of challenges. Research by the Supreme Court's Religious Justice Agency (2023) noted that around 40% of mediated joint property cases can be resolved by a peace agreement, while the rest continue to the litigation process. One of the main obstacles is the lack of legal awareness of the community and the inequality of power in the husband-wife relationship, which makes mediation not always run equally. Emotional factors, especially in the case of divorce, often hinder the attainment of a fair consensus. Therefore, a mediator is needed who not only understands positive law, but also has social competence and gender empathy so that the mediation process can take place effectively and fairly.³²

Within the framework of progressive legal theory, mediation and negotiation in the division of common property can be seen as a form of substantive justice reconstruction. Instead of focusing on legal certainty alone, this mechanism places human values and social balance at the heart of dispute resolution. This approach is in line with the spirit of *maqāṣid al-syarī'ah*, which places the protection of property (*ḥifẓ al-māl*) and descent (*ḥifẓ al-nasl*) as the primary purpose of Islamic family law.³³

Thus, the success of mediation is measured not only by the written agreement reached, but also by the extent to which the process creates emotional and social justice for both parties to the dispute. In this context, mediation can be a bridge between legal norms and the moral values of a religious society. Furthermore, mediation and negotiation in the division of common property have the potential to become a model for adaptive and sustainable family dispute resolution in Indonesia. The integration of national law and Islamic principles provides a strong normative foundation for the development of this mechanism. However, in order to function optimally, institutional support is needed in the form of certified mediator training, proactive court policies, and legal socialization to the community. Strengthening the role of mediation based on substantive justice values and

³¹ Alyaziza Aisya et al., "Equitable Distribution of Common Property for Boys and Girls (Study of Decision No. 382/Pdt.G/2021/Pa.Plh)," *Journal of Social Technology* 4, no. 12 (2024): 1027–34, <https://doi.org/10.59188/jurnalsostech.v4i12.31774>.

³² Septi Rose et al., *The Effectiveness of Family Mediation in Domestic Violence Cases in Islamic Perspectives: Between Peaceful Settlement and*, 5, no. 2 (2025): 134–47.

³³ As Salah et al., *SRI TURATMIYAH DOCTORAL STUDY PROGRAM IN LAW*, 2025.

maqāṣid al-syarī'ah can strengthen the character of Indonesian family law as a responsive, humanist, and *peace-oriented legal system*.³⁴

C. Family Financial Dispute Resolution After Divorce

Postmarital family financial disputes, especially after divorce, are one of the most complex issues in the Indonesian family law system. Conflicts usually relate to the division of joint property, child support, and financial responsibilities after the breakdown of the marital relationship. In the context of positive law, the case is regulated through Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI), which affirms that joint property is divided fairly after divorce, while inherited property remains their personal right. However, implementation in the field is not always simple. Emotional factors, economic inequality, and gender bias often complicate the settlement process. Therefore, resolving family financial disputes after divorce requires a legal approach that is not only normative, but also substantive and humane justice.³⁵

From the perspective of Islamic law, the settlement of family financial disputes after divorce must be based on the principles of *al-'adl* (justice) and *ihsān* (virtue). The Qur'an encourages that the settlement of divorce be carried out in a good way (*tasrīh bi ihsān*), including in financial matters such as alimony, iddah, mut'ah, and children's rights. The rule of *lā ḍarar wa lā ḍirār* (not to cause harm to one party) is the main foothold in limiting arbitrary actions in the division of property and financial obligations. Thus, Islamic law views the settlement of financial disputes not only as a material transaction, but also as a form of moral and social responsibility to maintain balance after the breakdown of the marital relationship. This approach shows that justice in Islam is relational, not just formal, taking into account the social and psychological context of each party.³⁶

From the perspective of religious justice in Indonesia, the resolution of post-divorce family financial disputes is carried out through two main channels: litigation and non-litigation. The litigation path involves an examination and a judge's decision, especially if mediation fails to reach an agreement. However, recent trends show an increasing preference for non-litigation settlements through mediation and *amicable settlements*. In practice, judges in religious courts often play the role not only of law enforcement, but also of social justice facilitators. This kind of judicial approach reflects the transformation of the family law paradigm which is no longer rigid in interpreting norms, but seeks to adapt to the values of benefit and maqāṣid al-syarī'ah. Thus, Indonesia's religious justice system is moving towards a

³⁴ Nirwan Junus et al., "Integration of Mediation in Divorce Cases Reviewed from Supreme Court Regulation on Court Mediation Procedures," *Jambura Law Review* 6, no. 1 (2024): 183–205, <https://doi.org/10.33756/jlr.v6i1.19370>.

