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Reconstruction Of The Jurisprudential-*Maqāṣidī* Method In The Division Of Joint Property In Polygamous Marriages In Indonesia

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Abstract: The division of joint marital property in polygamous marriages cannot always be resolved by applying the chronology of marriage as stated in Article 94 of the Compilation of Islamic Law (KHI). In practice, assets may be mixed, transformed, reinvested, increased in value, or used across more than one household, while the parties' contributions may be material or non-material. This article reconstructs a jurisprudential-maqāṣidī method for adjudicating such disputes by systematizing judicial reasoning and evaluating it through maqāṣid al-sharīʿah. This normative legal research applies statutory, conceptual, and case approaches. Primary legal materials consist of the Marriage Law, the KHI, and selected court decisions on joint property and polygamy; secondary materials consist of scholarly works on marital property, judicial discretion, substantive justice, and Islamic family-law reform. Legal materials were collected through document study and analyzed qualitatively-prescriptively by identifying legal norms, mapping legally relevant facts, extracting ratio decidendi, comparing patterns of judicial reasoning, and testing those patterns against maqāṣidī parameters. The analysis shows that Article 94 KHI provides a necessary normative foundation but not an operational method for tracing transformed or mixed assets and evaluating unequal contributions. Judicial reasoning, particularly Supreme Court Decision No. 266 K/AG/2010, demonstrates that a mechanical one-half division may be corrected when evidence shows substantial inequality in contribution and fulfilment of maintenance obligations. This article reconstructs those dispersed considerations into five stages: normative classification, asset tracing and transformation analysis, contribution assessment, controlled correction of mechanical division, and maqāṣidī justification. The novelty lies not merely in combining jurisprudence and maqāṣid, but in converting case-specific judicial considerations into a systematic decision-making procedure with objective limits on judicial discretion.
Keywords: Joint Marital Property, Polygamy, Jurisprudence, *Maqāṣid Al-Sharīʿah*, Judicial Discretion.

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***Abstrak**:* Pembagian harta bersama dalam perkawinan poligami tidak selalu dapat diselesaikan berdasarkan urutan perkawinan sebagaimana diatur dalam Pasal 94 Kompilasi Hukum Islam (KHI). Dalam praktiknya, harta dapat bercampur, berubah bentuk, diinvestasikan kembali, meningkat nilainya, atau dimanfaatkan oleh beberapa rumah tangga, sedangkan kontribusi para pihak dapat bersifat materiil maupun nonmateriil. Artikel ini bertujuan merekonstruksi metode penyelesaian sengketa berbasis yurisprudensi dan *maqāṣid al-sharīʿah* melalui sistematisasi pertimbangan hakim. Penelitian hukum normatif ini menggunakan pendekatan perundang-undangan, konseptual, dan kasus. Bahan hukum primer meliputi Undang-Undang Perkawinan, KHI, dan putusan pengadilan terpilih mengenai harta bersama dan poligami; bahan sekunder berupa literatur tentang harta perkawinan, diskresi hakim, keadilan substantif, dan pembaruan hukum keluarga Islam. Bahan dikumpulkan melalui studi dokumen dan dianalisis secara kualitatif-preskriptif dengan mengidentifikasi norma dan fakta hukum, menelaah *ratio decidendi*, membandingkan pola pertimbangan hakim, serta mengujinya menggunakan parameter *maqāṣidī*. Hasil penelitian menunjukkan bahwa Pasal 94 KHI menyediakan landasan normatif, tetapi belum memberikan metode operasional untuk menelusuri harta yang bercampur atau berubah bentuk serta menilai ketimpangan kontribusi. Putusan Mahkamah Agung Nomor 266 K/AG/2010 menunjukkan bahwa pembagian sama rata dapat dikoreksi apabila bukti memperlihatkan ketimpangan kontribusi yang signifikan dan pemenuhan kewajiban nafkah. Artikel ini merumuskan lima tahap penyelesaian: klasifikasi normatif, penelusuran dan analisis transformasi harta, penilaian kontribusi, koreksi terukur terhadap pembagian mekanis, serta justifikasi *maqāṣidī*. Kebaruannya terletak pada pengubahan pertimbangan hakim yang kasuistis menjadi prosedur pengambilan keputusan yang sistematis dengan batasan objektif terhadap diskresi hakim.
Kata Kunci: Harta Bersama, Poligami, Yurisprudensi, *Maqāṣid Al-Sharīʿah*, Diskresi Hakim.

