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## **Joint Property Division in Indonesia: A Gender Equality Viewpoint**

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### **Abstract:**

The distribution of joint property regulated under the Compilation of Islamic Law is considered very effective due to the legal certainty guaranteeing that ex-husbands and wives receive a half share. However, these provisions cannot be fully applied to estranged husbands and wives because family background conditions vary. There are certain conditions where husbands and wives have multiple roles, and this occurrence needs to be more profoundly studied. Therefore, this study is presented to analyze the distribution of joint assets according to the roles assigned in the household. This research employed a normative-legal method and statutory and conceptual approaches. The primary data in this study is the Compilation of Islamic Law (KHI). The researcher analyzed activity profiles, access and control between husband and wife as specified in KHI norms by using a gender equity analysis tool. The results show that the fair value of the distribution of joint assets which refers to the division of roles between husband and wife contained in the KHI has set different roles between the two, in which the husband works outside the house while the wife serves as a housewife. Meanwhile, currently, all roles performed by husbands can also be performed by wives and the other way around, while unchangeable roles remain in the biological or reproductive role. So the division of roles cannot be interpreted literally because the husband or wife has flexible and fair access and control.

**Keywords:** joint property; gender equality; spouses rights.

### **Introduction**

One of the polemics that arise as a result of divorce between husband and wife is the division of joint property between them.<sup>1</sup> Law Number 1 of 1974 concerning Marriage states that any property acquired during marriage is used as joint property of the husband and wife, without distinguishing who works and whose property is registered under whose name. If the marriage ends due to either death or divorce, the property must be divided equally in value.<sup>2</sup> Under the same law, Article 37 states that if a marriage breaks due to divorce, the joint assets are divided according to religious law, customary law, and positive law, respectively.<sup>3</sup>

The Compilation of Islamic Law, (commonly abbreviated as KHI)--a national Islamic law—serves as a guideline and should be applied by the community and all judges of Religious Courts in Indonesia when issuing their decisions.<sup>4</sup> It also includes provisions related to joint property within households. When referring to the KHI the distribution of joint assets is determined by a definite share, of which each one gets half of the joint property. This provision is as stated in Article 97 which states, divorced widows or widowers are each entitled to half of the joint property as long as it is not specified otherwise in the marriage agreement.<sup>5</sup> The implementation of the above regulations can be seen in the decision of the Religious Court of Malang City Number 0311/Pdt.G/2022/PA.Mlg, with the defendant's reconvention. Ana Sofiyanti binti Suwito is an entrepreneur and plaintiff of the convention. Wahyudi Dusanto bin RM Soeharso is an entrepreneur. The panel of judges made Article 97 KHI part of the basis for deciding the case so that the final result was that half of the distribution went to the ex-husband and the other half went to the ex-wife even though the wife's status in the decision was as a self-employed worker and housewife.<sup>6</sup>

Another example is found in decision number 0221/Pdt.G/2021/PA.Mlg. with the plaintiff (Ms. X) working as a Civil Servant (PNS), while the Defendant (Mr. Y) is an entrepreneur. The judge in his legal considerations referred to Article 35 paragraph (1) of Law Number 1 of 1974 which states that property acquired during marriage becomes joint property. In addition, the judge also used the general

<sup>1</sup> Zainurohmah Zainurohmah, Marcellia Puspa Andini, dan Anisa Vira Damayanti, "Discourse on Post-Divorce Distribution of Joint Assets in the Perspective of Islamic Law in Indonesia," *Contemporary Issues on Interfaith Law and Society* 2, no. 1 (2023): 71–86, <https://doi.org/10.15294/ciils.v2i1.66295>; Nurunnisa Nurunnisa et al., "Implications of Annulment of Marriage on The Distribution of Joint Assets According To The Compilation of Islamic Law and National Law," *Syariah: Jurnal Hukum dan Pemikiran* 23, no. 1 (2023): 1–23, <https://doi.org/10.18592/sjhp.v23i1.8611>.

<sup>2</sup> Republik Indonesia, "Undang-Undang Republik Indonesia Tentang Perkawinan," Pub. L. No. 1 (1974), <https://peraturan.bpk.go.id/Home/Details/47406/uu-no-1-tahun-1974>, Pasal 35; Musfira Musfira et al., "The Concept of Joint Property Ownership of Husband and Wife," *Proceedings of International Conference on Multidisciplinary Research* 4, no. 1 (2021): 15–19, <https://doi.org/10.32672/pic-mr.v4i1.3733>.

<sup>3</sup> Republik Indonesia, Pasal 37.

<sup>4</sup> Asriati Asriati, "Pembaruan Hukum Islam dalam Terapan dan Perundang-Undangan di Indonesia," *Jurnal Hukum Diktum* 10, no. 1 (2012): 23–39.

<sup>5</sup> Kementerian Agama RI, "Kompilasi Hukum Islam" (2018), Pasal 97, <https://simbi.kemenag.go.id/eliterasi/storage/perpustakaan/slims/repository/b5c07c0ce34195adb3cd15ad059b33f2.pdf>.

<sup>6</sup> Direktori Putusan Mahkamah Agung Republik Indonesia, Putusan Nomor 0311/Pdt.G/2022/PA.Mlg. (2022).



provisions of Article 1 letter (f) of KHI which states that marital assets or syirkah are acquired either individually or jointly with the husband and wife while the marriage bond is in progress (hereinafter referred to as joint assets) without questioning, registered under the name of either a husband or wife, so the joint property that exists either in the name of the husband or wife is essentially joint property. Therefore, the results are divided in half for each party.<sup>7</sup>

Furthermore, in decision number 1926/Pdt.G/2021/PA.Mlg., with the plaintiff (Ms. X) working as a private employee and the defendant (Mr. Y) also working as a private employee, because the two disputed objects were purchased by the Plaintiff and the Defendant while still married, according to the provisions of Article 35 paragraph (1) of the Law Number 1 of 1974 and Article 1 letter (f) of KHI, the two objects of the dispute include joint assets. In this case, the Panel of Judges determined the distribution of the joint assets by dividing, namely that Plaintiff gets 1/2 of the joint assets and Defendant also gets 1/2 of the assets.<sup>8</sup>

The effectiveness of Article 97 paragraph 1 of the KHI in deciding cases of joint property is indeed very significant because in it there is legal certainty, namely a half share for husband and wife because the husband and wife have the same contribution in the household.<sup>9</sup> In the family, there is a distribution of obligations, roles and functions of each, namely the husband as the head of the family must guide, protect and provide religious education to his wife and household and provide a living accommodated by his income.<sup>10</sup> Meanwhile, the wife as a housewife must be physically and mentally devoted to her husband and is responsible for organizing and managing daily household needs as well as possible<sup>11</sup> to ensure a happy household. With the distribution of roles and functions in the family, it is hoped that the growth and development of a family can run well. However, it is not uncommon to find that the role and function of the wife have undergone a shift, where many wives also work professionally to earn a living to help meet the needs of the family and they also play a role as housewives.<sup>12</sup> Based on this condition, the provisions of the article above cannot be used because the obligations fulfilled between the two are not aligned. In other words, the rights to joint property are relevant to the obligations they have for the household according to the principle of gender justice.