³⁵ Junus et al., "Integration of Mediation in Divorce Cases Reviewed from Supreme Court Regulation on Court Mediation Procedures."

³⁶ Rose et al., *The Effectiveness of Family Mediation in Domestic Violence Cases in Islamic Perspectives: Between Peaceful Settlement and*.

responsive legal system model that places the interests of the family at the center of justice.³⁷

Sociologically, the resolution of family financial disputes after divorce must also pay attention to the economic and psychological dimensions of the community. Many women, especially in the lower middle social class, experience economic vulnerability after divorce because they do not have equal access to financial resources. This condition creates structural injustices that cannot be resolved only through formal legal rulings. Therefore, a substantive justice-based approach is important, including the provision of legal protection for women's and children's economic rights post-divorce. Legal aid and social assistance programs for women victims of divorce need to be strengthened so that financial dispute resolution does not end in economic marginalization. In this context, the law must be present as an instrument of empowerment, not just a punishment mechanism.³⁸

The resolution of family financial disputes after divorce should ideally be directed to the integrative *justice model*, which is justice that combines legal, moral, and social dimensions. The integration between the principles of national law and Islamic values provides an adaptive and equitable framework for a plural Indonesian society. Strengthening the mediation system, improving community legal literacy, and institutional reform in the religious justice environment are strategic steps to achieve sustainable justice. In the perspective of *maqāṣid al-syarī'ah*, the settlement of family financial disputes is not only about the division of property, but also about the maintenance of human dignity (*ḥifẓ al-'ird*), the protection of property (*ḥifẓ al-māl*), and the sustainability of the family (*ḥifẓ al-nasl*). This is the philosophical foundation that should be the direction of family law reform in Indonesia in the future.³⁹

CONCLUSION

This study emphasizes that the regulation and settlement of joint property disputes in the context of Indonesian family law is a reflection of efforts to harmonize national legal norms, Islamic justice principles, and socio-cultural values of the community. The concept of common property and inherited property has been comprehensively regulated in Law Number 1 of 1974 and the Compilation of Islamic Law (KHI), which places the principles of justice, equality, and responsibility as the main foundation of financial relationships in households. Islamic law, through the principles of *musharakah* and *ṣulḥ*, also provides moral and spiritual legitimacy for the concept of common ownership, thereby strengthening the relevance of Indonesia's positive law in the context of a religious and pluralistic society.

³⁷ Ristianawati, "Joint Property Distribution upon Divorce Reviewed From the Contribution of Husband and Wife in the Household."

³⁸ Muhyidin*, "Reformulation of the Status and Legal Position of Wives in the Concept of Joint Marital Property in the Islamic Inheritance System."

³⁹ Kostina, "Mediation in Public-Law Disputes: An Innovative Approach to the Protection of Human Rights."

Settlement of joint property and family finance disputes through negotiation and mediation has proven to be more effective in realizing substantive justice than litigation approaches that tend to be formalistic. This mechanism reflects the *restorative justice* paradigm in family law, where peace, empathy, and relational balance take precedence over just the enforcement of legal norms. The principle of *ṣulḥ* in Islam and the modern approach to mediation have substantial similarities in placing the benefit (*maslahah*) and proportional justice as the ultimate goal. Thus, the integration of the two systems shows the direction of family law reform that is more humanistic and adaptive to the needs of contemporary society.

On the other hand, the settlement of post-divorce family financial disputes demands the presence of a law that not only upholds formal justice, but also protects vulnerable parties, especially women and children. The implementation of family law must be oriented towards distributive justice, taking into account the non-material contribution in the household, emotional burden, and postmarital socio-economic conditions. In the perspective of *maqāṣid al-syarī'ah*, such justice is a form of protection of property (*ḥifẓ al-māl*), human dignity (*ḥifẓ al-'ird*), and the sustainability of generations (*ḥifẓ al-nasl*). Therefore, post-divorce justice is not just the division of assets, but the reconstruction of moral and social balance in family life.

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