A. Introduction

Joint property is one of the important legal consequences of marriage because family life not only forms personal relationships, but also economic relationships. Law Number 1 of 1974 concerning Marriage distinguishes property acquired during marriage as joint property from the inherited property of each party. Within the framework of Indonesian Islamic family law, the Compilation of Islamic Law (KHI) maintains the recognition of individual ownership of husband and wife, while at the same time recognizing the existence of joint property as a result of economic life during marriage. This construction shows that common property is not only a matter of whose name is listed on the certificate or proof of ownership, but also related to when the property was obtained, from what source the property was formed, and how the contribution of the parties worked in its formation and maintenance.[1]

[1] Ibnu Elmi A S Pelu and Ahmad Dakhoir, "Marital Property within the Marriage Law: A Debate on Legal Position and Actual Applications," *Al-Jami'ah: Journal of Islamic Studies* 59, no. 2 (2021): 287–316, https://doi.org/10.14421/ajis.2021.592.287-316.

This complexity increases in polygamous marriages. Article 65 paragraph (1) b and c of the Marriage Law limits the rights of the second wife and so on to property that existed before her marriage,[2] while Article 94 of the KHI emphasizes that the joint property of each marriage must be separated and calculated from the marriage contract of each wife.[3] Normatively, this provision provides an important foundation to protect the rights of the first wife while recognizing the rights of the next wife. However, the normative foundation has not answered all the problems when an asset changes shape, is sold and the result is used as business capital, experiences an increase in value, is refinanced by income from the next household, or is used across households. In such a condition, the date of the contract is important, but it is not always enough to determine who is entitled to the economic value of an asset.

The main problem with this article is not that Article 94 of the Criminal Code is unregulated, but rather that it does not provide a systematic method of reasoning to translate the separation of property into complex case facts. Budianto and Sulistyarini highlight the need for legal certainty for the first wife,[4] Nurmila points out the impact of polygamy on women's access to income and property,[5] Wirastri and van Huis show the ambivalence between formal protection and the reality of the position of the second wife,[6] while research on common property and contributions confirms that a seemingly mathematically equal division is not always synonymous with substantive justice.[7] Studies of court practice also show that the division of joint property is often resolved casutically and does not always follow the formula 1/2 : 1/2 rigidly.[8][9][10] The literature is

[2] Undang-Undang Republik Indonesia, "Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan" (Jakarta: Republik Indonesia, 1974).

[3] Republik Indonesia, "Instruksi Presiden Nomor 1 Tahun 1991 Tentang Penyebarluasan Kompilasi Hukum Islam" (1991).

[4] Willy Budianto and Rachmi Sulistyarini, "Kepastian Hukum Harta Bersama Bagi Istri Pertama Dalam Perkawinan Poligami," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 6, no. 1 (2021): 66–71, https://doi.org/10.17977/um019v6i1p66-71.

[5] Nina Nurmila, "Polygamous Marriages in Indonesia and Their Impacts on Women's Access to Income and Property," *Al-Jami'ah: Journal of Islamic Studies* 54, no. 2 (2016): 427–46, https://doi.org/10.14421/ajis.2016.542.427-446.

[6] Theresia Dyah Wirastri and Stijn van Huis, "The Second Wife: Ambivalences towards State Regulation of Polygamy in Indonesia," *The Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (2021): 246–68, https://doi.org/10.1080/07329113.2021.1912579.

[7] Abd Rouf, Mufidah Ch, and Zaenul Mahmudi, "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.

[8] I Rais, "The Settlement of Joint Property in Religious Courts of Indonesia: A Case in the Religious Court of South Jakarta," *Al-'Is* 15, no. 2 (2018): 234–62, https://doi.org/10.24042/adalah.v15i2.2484.