Gender justice is a process towards equality, harmony, balance, and indiscriminability.<sup>13</sup> This means that there is no standardization of roles, double burden, subordination, marginalization and violence against women and men. This concept can be used as an analysis to capture the problem in a balanced way without discrimination, where men and women are treated equally in obtaining their basic

<sup>7</sup> Direktori Putusan Mahkamah Agung Republik Indonesia, Putusan Nomor 0221/Pdt.G/2021/PA.Mlg. (2021).

<sup>8</sup> Direktori Putusan Mahkamah Agung RI, Putusan Nomor 1926/Pdt.G/2021/PA.Mlg. (2022).

<sup>9</sup> JM. Muslimin dan Yulia Fatma, "The Actualization of Justice in the Settlement of Joint Assets Due to Divorce: Comparative Analysis of Decisions of the Religious Courts," *De Jure: Jurnal Hukum dan Syar'iah* 12, no. 2 (2020): 176–90, <https://doi.org/10.18860/j-fsh.v12i2.9064>.

<sup>10</sup> Kementerian Agama RI, Kompilasi Hukum Islam, Pasal 80 tentang kewajiban suami.

<sup>11</sup> Kementerian Agama RI, Kompilasi Hukum Islam, Pasal 83 tentang kewajiban istri.

<sup>12</sup> Misbah Zulfa Elizabeth et al., "Gender Relation in Family in Post-COVID-19 Era: Study Among Working Couple in Semarang, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (2023): 937, <https://doi.org/10.22373/sjhk.v7i2.17007>.

<sup>13</sup> Mufidah Ch, *Psikologi Keluarga Islam Berwawasan Gender* (Malang: UIN Maliki Press, 2008), 18.



rights in the family, society and the state.<sup>14</sup> Evidence of gender equity is characterized by the following: 1) Access is an opportunity to obtain or use certain resources, 2) Role is the participation of a person/group in an activity and/or decision-making, 3) Control refers to authority or power to make decisions, and 4) Benefit refers to the use of resources that can be enjoyed optimally.<sup>15</sup>

The issue of joint property distribution is closely related to partnerships between husband and wife and also justice in social roles between men (husbands) and women (wives) whose rights and obligations are regulated in legislation and KHI. However, in reality, in the life of Indonesian society, there are several shifts in roles, in which the wife helps her husband work so that they have multiple roles.<sup>16</sup> By referring to the concept of gender justice, the division of joint assets between husband and wife will get an equal share according to the contribution made in the household.

Research related to the distribution of joint property has been carried out. For example, Ilham Akbar Syarif<sup>17</sup> concluded that Joint Assets in KHI are relevant to the principles of Islamic Law legislation, namely containing the principles of divinity, justice, equality, deliberation, freedom, *amar ma'ruf nahi munkar*, tolerance, and *ta'awun*. However, these provisions still cause problems, as revealed by Ongky Alexander,<sup>18</sup> Article 85 and Article 97 KHI carry multiple interpretations. Apart from that, Marriage Law Number 1 of 1974 Article 37 also does not specify the division of joint assets, thereby requiring revision.<sup>19</sup> This statement is reinforced by research conducted by Elimartati,<sup>20</sup> concluding that the implemented KHI has not been able to cover all problems related to shared assets in Indonesia. It is proven that in the settlement of joint assets, the judge did not evenly divide ½ of the joint property

<sup>14</sup> Rossa Ilma Silfiah dan Humiati Humiati, "The Relevance of Gender Mainstreaming in Indonesia to Women's Rights in Islamic Law," *Lampung Journal of International Law* 5, no. 1 (2023): 15–28, <https://doi.org/10.25041/lajil.v5i1.2757>; Khidirov Kholmurod Norimovich, "Gender Equality: A Matter of Social Justice," *Tematics Jurnal of Law* 6, no. 2 (2022): 16–22; Fransiska Novita Eleanora dan Edy Supriyanto, "Violence against Women and Patriarkhi Culture in Indonesia," *International Journal of Multicultural and Multireligious Understanding* 7, no. 9 (2020): 44–51, <https://doi.org/10.18415/ijmmu.v7i9.1912>.

<sup>15</sup> Trisakti Handayani dan Sugiarti, *Konsep dan Teknik Penelitian Gender* (Malang: Pusat Studi dan Kemasyarakatan UMM, 2002), 179.

<sup>16</sup> Ahdiyatul Hidayah dan Nurul Huda, "Scholar's Perspective on Wives as Family Breadwinners During The Covid-19 Pandemic," *An-Nisa : Journal of Gender Studies* 16, no. 1 (2023): 43–58; Fatum Abubakar, Mazroatus Saadah, dan Ulin Na'mah, "The Transformation of the Dilemma of Role Exchange in the Household: Analyzed Gender in Family Resilience Discourse in National Law and Islamic Law," *Jurnal Ilmiah Al-Syir'ah* 21, no. 1 (2023): 1–18; Deniey A. Purwanto, "Double Roles of Married Working Women in Indonesia: for Better or for Worse?," *Sustainability Science and Resources* 1, no. 2 (2021): 38–61, <https://doi.org/10.55168/ssr2809-6029.2021.102>.

<sup>17</sup> Ilham Akbar Syarif, Shindu Irwansyah, dan Ilham Mujahid, "Analisis Hukum Islam terhadap Harta Bersama dalam Kompilasi Hukum Islam," in *Prosiding Hukum Keluarga Islam* (Bandung: Universitas Islam Bandung, 2020), 10, [https://doi.org/10.29313/islamic\\_family.v0i0.20514](https://doi.org/10.29313/islamic_family.v0i0.20514).

<sup>18</sup> Ongky Alexander, "Efektivitas Pembagian Harta Gono-Gini Pasca Perceraian dalam Perspektif Yuridis Sosiologi," *el-Ghiroh* 16, no. 1 (2019): 113–29.

<sup>19</sup> M Munir, H M Isnaeni, dan E Prasetyawati, "Legal Construction of the Division of Marriage Assets Due to Divorce in Islamic Law Perspective," ... *Journal of Multicultural and ...* 7, no. 8 (2020): 437–42, <http://ijmmu.com/index.php/ijmmu/article/view/1943>.