[9] J M Muslimin and Y Fatma, "The Actualization of Justice in the Settlement of Joint Assets Due to Divorce: Comparative Analysis of Decisions of the Religious Courts," *De Jure: Journal of Law and Sharia* 12, no. 2 (2020): 176–90, https://doi.org/10.18860/j-fsh.v12i2.9064.

[10] I Rais and Y R Muyassar, "The Construction of Religious Court Judges' Decisions in the Case of Joint Assets Based on Islamic Law and Legal Development," *Jurnal Cita Hukum* 10, no. 2 (2022): 205–22, https://doi.org/10.15408/jch.v10i2.27800.

important, but most of it still discusses the norms of joint property, the protection of the wife, judicial practice, or maqāṣid separately. There has not been a definitive method that links normative classification, asset tracing, contribution, ratio decidendi patterns, discretion limits, and *maqāṣidī* testing in a single reasoning procedure.

The methodological need can be seen from judicial practice. The Supreme Court Decision No. 266 K/AG/2010 does not divide the joint property mechanically by one and two for each party.[11] The Supreme Court gives three-quarters of the share to the wife and one quarter to the husband because the joint property is basically generated by the wife, while the husband does not fulfill the maintenance obligations to the wife and children for about eleven years. The rules of the ruling show that the actual contribution and the implementation of family obligations can be relevant legal facts to correct the formal division. Thus, the decision is not enough to be read only as an example of the final result 3/4: 1/4, but as a pattern of ratio decidendi: the general norm remains the starting point, but its application is corrected based on the fact of contribution and violation of obligations so that the results of the division do not result in substantive injustice.[12][13]

In polygamy cases, the issue of determining property can even arise before the dispute of division after divorce. Gorontalo Religious Court Decision Number 556/Pdt.G/2021/PA. Gtlo shows that the request for joint property can be intertwined with the application for a polygamy permit.[14] However, because the application for the determination of property in the case was declared unaccepted, this decision is not appropriate to be used as automatic evidence of a substantive legal vacuum. The analytical value lies precisely in the fact that the status and separation of property can be a procedural issue from the early stages of polygamy. Therefore, the reconstruction method must distinguish normative problems, evidentiary problems, and procedural problems so that the entire complexity of the case is not charged with the shortcomings of Article 94 of the KHI.

The role of judges is important in the space between general norms and concrete facts. Judicial discretion can indeed be used to respond to inequities that are not accommodated by formal application, but discretion should not be equated with subjectivity. The literature on family justice in Indonesia shows that judges' flexibility

[11] Mahkamah Agung Republik Indonesia, Putusan Nomor 266 K/AG/2010 tentang Pembagian Harta Bersama terhadap Suami yang Tidak Memberi Nafkah terhadap Anak dan Istri (2010).

[12] Indonesia.

[13] Uswatun Hasanah, Adnan, and Ulfa Widayati, "ANALISIS YURIDIS PEMBAGIAN HARTA BERSAMA PASCA PERCERAIAN (STUDI PUTUSAN MA NOMOR 266 K/AG/2010)," *Al-IHKAM Jurnal Hukum Keluarga Jurusan Ahwal Al-Syakhshiyyah Fakultas Syariah IAIN Mataram* 18, no. 1 (July 10, 2026): 46–71, https://doi.org/10.20414/alihkam.v18i1.16009.

[14] Pengadilan Agama Gorontalo, Putusan Nomor 556/Pdt.G/2021/PA.Gtlo, Direktori Putusan Mahkamah Agung Republik Indonesia (2021).

should remain based on evidence, legal reasons, and rights protection goals.[15][16] Studies of the division of common property in religious courts also show that considerations of contributions, the origin of property, and a sense of justice are used to explain the non-uniform distribution.[17][18][19] In a comparative perspective, a contribution-based system can provide room for substantive justice, but it requires a reasoning structure in order for discretion to remain predictable and tested.[20][21]

This article departs from the thesis that Article 94 of the KHI has provided a normative foundation for the separation of joint property in polygamous marriages, but the complexity of property in practice requires a reasoning method capable of connecting norms, facts, contributions, *ratio decidendi*, and the goal of justice. The term 'reconstruction' in this article means to systematize the patterns of consideration scattered in norms and jurisprudence, then integrate them with the parameters of *maqāṣid al-sharīʿah* into a more operational reasoning procedure. Thus, this article does not claim to create a principle from empty space, but rather turns a causistic consideration into a method that can be applied more consistently.

Based on this framework, this article answers three questions. First, what is the normative construction of joint property in polygamous marriage and its point of limitation when dealing with mixed or transformed property? Second, what patterns can be drawn from the *ratio decidendi* of decisions related to common property and polygamy? Third, how is the pattern reconstructed into a jurisprudential-maqā *ṣidī method* that has clear stages, indicators, and limits of discretion? The novelty of the research lies in the transformation of dispersed and casuistic judicial considerations into a five-stage procedure for determining the status of property, tracing the transformation

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[15] Ramadhita Ramadhita, Ali Mahrus, and Bachri Syabbul, "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia," *Cogent Social Sciences* 9, no. 1 (December 31, 2023), https://doi.org/10.1080/23311886.2023.2206347.

[16] Balawyn Jones and Amira Aftab, "Inside Indonesia's Religious Courts: An Argument for Domestic and Family Violence Screening and Exemption from Compulsory Mediation," *Oxford Journal of Law and Religion* 12, no. 2 (2023): 217–31, https://doi.org/10.1093/ojlr/rwad015.

[17] Rais and Muyassar, "The Construction of Religious Court Judges' Decisions in the Case of Joint Assets Based on Islamic Law and Legal Development."

[18] M Ridwan et al., "Distribution of Joint Properties According to Balanced Justice Principle," *Journal of Law and Justice* 12, no. 1 (2023): 57–76, https://doi.org/10.25216/jhp.12.1.2023.57-76.

[19] Z Nasution, D Tanjung, and H Matsum, "The Position of the Wife as the Primary Breadwinner in the Division of Joint Property: A Legal Review of Decision No. 2388/Pdt.G/2023/PA. Im," *Al-Risalah Journal of Sharia and Law* 25, no. 2 (2025): 776–91, https://doi.org/10.24252/al-risalah.vi.61691.

[20] L V Chan and K R Xu, "Trends in the Division of Matrimonial Property Based on Contribution: An Empirical Case Study Based on the Structured Approach in Singapore," *International Journal of Law, Policy and the Family* 36, no. 1 (2022), https://doi.org/10.1093/lawfam/ebac009.

[21] E C Lubaale, "Substantive Equality for Women in Distribution of Matrimonial Property: Uganda's Contribution-Based Approach," *International Journal of Law, Policy and the Family* 39, no. 1 (2025), https://doi.org/10.1093/lawfam/ebaf001.

of assets, assessing contributions, testing the need for correction to mechanical divisions, and providing justification *for maqāṣidī*.

B. Research Methods

This research is a normative legal research that is prescriptive. The approaches used include a legislative approach, a conceptual approach, and a case approach. The legislative approach is used to examine Law Number 1 of 1974 concerning Marriage and its amendments, especially the provisions on common property and polygamy, as well as the Compilation of Islamic Law, especially Articles 85-97. The conceptual approach is used to establish the relationship between common property, contribution, substantive justice, judicial discretion, and *maqāṣid al-sharīʿah*. The case approach is used to read *the ratio decidendi* of decisions that are relevant to the division of common property and the determination of property in the context of polygamy.

The primary legal material consists of laws and regulations, KHI, Supreme Court Decision Number 266 K/AG/2010, Supreme Court Decision Number 197 K/Ag/2015, Supreme Court Decision Number 107 PK/Ag/2016, and Gorontalo Religious Court Decision Number 556/Pdt.G/2021/PA. Gtlo. The four decisions were purposively chosen to represent a variety of problems: correction to the division of 1/2: 1/2 due to inequality in contributions and obligations; proportional division in cases of joint property and inheritance; mixing of assets in polygamous families; and problems of determining assets at the stage of polygamy permits. The decisions were selected based on three criteria: containing the issue of classification or distribution of common property; displaying considerations regarding contributions, obligations, transformations or property status; and/or showing the problem of separation of property in polygamy relationships. Secondary legal materials are in the form of journal articles, books, and research results on joint property, polygamy, spousal contribution, judges' discretion, distributive justice, and Islamic family law reform.