<sup>20</sup> Elimartati Elimartati dan Elfia Elfia, "Kritik Terhadap Kompilasi Hukum Islam Tentang Ketentuan Harta Bersama Dalam Perkawinan," *JURIS (Jurnal Ilmiah Syariah)* 19, no. 2 (2020): 231–43, <https://doi.org/10.31958/juris.v19i2.2283>.



for each ex-husband, but the judge divided 2/3 for the ex-wife and 1/3 for the ex-husband based on the principles of justice and social justice by considering the wife's greater contribution in seeking joint property. This fact was echoed by Melia et al.<sup>21</sup>

### Method

This research includes normative law research triggered by the problems in determining the distribution of joint assets for female breadwinners in Indonesia through a study of KHI. Among the approaches that can be used in normative legal research are the statute approach and the conceptual approach. The statutory approach performs an analysis based on principles, norms, and statutory rules, while the conceptual approach is based on the doctrines in the science of law both Islamic law and general law to clarify ideas, legal concepts, and legal principles that are relevant to the focus of the problem under study. The data included primary and secondary materials. The primary data consisted of KHI and the secondary data were garnered from relevant books, journals and articles. Data collection took into account document study or literature study—a way of collecting written legal materials using content analysis. This technique is also useful for obtaining a theoretical basis by studying laws and regulations, books, documents, reports, archives and other research results, both printed and electronic, related to the distribution of joint assets for husband and wife after divorce. After data collection, the data were analyzed using the concept of gender justice.

### Result and Duscussion

#### Husband and Wife Relations in Law Number 1 of 1974 and the Compilation of Islamic Law

Marriage is an expression of love between a man and a woman to live together as husband and wife bound in a legal commitment and bond<sup>22</sup> to stay together for a long time, think and act in the framework of lasting love and solve problems together. In Islamic law, marriage aims to protect, nurture and preserve offspring as well as a means to achieve blessings, requiring marriage to take place on the grounds of sincerity, full of responsibility and compliance with applicable legal provisions. In addition, each husband and wife must love, respect, care for and complement each other.<sup>23</sup> Within the framework of marriage, husband and wife must understand each other and maintain the rights and obligations that come with it. Fulfilment of rights and obligations must be carried out in a fair and balanced manner according to al-Baqarah [2]: 228, “*And they (women) have equal rights with their obligations according to the proper way. But husbands have an advantage over them. Allah is Mighty, Most Wise.*”

From the verse above it is clear that the desired pattern of relationship is a relationship (relationship) of mutual need between one party—the husband and the other party—the wife. Both husband and wife have rights and obligations that must be respected and guarded wholeheartedly for the realization of the ideals of marriage,

<sup>21</sup> Melia Melia, Muzakkir Abubakar, dan Darmawan Darmawan, “Pembagian Harta Bersama Setelah Perceraian (Studi Terhadap Putusan Mahkamah Agung Nomor 597K/Ag/2016),” *Jurnal IUS Kajian Hukum dan Keadilan* 7, no. 3 (2019): 506–18, <https://doi.org/10.29303/ius.v7i3.665>.

<sup>22</sup> David Knok dan Caroline Schacht, *Choices in Relationship: an Introduction to Marriage and the Family*, 10 ed. (Canada: Nelson Education, 2010), 207.

<sup>23</sup> Siti Musdah Mulia, *Membangun Surga di Bumi; Kiat-Kiat Membina Keluarga Ideal dalam Islam* (Jakarta: PT Garamedia, 2011), 40.



sakinah, mawaddah, rahmah and mashlahah shared life or a family with a peaceful life, love and benefit, both in this world and in the hereafter. Thus, the relationship between husband and wife involves close ties without any subordination in fulfilling either rights or obligations. In such a relationship where the two complement each other, the interactions that exist between husband and wife are balanced, unlike that between an employer and his subordinates.<sup>24</sup> One thing that needs to be considered is how to regulate the balance between husband and wife's rights and their obligations. The concept of the husband and wife relationship is an aspect regulated in Islam regarding how husbands and wives must fulfil their obligations and obtain rights while navigating family life to maintain a *sakinah, mawaddah, rahmah* and *mashlahah* family life that complies with the Shari'a.<sup>25</sup> These rights and obligations are established to bring about harmony in household life which ultimately creates an atmosphere of security, happiness, prosperity and justice. In an Islamic marriage, the rights and obligations between husband and wife are based on their respective responsibilities. This principle explains that each carries responsibility in living a household life to achieve a *sakinah* family life.<sup>26</sup>

Meanwhile, in ensuring the balance of a marital relationship, Indonesia has established several regulations specified in Law Number 1 of 1974 and KHI. Law Number 1 of 1974 concerning Marriage is the main law that regulates marriage in Indonesia, aiming to promote gender equality in marriage and is considered an important legal framework for the protection of women's rights in marriage in Indonesia. Meanwhile, the KHI is a legal framework that regulates marriage and conjugal relations in the Perspective of Islamic Law in Indonesia. The KHI regulates the rights and obligations of husband and wife in the household, as well as regulates income, inheritance rights, divorce, parenting, and all matters related to the husband and wife relationship. The fulfilment of the rights and obligations of husband and wife is contained in Chapter VI Articles 30 to 34 of Law no. 1 of 1974 concerning Marriage with the following details:

**Table 1.** Law Number 1 of 1974 Concerning Marriage

CHAPTER VI concerning Rights and Obligations of Husband and Wife	
Article 30	Husband and wife bear a noble obligation to uphold the household serving as the basis of the structure of society.
Article 31	1. The rights and position of the wife are in balance with the rights and position of the husband in domestic life and social life together in society.
	2. Each party has the right to take legal action.
	3. The husband is the head of the family and the wife is a housewife.

<sup>24</sup> Sifa Mulya Nurani, "Relasi Hak dan Kewajiban Suami Istri dalam Perspektif Hukum Islam (Studi Analitis Relevansi Hak dan Kewajiban Suami Istri Berdasarkan Tafsir Ahkam dan Hadits Ahkam)," *Al-Syakhsyiyah: Journal of Law & Family Studies* 3, no. 1 (2021): 98–116, <https://doi.org/10.21154/syakhsyiyah.v3i1.2719>.

<sup>25</sup> Muhammad Amin Summa, *Hukum Keluarga Islam di Dunia Islam* (Jakarta: Raja Grafindo Persada, 2005), 31.

<sup>26</sup> Umar Haris Sanjaya dan Rahim Aunur Faqih, *Hukum Perkawinan Islam di Indonesia* (Yogyakarta: Gama Media, 2017), 76.



Article 32	<ol style="list-style-type: none"> <li>1. Husband and wife must have a permanent residence.</li> <li>2. The house where the residence is referred to in paragraph (1) of this article is determined by the husband and wife together.</li> </ol>
Article 33	Husband and wife must love each other, respect each other, be loyal and provide physical and spiritual assistance to one another.
Article 34	<ol style="list-style-type: none"> <li>1. The husband is obliged to protect his wife and provide everything necessary for household life according to his means.</li> <li>2. The wife is obliged to manage household affairs as well as possible.</li> <li>3. If a husband or wife neglects their respective obligations, they can file a lawsuit with the Court.<sup>27</sup></li> </ol>

Meanwhile, the division of roles in fulfilling the rights and obligations of husband and wife is further regulated in KHI in Chapter XII Article 77 to Article 84:

**Table 2.** Compilation of Islamic Law (KHI) Chapter XII concerning Rights and Obligations of Husband and Wife

Article 77	<ol style="list-style-type: none"> <li>1. Husband and wife bear a noble obligation to uphold a household that is sakinah, mawaddah and rahmah which is the basis and structure of society.</li> <li>2. Husband and wife must love and respect each other, be loyal and provide physical and spiritual assistance to one another;</li> <li>3. Husband and wife bear the obligation to care for each other and their children, both regarding physical growth, spiritual and intelligence and religious education;</li> <li>4. Husband and wife must maintain their honour;</li> <li>5. If a husband or wife neglects their respective obligations, they can file a lawsuit with the Religious Court.</li> </ol>
Article 78	<ol style="list-style-type: none"> <li>1. Husband and wife must have a permanent residence.</li> <li>2. The residence referred to in paragraph (1) is determined by the husband and wife together with the position of the husband and wife</li> </ol>
Article 79 Position of Husband and Wife	<ol style="list-style-type: none"> <li>1. The husband is the head of the family and the wife is the housewife.</li> <li>2. The rights and position of the wife are in balance with the rights and position of the husband in domestic life and social life together in society.</li> </ol>

<sup>27</sup> Republik Indonesia, Undang-Undang Republik Indonesia Tentang Perkawinan, Pasal 30-34.

<p>Article 80 Husband's Obligations</p>	<p>3. Each party has the right to take legal action.</p> <hr/> <p>1. The husband is and remains the guide for his wife and household regarding matters of household affairs that require the decision by husband and wife together</p> <hr/> <p>2. The husband is obliged to protect his wife and provide everything necessary for household life according to his means</p> <hr/> <p>3. 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.</p> <hr/> <p>4. According to his income, the husband bears a. maintenance, kiswah and residence for the wife; b. household expenses, maintenance costs and medical expenses for wife and children; c. education costs for children.</p> <hr/> <p>5. 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.</p> <hr/> <p>6. The wife can release her husband from the obligation towards herself as referred to in paragraph (4) letters a and b.</p> <hr/> <p>7. The husband's obligations as referred to in paragraph (5) fall if the wife is <i>musyuz</i>.</p>
<p>Article 81 Residence</p>	<p>1. The husband is obliged to provide a residence for his wife and children or ex-wife who is still in <i>iddah</i>.</p> <hr/> <p>2. The residence is a proper place to live for the wife while in the marriage bond, or during the <i>iddah</i> of divorce or <i>iddah</i> of death.</p> <hr/> <p>3. The residence is provided to protect his wife and children from interference by other parties to ensure safety and security. The residence also functions as a place to store wealth, and as a place to organize and manage household appliances.</p> <hr/> <p>4. The husband is obliged to complete the residence according to his ability and adapt to the conditions of the environment in which he lives, both in the form of household equipment and other supporting facilities.</p>
<p>Article 83 Wife's Obligations</p>	<p>1. The main obligation for a wife is to be physically and mentally devoted to her husband as justified by Islamic law.</p>





2. The wife organizes and manages daily household needs as well as possible.<sup>28</sup>

When viewed from a material perspective, the articles in KHI describe Law No. 1 of 1974 to apply specifically to Indonesian Muslims. This is because the marriage law that applies to all Indonesian citizens has general legal materials. Thus, the existence of KHI can fill the need for specific legal material for Muslims regarding special matters that are not accommodated in the marriage law.<sup>29</sup> Compared to the marriage law, the regulation of the rights and obligations of husband and wife in the KHI is more systematic. The provisions in KHI appear to be more detailed, while in the marriage law, these arrangements are more general. This is understandable because KHI was formulated later, namely 17 years after the issuance of the marriage law.<sup>30</sup>

The existence of KHI is a manifestation of efforts to reform Islamic law in Indonesia. The preparation of KHI can be assessed as part of the search for fiqh patterns that are unique to Indonesia or fiqh that are contextual. KHI is the result of the *ijtihad* of Indonesian scholars who are members of a team and jointly formulate a legal formulation relevant to the context of modernity. Even though the marriage law and KHI were made based on the conditions of Indonesian society, that does not mean that both are free from criticism and problems. Some points regarding the rights and obligations of husband and wife according to some circles are still considered to be gender biased. In Indonesia, the concept of gender still creates several problems in the area of family law, causing several paradigms to emerge with nuances of injustice, inequality, and also impartiality to one another. This can reflect actions and behaviour that greatly favour men and demean women, especially in the case of husbands and wives in carrying out their rights and obligations in the household.

The gender bias referred to by some is found in several articles which lead to a structure in which the dominant husband subordinates the role of the wife in the household. Subordination can be seen from the difference in position that leads to efforts to domesticate women. For example, in the marriage law Article 31 (3) the husband is the head of the family and the wife is the housewife; Article 34 (1) The husband is obliged to protect his wife and provide all household needs according to his ability. (2) The wife is obliged to manage household affairs as well as possible,<sup>31</sup> and in KHI Article 79 (1), the husband is the head of the household while the wife is the housewife; in Article 80 (1), the husband is a guide in the household (3) The husband is obligated to provide religious education to his wife (5) That the husband's obligation will fall if the wife is *nusyuz*; Article 83 (2) That the wife organizes and manages the household as well as possible.<sup>32</sup>

<sup>28</sup> Kementerian Agama RI, *Kompilasi Hukum Islam*.

<sup>29</sup> Asni Asni, "Urgensi Sinkronisasi Hukum Perkawinan di Indonesia Perspektif Perlindungan Perempuan dan Anak," *Jurnal Sipakalebbi* 3, no. 2 (2019): 180–203, <https://doi.org/10.24252/jsipakallebbi.v3i2.11896>.

<sup>30</sup> Asni, "Kedudukan Perempuan dalam Hukum Keluarga Islam di Indonesia (Telaah Kompilasi Hukum Islam Perspektif Kesetaraan Gender)," *Al'Adl* 1, no. 2 (2008): 1–10.

<sup>31</sup> Republik Indonesia, *Undang-Undang Republik Indonesia Tentang Perkawinan, Pasal 31 dan 34*.