Legal materials are collected through document studies. The analysis is carried out qualitatively-prescriptively in five steps. First, identifying the relevant norms and the functions of each norm. Second, mapping the legal facts that determine the origin, time of acquisition, change of form, and use of property. Third, extracting the ratio decidendi of the decision by distinguishing the facts, the norms referred, the reasons for the correction or application of the norm, and the results of the division. Fourth, comparing the pattern of considerations between judgments to find repetitive elements and the limits of discretion. Fifth, test the pattern using *the parameters of maqāṣidī*, especially the protection of property (*ḥifẓ al-māl*), the prevention of tyranny, the protection of families and vulnerable parties, and the benefits that can be proven from the consequences of distribution. From this process, the five stages of the jurisprudential method-maqā *ṣidī* are reconstructed.

C. Discussion and Research Results

Legal Construction of Joint Property in Polygamous Marriage in Indonesia

The construction of joint property in Indonesian Islamic family law stands on two principles that must be read simultaneously: the recognition of individual ownership and the recognition of economic cooperation in marriage. Articles 86 and 87 of the KHI retain personal property, gifts, inheritances, and congenital property as the property of each party, while Article 85 and the provisions on joint property recognize the existence of wealth born during the marriage. This framework differs from the reading that only asks on whose behalf the assets are registered. The normative focus is on the relationship of the assets to the period of marriage and the source of their acquisition.[22]

In polygamy, Article 94 of the KHI adds a layer of separation between households. The provision that the joint property of each marriage is "separate and independent" and calculated from the contract of each wife aims to prevent the rights of the first wife from being reduced by the next marriage, as well as to ensure that the next wife obtains the right to property formed during her marriage. This protective function is in line with Article 65 of the Marriage Law and various studies on the economic protection of wives in polygamy.[23][24] More recent studies of decisions also show that the determination and separation of property at the stage of polygamy permits serves as a preventive function to provide certainty regarding the space of the property of each marriage.[25] Meanwhile, the marriage agreement can be an additional instrument to maintain the balance of rights of the parties.[26]

However, the relationship between norms and facts is not always linear. For example, land acquired in the first marriage can be sold after the second marriage and the proceeds are used as business capital; the business then develops with the labor or capital of the second wife; the business profit is used to buy a house whose certificate is in the name of the husband. If the analysis stops at the date of the contract or the name on the ownership document, the contribution to the transformation of the value of the asset may

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[22] Pelu and Dakhoir, "Marital Property within the Marriage Law: A Debate on Legal Position and Actual Applications."

[23] Budianto and Sulistyarini, "Legal Certainty of Joint Property for First Wife in Polygamous Marriage."

[24] Nurmila, "Polygamous Marriages in Indonesia and Their Impacts on Women's Access to Income and Property."

[25] M Rafly, F Asyhadi, and M Abas, "Analysis of the Decision of the Karawang Religious Court Number 555/Pdt.G/2024/PA. Krw on the Determination of Joint Property in Polygamy Permit Cases to Prevent Family Conflicts," *Mizan: Journal of Islamic Law* 13, no. 2 (2025): 173–80, https://doi.org/10.32832/mizan.v13i2.21276.

[26] A Shomad and S Hajati, "Prenuptial Agreement and the Principle of Balanced Justice in the Division of Joint Property in Islamic Marriage Law," *Yuridika* 40, no. 1 (2025): 129–42, https://doi.org/10.20473/ydk.v40i1.60238.

be invisible. Therefore, the division of property by chronology should be understood as an entry point of classification, not as the only algorithm of division.

Similarly, Article 97 of the KHI which provides a general formula for each party after a divorce must be read in the context of the broader legal system. The formula provides certainty and a starting point for distribution, but does not close the need for judges to assess concrete facts when there is evidence of extreme inequality in contributions or fulfillment of obligations. Butt and Lindsey (2018) show that Indonesian family law combines codification rules with court interpretation,[27] court practice also shows a caustic division based on contributions and concrete circumstances.[28][29] In the realm of shared property, the interpretation space must be used in a measured manner so that flexibility does not turn into uncertainty.