<sup>32</sup> Syarafuddin, "Kesetaraan Gender dalam Undang- Undang No 1 Tahun 1974 dan Kompilasi Hukum Islam (Respon Hakim Pengadilan Agama Surakarta Tahun 2013)," *Suhuf* 26, no. 1 (2014): 21–37.



Examined further, the provision of the husband as "the head of the family" and the wife as "housewife" in law no. 1 of 1974 article 33 paragraph (3) is inconsistent with paragraph (1) which states that the rights and position of the wife are equal to the rights and position of the husband in domestic life and association living together in society. Likewise, Article 79 paragraph (1) of KHI carries a different understanding from the next paragraph 79 (2) stating that the position of husband and wife is equal.<sup>33</sup> In addition, from the perspective of gender analysis, the above articles still denote discrimination, and gender bias, and still support the division of roles based on sex that develops in society.<sup>34</sup>

Some of the articles mentioned above are considered as the standardization of the patriarchal structure with the confirmation of the role of motherhood which officially determines the role of women in the family. According to Ihromi, the emphasis on the wife being a housewife shows her activities in the domestic sphere, while the husband is the breadwinner so his activities are in the public sphere.<sup>35</sup> Thus, a wife who may be able to occupy important positions in society does not have this opportunity and the freedom to develop her skills and talents as her husband does.

When the division of roles in the marriage law and KHI is applied rigidly and textually, it will create a conservative culture that continues to take root from time to time. This is what triggers an imbalance or unfair position between husband and wife. The role of the wife as a housewife will prevent women from obtaining mastery of economic, social and political resources outside the home because economically the wife depends on her husband, whose role is to make a living. If the husband dies first or the husband is fired from his job, there will be economic imbalance in the family. Worse, the welfare of the family will be threatened when this happens.

To overcome the concerns that have been mentioned, many wives finally choose to work outside the home even though it is not their obligation. However, this fact cannot be separated from her gender role as a housewife, so in the end the wife will play a dual role. For example, when the wife finishes work, she still has to complete household tasks. On the contrary, when the husband finishes work outside, he can immediately take a rest. It is this dual role that creates problems within the framework of marriage and after a divorce.<sup>36</sup>

The concept of gender justice in marriage emphasizes the importance of recognizing equal rights and responsibilities between husband and wife in marriage. This includes rights and obligations in terms of property ownership, inheritance, child care, and responsibilities in household chores. In the Indonesian context, gender justice in marriage requires broader cultural changes. For example, there needs to be a change in people's views that still think that household chores and caring for children are the tasks that can only be performed by women. In addition, there needs to be support from the government and society to provide equal opportunities for women to pursue their careers and personal goals.

<sup>33</sup> Mulia, *Membangun Surga di Bumi; Kiat-Kiat Membina Keluarga Ideal dalam Islam*, 83.

<sup>34</sup> Siti Musdah Mulia, *Islam dan Inspirasi Kesetaraan Gender* (Yogyakarta: Kibar Pres, 2006), 148.

<sup>35</sup> Asni, "Kedudukan Perempuan dalam Hukum Keluarga Islam di Indonesia (Telaah Kompilasi Hukum Islam Perspektif Kesetaraan Gender)."

<sup>36</sup> Mailod Latuny, "Peran Ganda Perempuan dalam Keluarga," *Sasi* 18, no. 1 (2012): 13–20; Asni, "Kedudukan Perempuan dalam Hukum Keluarga Islam di Indonesia (Telaah Kompilasi Hukum Islam Perspektif Kesetaraan Gender)."



## Joint Property Distribution in Law Number 1 of 1974 Concerning Marriage and Compilation of Islamic Law from a Gender Equity Perspective

Problems in the marriage may arise in the marriage or after divorce. Divorce is caused by various factors, including misunderstandings, disputes and prolonged fights that lead to the breakup of the husband-and-wife relationship. Divorce will become valid and legal before the law when a husband decides to divorce his wife or a wife sues her husband which is then legalized by a judge in a trial at the Religious Court, as in line with the provisions of Article 39 paragraph (1) of the Marriage Law that "Divorce can only be carried out before a court hearing, after the court concerned has tried and failed to reconcile the two parties."<sup>37</sup> One of the implications that arise after the divorce is the division of joint property between husband and wife.<sup>38</sup> According to Sayuti Talib, joint property is assets acquired during the marriage bond, obtained for each individual's efforts, or obtained jointly between husband and wife.<sup>39</sup> Joint property acquired during marriage can be in the form of tangible and intangible objects. Tangible shared assets can include immovable objects, movable objects and securities, while intangible joint assets can be in the form of rights or obligations.<sup>40</sup>

Provisions regarding joint assets contained in Law Number 1 of 1974 article 35 paragraph (1) states that assets acquired during marriage become joint assets, meaning that property acquired by either husband or wife after the marriage bond between the two becomes joint property and when the marriage bond is terminated (divorce), the property must be divided between the two. However, paragraph (2) in article 35 states "Inherited assets of each husband and wife and assets obtained by each as a gift or inheritance, are under the control of each as long as the parties do not specify otherwise" so that it is possible for the husband or the wife has personal property obtained from before marriage, gifts or inheritance respectively. Based on this article, the assets of the husband and wife are divided into three categories, namely 1) Assets acquired during the marriage; this property is jointly owned during the marriage and is called joint property; 2) Innate assets; assets carried by each party before the marriage process was carried out. This property is controlled by each party as long as the parties do not specify otherwise; and 3) Acquired assets; assets obtained from gifts or inheritance. Each of these assets is controlled as long as the parties do not specify otherwise.

The provision of Article 35 paragraphs (1) and (2) of Law Number 1 of 1974 is in line with that of KHI Article 85 stating "The existence of joint assets in a marriage does not rule out the possibility of the existence of property owned by each husband or wife." Article 86 paragraph (1) states "Basically there is no amalgamation between the husband's property and the wife's property because of marriage," and (2) "The wife's property remains the right of the wife and is fully controlled by her, likewise the husband's property remains the right of the husband and he fully controls the

<sup>37</sup> Republik Indonesia, Undang-Undang Republik Indonesia Tentang Perkawinan, Pasal 39.

<sup>38</sup> Silvani Nur Rahmat Lukum, Nirwan Junus, dan Sri Nanang Meiske Kamba, "Determinant Factors for Delays in Settlement of Gono-Gini Asset Disputes," *Damhil Law Journal*, vol. 2, no. 1 (2022): 36–54, <https://doi.org/10.56591/dlj.v1i1.1740>.

<sup>39</sup> Sayuti Thalib, *Hukum Kekeluargaan Indonesia* (Jakarta: UI Press, 2004), 86.

<sup>40</sup> Barzah dkk. Latupono, *Buku Ajar Hukum Islam Edisi Revisi*, 2 ed. (Yogyakarta: Deepublish, 2020), 148; Ita Musarrofa et al., "Sociological-Normative Analysis of The Provision of Joint Property in The Cyber Era," *Indonesian Journal of Interdisciplinary Islamic Studies* 5, no. 2 (2022): 44–64, <https://doi.org/10.20885/ijjis.vol.5.iss2.art3>.



property," and article 87 paragraph (1) states "Inherited assets of each husband and wife and assets obtained by each as a gift or inheritance are under the control of each, as long as the parties do not specify otherwise in the marriage agreement."

The above provisions indicate that the marriage law and the KHI emphasize that joint property is only limited to assets acquired during marriage. These provisions are not that simple when they are linked to the jurisdictions developed in the judicial process. Harahap stated that the results of joint property jurisdiction include: 1) Assets purchased while the marriage bond lasts. Every item purchased during the marriage bond becomes the jurisdiction of the joint property; 2) Assets purchased and built post-divorce that are financed from *gono gini* assets. An item is included in the jurisdiction of joint property or is not determined by the origin of the cost of purchasing or building the item in question, even though the item was purchased or built after a divorce; 3) Assets that can be proven and acquired in a marriage bond. All assets acquired during the marriage bond automatically become joint property; 4) Income from *gono gini* assets and inherited assets. Income derived from joint property becomes the jurisdiction of joint property. Income from the personal property of the husband and wife is also included in the jurisdiction of joint property. As far as the personal income of the husband and wife is concerned, there is no separation. A merger occurs automatically as joint property. The combination of the husband and wife's income occurs by law, as long as the husband and wife do not specify otherwise in the marriage agreement.<sup>41</sup>

Article 91 of the KHI states that joint assets include: 1) Joint property as referred to in article 85 above can be in the form of tangible or intangible objects; 2) Tangible shared assets may include immovable objects, movable objects and securities; and 3) Intangible shared assets can be in the form of rights or obligations. Thus it can be understood that the scope of joint property is not only for objects that have value or price but also for the rights and obligations of each husband and wife. Article 91 paragraph (4) which reads "Joint assets can be used as collateral by one of the parties with the agreement of the other party" indicates the existence of an agreement of both parties in the use of joint assets.

If one party uses it without the consent of the other party, then he has violated the provisions in Article 92, namely "Husband or wife without the consent of the other party is not allowed to sell or transfer joint property." This will lead to disputes between husband and wife over joint property. In addition, each of them can carry out the applicable legal provisions as in Article 88 KHI which reads "If there is a dispute between husband and wife regarding joint property, then the settlement of the dispute is submitted to the Religious Court"<sup>42</sup>

Article 36 paragraph (1) confirms that the joint property of each husband and wife has the right to use it based on the agreement of both. This provision is detailed in Article 89 "The husband is responsible for guarding the joint property, the wife's property and his property." Article 90 also implies that the wife is also responsible for guarding the joint assets and the husband's assets that are in her possession. Meanwhile, each has the full right to carry out legal actions over these assets. According to this article, husband and wife have full rights to each other's property.

<sup>41</sup> Abdul Manaf, *Aplikasi Asas Equalitas Hak dan Kewajiban Suami Isteri dalam Penjaminan Harta Bersama pada Putusan Mahkamah Agung* (Bandung: Mandar Maju, 2006), 59.

<sup>42</sup> Jassica Halim, Ahmadi Miru, dan Nurfaidah Said, "Authority To Act Husband or Wife in Making a Deed of Testamentary Estate (Legaat) on Joint Property in Marriage," *Awang Long Law Review* 5, no. 1 (2022): 60–72, <https://doi.org/10.56301/awl.v5i1.534>.



They are free to use their property by selling it, donating it or otherwise as stated in article 87 paragraph (2) KHI which reads "Husband and wife have the full right to carry out legal actions on their respective assets in the form of grants, gifts, sadaqah, or others."

Therefore, when a husband or wife has a debt for the benefit of each, the burden of repayment is also borne by each according to the specification of Article 93 KHI paragraph (1) Liability for the debts of the husband or wife is borne by their respective assets. However, if the debt is made for the continuation of the family, the burden of repayment follows the provisions in the next paragraph which reads, 2) Accountability for debts made for the benefit of the family is borne by the joint property, 3) If the joint property is insufficient, it is borne by the husband's property, and 4) If the husband's property does not exist or is sufficient, it will be charged to the wife's property.<sup>43</sup>

The provisions above indicate that the utilization of joint assets is nothing but for household life. All profits and losses resulting from the use of joint assets are used for family needs, not for each other so that both have full responsibility for the joint assets. This is in line with what is specified in the aforementioned Articles 89 and 90 of the KHI. The distribution of joint property is regulated in Article 37 of the Marriage Law which reads "If the marriage breaks up due to divorce, joint assets are regulated according to their respective laws." The meaning of "law" in the article refers to the elucidation of the article which reads "What is meant by "law" respectively is religious law, customary law and other laws." Thus this law provides an alternative distribution of joint assets as follows: First, based on religious law if the religious law is a living legal awareness in regulating divorce procedures; Second, based on customary law, if the law is a legal awareness that lives in the community concerned; Third, or other laws.<sup>44</sup>

The article above does not provide a solution to the distribution of joint assets but instead creates legal uncertainty because it does not clearly state the portion that the husband and wife will receive after the divorce and only mentions alternative settlements. This article will also lead to different interpretations regarding post-divorce joint assets and there will be conflicts in the use of applicable law (conflict of law) because the arrangements for marital assets and distribution of post-divorce joint assets, according to religious law and customary law, are different and have their own rules. The distribution of joint property is stated in more detail in Articles 96 and 97 of KHI. Article 96 contains the division of joint assets in the event of a death divorce as mentioned in paragraph (1), namely "In the event of a death divorce, half of the joint property belongs to the spouse who lives longer."<sup>45</sup> Whereas article 97 KHI states the distribution of joint assets to divorced married couples, namely "The divorced widow or widower, each has the right to half of the joint property as long as it is not specified otherwise in the marriage agreement."<sup>46</sup> Thus litigation can be taken according to KHI provisions. Both in cases of divorce, each spouse gets half of the joint property.

<sup>43</sup> Kementerian Agama RI, Kompilasi Hukum Islam, Pasal 93.

<sup>44</sup> M. Yahya Harahap, *Pembahasan Hukum Perkawinan Nasional Berdasarkan Undang-Undang Nomor 1 Tahun 1974, Peraturan Pemerintah Nomor 9 Tahun 1974* (Medan: Zahir Trading Co, 1975), 125.

<sup>45</sup> Kementerian Agama RI, Kompilasi Hukum Islam, Pasal 96.

<sup>46</sup> Kementerian Agama RI, Kompilasi Hukum Islam, Pasal 97.



This provision applies in general conditions, namely the husband has carried out the role as the head of the family well and the wife has carried out the role as a housewife well too "according to KHI provisions". The division of joint assets with each husband and wife gets half and can not be applied when one party does not carry out its obligations in the family. The concept is determined based on the contribution of husband and wife in marriage. Therefore, joint property can be divided in half if the husband and wife both contribute to the acquisition of joint property. The husband is obliged to earn a living for his family. Likewise, the wife is obliged to take care of the household such as dropping off and picking up children, shopping and providing for her husband's needs, and so on. So, the wife is eligible to get the right to half of the joint property. This is because the status of a wife who works at home as a housewife is comparable to a husband who works outside the home.

Thus the wife who gets the same share as the husband's share of the joint property is according to gender justice which requires both men and women to get opportunities and their rights as human beings. It is a different matter when several phenomena allow it to occur, where the household conditions between husband and wife are not ideal as described above: a) the husband is the head of the household while the wife is a housewife and also works for a living (double burden), b) the husband works, the wife also works, and household chores are done together, c) the husband does household chores, while the wife works by leaving household chores (swapping roles), d) the husband does not work, while the wife works and household chores are done together, and e). The husband works, the wife works, and household work is done by a maid hired by the husband.

Some of these phenomena show that in the household there is no standardization of roles, double burden, subordination, marginalization and violence against both men and women. All according to their respective roles are based on the agreement of both parties. Therefore, the roles of husband and wife specified in KHI can be mapped as follows:

**Table 3.** Profile of Husband and Wife Activities, Access and Control

No.	Profile Activity	Access and Control		Conformity
		Men	Women	
1.	Household Leader	Yes	No	a. In today's era, all roles performed by husbands can also be performed by wives and vice versa. b. The role that cannot be changed is the biological or reproductive role
2.	Protecting the family	Yes	No	
3.	Providing religious education to families	Yes	No	
4.	Bearing a living, household expenses and children's education	Yes	No	
5.	Being devoted physically and mentally	No	Yes	
6.	Organizing and managing household needs	No	Yes	



Based on the description above, it can be described by the following gender analysis: 1) Access refers to the opportunities in obtaining or using certain resources. Husband and wife can each access every obligation in the household. Because both of them have the opportunity to build a harmonious family by fulfilling all the roles that have been mentioned. Both the husband and wife possess the authority to decide on responsibilities within the household. In specific situations, a husband might handle household affairs, or a wife might engage in employment, given that these decisions are mutually agreed upon by both partners; 2) Control, namely mastery or authority or power to make decisions. Between husband and wife have their respective parts in each role, but it is possible if both of them share all the roles that have been determined by their parts so that both of them feel how heavily the role is played by each other; 3) Benefits, namely the use of resources that can be enjoyed optimally.<sup>47</sup> For example, if the wife decides to work and the husband agrees, then indirectly the wife will carry out the obligations that are generally carried out by the husband. As a result, the wife has two obligations that must be carried out, leaving the wife with more share (rights) in the household.

Because the role in the household can be carried out by both husband and wife without distinguishing between one role and another, in matters of joint property, husband and wife have the same rights and responsibilities in maintaining and using it. In addition, both of them must work together in developing joint assets while at the same time bearing losses from the utilization of shared assets. If one or both of them want to take advantage of joint property, it must be based on the agreement of both parties and the benefits of joint property can be utilized by both as long as it is for the benefit of the family. Thus the indicators of gender justice have been represented in the articles that have been formulated in the Marriage Law and KHI.

So this is according to the principle of Law Number 1 of 1974 which aims to promote gender equality in all aspects of married life. Article 33 of this Law confirms that "Marriage is based on the principle of love and mutual respect between husband and wife as equal partners in marriage." This law also provides equal rights between husband and wife in terms of property ownership, inheritance, and child care. In addition, KHI as a legal framework that regulates marriage and husband-wife relations in the perspective of Islamic law in Indonesia emphasizes the importance of recognizing equal rights and responsibilities between husband and wife, so there is no gender inequality.

However, nowadays, as a result of egalitarianism, wives do not only sit at home and serve their husbands' needs, but they also work outside the home in various economic, social, political, and other sectors. Even though the wife is not obliged to work, this fact allows the wife to supplement the family income so that in the end the wife has a dual role as a housewife and breadwinner. This raises the contribution inequality between husband and wife in a household. That is, there has been a major change between the old culture and the new culture, between the old social structure and the present social structure, so it is disproportionate (balanced) if the old law is applied in the new social structure.

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<sup>47</sup> Handayani dan Sugiarti, *Konsep dan Teknik Penelitian Gender*, 179.



## The Value of Equity in the Joint Assets Property in Law Number 1 of 1974 Concerning Marriage and Compilation of Islamic Law Perspective of Gender Equity

Husband and wife relations are specified in Law Number 1 of 1974, and KHI divides the roles of husbands outside the home and wives inside the home. The consequence that occurs is that a wife's access becomes narrower because she is in the domestic area of the household so she is unable to develop economic, social and political resources. In contrast to husbands who do activities outside the home, those who can maximize these resources can even develop them. Even though there is an imbalance in the applicable legal provisions, in the distribution of joint assets each husband and wife still receive the same share, namely half. This applies in general conditions where the husband performs his role outside the home as the head of the family who is obliged to earn a living and the wife also performs her role in managing the household. This condition indicates that the burden borne by the husband is the same as the burden borne by the wife. There is no subordination and marginalization of roles between the two. Each of them bears the same burden in the household, which represents the implementation of gender justice in the household without neglecting the role of the wife at home.

The distribution of joint property under normal conditions does not rule out certain conditions in the household. For example, a wife who also works then she bears a double burden in the family or a husband who does not work then he leaves his role. Such a condition and half-distribution of joint assets raise inequality and injustice. The halving that occurs under normal conditions is adjusted to the roles borne by the husband and wife. When one party assumes a dual role or even does not carry a role at all, the portion that is obtained will differ according to what has been done. The Decision issued by the High Religious Court of Banten under Case Number 1/Pdt.G/2021/PTA.Btn. on January 6, 2021<sup>48</sup> specifies the outcome emerging from an appeal hearing at the High Religious Court of Banten concerning a lawsuit initiated by the plaintiff (husband) for the division of joint property. The main point of the ruling is that the High Religious Court of Banten approved the husband's appeal concerning the division of joint property. The initial decision made by the lower court judge favoured the wife, allocating 30% to the husband and 70% to the wife, indicating that the wife was granted a larger share.

According to the panel of judges, the joint property should be divided equally, with 50% for the Appellant (husband) and 50% for the Appellee (wife), following Article 97 of KHI, unless there are significant reasons to deviate from it. Another fact considered was that the husband (plaintiff) had a source of income and contributed to the accumulation of joint property. Therefore, the judge reaffirmed the impact of the roles and responsibilities of both spouses in the marriage. The husband, in his role as the head of the family, is responsible for providing maintenance to the wife and children, who have equal legal status and rights to him. On the other hand, the wife also has an equal position and rights in the household, responsible for various matters within it.

<sup>48</sup> Direktori Putusan Mahkamah Agung Republik Indonesia, Putusan Tingkat Banding: Putusan Pengadilan Tinggi Agama Banten Nomor 1/Pdt.G/2021/PTA.Btn. (2021).





In another verdict, the Decision of the Baubau Religious Court Number 374/Pdt.G/2020/PA Bb<sup>49</sup> on February 11, 2021, divided the joint property equally between the former spouses. In this case, the husband was proven to fulfil his obligations as the head of the family despite physical limitations. The husband was engaged in various roles as an Islamic religious counsellor, lecturer, and private English tutor, and worked at an orphanage, with his honorarium used for household expenses and as capital for the "jipang" business currently managed by the wife. Regarding the Defendant (wife), actively contributing to the family's economy through the "jipang" (caramelized rice) business did not indicate that she replaced or took over some of the duties of the Plaintiff as the husband and head of the household. Although circumstances might suggest the Plaintiff's inability to provide for the family due to his visual impairment, in reality, he continued to fulfil his responsibilities by actively working. This indicated that the Plaintiff, as the husband, did not neglect his obligation to support the family and still contributed to the acquisition of joint property.

In this decision, the judge openly acknowledged the shared roles and responsibilities of both spouses in a marriage. Despite the wife being the primary earner, the judge stressed that the income level should not be the sole measure for evaluating the husband's contributions to the household. This holds as long as he does not purposefully neglect his responsibilities and consistently plays an active role as the husband and as the leader of the household.

In other words, the share that the husband or wife gets is proportional to the roles played by both. When the husband performs a bigger role than the wife, he gets more parts. Vice versa, when the wife performs a bigger role than the husband, the share will be greater for the wife. This is what is referred to as justice (proportional/balanced share) according to the portion obtained.<sup>50</sup> As an example, if the husband works to earn a living and the wife does not carry out her obligations to take care of the household and even performs *nusyuz* against her husband, the wife is not making an equal contribution to that of her husband. When there is a divorce, the husband has the right to get a bigger share than the wife, accounting for 2/3 or 3/4 and 1/3 or 1/4 for the husband and wife respectively. And vice versa, if the wife earns a living and takes care of the household, it gives a double burden for the wife. In case of the husband not carrying out his obligations actively as a breadwinner, when a divorce occurs, the wife has the right to get a bigger share than the husband. It can be for the wife 2/3 or 3/4 while for the husband only 1/3 or 1/4.

Justice has the meaning of being equal and impartial, but justice is more focused on understanding by putting something in its place.<sup>51</sup> Justice means 'fair' and '*adl*' in Arabic which means to act fairly and impartially and punish properly.<sup>52</sup> However, the word '*adl*' can also be interpreted in a balanced way as mentioned in the Qur'an surah al-Infītār [82]: 7, "who created you then perfected your events and made your

<sup>49</sup> Direktori Putusan Mahkamah Agung Republik Indonesia, Putusan Tingkat Pertama: Putusan Pengadilan Agama Baubau Nomor 374/Pdt.G/2020/PA Bb (2021).

<sup>50</sup> Nur Solikin dan Moh. Wasik, "The Construction of Family Law in The Compilation of Islamic Law in Indonesia: A Review of John Rawls's Concept of Justice and Jasser Auda's Maqashid al-Shari'a," *Ulumuna* 23, no. 1 (2023): 315–40.

<sup>51</sup> Abdul Aziz Dahlan, *Ensiklopedi Hukum Islam*, 1 ed., vol. 1 (Ichtiar Baru Van Hoeve, 1996), 25.

<sup>52</sup> Louis Ma'luf, *Al-Munjid fi al-Lughah*, 10 ed. (Beirut: Dar al-Masyriq, 1977), 491 & 628; A. W. Munawwir, *Kamus Al-Munawwir Arab-Indonesia* (Surabaya: Pustaka progressif, 1997), 971.



(body structure) balanced." The verse above informs that the human body as a whole is structured according to the principles of balance. In this case, it can be formulated that if one of the members of the human body is excessive or reduced from the level or condition, imbalance (justice) will take place.<sup>53</sup> Another example of "justice" in the sense of "balance" is the universe and its ecosystems as stated in the Qur'an al-Mulk [67]: 3, "The one who created the seven heavens in layers. You will not see anything unbalanced in the creation of a loving God. So look once more, do you see anything that is flawed?"

This verse shows that justice is synonymous with conformity or proportionality, so that balance does not require equal levels and conditions for all parts of the unit to be balanced. It could be that one part is small or large, while the small and the size are determined by the function expected of it.<sup>54</sup> Therefore, the division of joint property may be adapted according to the circumstances of the household, enabling each spouse to obtain varying shares that may not be uniformly equal, as outlined in the KHI. The share that the husband and wife get is according to the role played in the family. If the husband plays a bigger role in the family then he gets a bigger share of the distribution of joint assets. Vice versa, if the wife plays a bigger role in the family then she will also get a bigger share. This means that the results obtained by the husband or wife are directly proportional to the efforts made by both.

## Conclusion

The division of joint assets in Law Number 1 of 1974 and KHI from the perspective of gender justice concerning the division of roles or obligations between husband and wife is ideal. However, when referring to the functions or obligations of each party, there may be differences according to their respective social backgrounds. This makes it possible to necessitate the roles assigned to husbands or wives in a household to be different from those of other households. The joint property will be divided equally when the husband and wife carry out their roles equally. Meanwhile, if one of the two plays a bigger role, the share that will be obtained will also be greater so that each gets proportional justice according to the role played.

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<sup>53</sup> M. Quraish Shihab, *Wawasan al-Qur'an: Tafsir Tematik atas Pelbagai Persoalan Umat* (Bandung: Mizan Pustaka, 1996), 115; M. Dawam Raharjo, *Ensiklopedi Al-Qur'an: Tafsir Sosial Berdasarkan Konsep-Konsep Kunci*, 1 ed. (Jakarta: Paramadina, 1996), 373.

<sup>54</sup> M. Quraish Shihab, *Wawasan al-Qur'an: Tafsir Tematik atas Pelbagai Persoalan Umat* (Bandung: Mizan Pustaka, 1996), 115.



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