Thus, the legal question is not a choice between Article 94 and Article 97 of the KHI or substantive justice. Both must be placed in an analytical order: Article 94 specifies the space and period of property in polygamy; Article 97 provides a general distribution formula; while the facts of the origin of assets, contributions, and liabilities determine whether the formula can be applied directly or requires an accountable correction.

Jurisprudence Problems in the Distribution of Joint Property in Polygamous Marriage

Jurisprudence is relevant not only because it produces a certain number of divisions, but because it shows the way judges relate norms and facts. The Supreme Court Decision Number 266 K/AG/2010 is an important example. The fact emphasized is not only that the wife works, but that the joint property is basically produced by the wife while the husband does not provide support to the wife and children for about eleven years. The Supreme Court then gives three-quarters of the share to the wife and one quarter to the husband. The ratio decidendi that can be drawn is that nominal equality of 1/2 : 1/2 can be corrected when its application actually provides a disproportionate benefit to the party who does not fulfill the obligation and does not contribute proportionately to the formation of the property.

This pattern is important because it shows three layers of reasoning. First, the KHI norm is not ignored; it remains the baseline. Second, the judge assesses the fact of contribution and the performance of the obligation as a legal fact, not a mere moral consideration. Third, corrections to *the baseline* are made to achieve a more proportional distribution. Thus, Decision 266 K/AG/2010 cannot be understood as a general license for

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[27] Simon Butt and Tim Lindsey, "Marriage, Divorce, and Inheritance," in *Indonesian Law* (Oxford University Press, 2018), https://doi.org/10.1093/oso/9780199677740.003.0022.

[28] A S Maspeke and A Khisni, "Kedudukan Harta Bersama Dalam Perkawinan Menurut Fiqih Dan Hukum Positif Indonesia Serta Praktik Putusan Pengadilan Agama," *Jurnal Hukum Khaira Ummah* 12, no. 2 (2017): 173–84, https://doi.org/10.30659/jhku.v12i2.1849.

[29] Rais, "The Settlement of Joint Property in Religious Courts of Indonesia: A Case in the Religious Court of South Jakarta."

judges to determine proportions freely. Instead, it shows that deviations from the general formula require strong and verifiable factual reasons.

In the context of polygamy, the Decision of the Gorontalo PA Number 556/Pdt.G/2021/PA. Gtlo provides a different lesson. The issue of determining property arises with the application for a polygamy permit, but the application regarding property is declared inadmissible.[30] Therefore, this decision cannot be directly used to conclude that Article 94 of the KHI is inadequate in substance. It is more appropriate to point out that the status of the property, the form of application, and the procedural stage can be intertwined. For the reconstructed method, the implication is that the judge must first distinguish whether the dispute is at the stage of classification of property status, determination for the benefit of polygamy permits, or distribution after the breakdown of marriage.

The appellate decision shows that the correction to the formal division is not a single event. In Supreme Court Decision No. 197 K/Ag/2015, the distribution of joint property is set at 60% for the wife and 40% for the husband.[31] This pattern shows that the real contribution to the formation of property can be used to adjust the general formula when the evidence shows inequality of contributions. Studies of a number of religious court decisions also found variations of 4/10: 6/10, 20%: 80%, and 1/4: 3/4 which are explained through contributions, the origin of property, and considerations of justice.[32] Thus, the jurisprudence of common property shows a broader pattern than a single judgment: the formula 1/2 : 1/2 remains the baseline, while correction requires factual reasons and verifiable legal arguments.[33][34][35]

The Supreme Court Decision Number 107 PK/Ag/2016 shows a more typical problem for polygamous families, namely when one asset is administratively in the name of one of the wives but its economic history is related to the entire marital relationship.[36] A review of the decision shows that the Supreme Court did not stop at the name of the certificate holder and built the construction of "collective common property" to resolve

[30] Gorontalo, Putusan Nomor 556/Pdt.G/2021/PA.Gtlo, Direktori Putusan Mahkamah Agung Republik Indonesia.

[31] Mahkamah Agung Republik Indonesia, Putusan Mahkamah Agung Republik Indonesia Nomor 197 K/Ag/2015 (2015).

[32] Rais and Muyassar, "The Construction of Religious Court Judges' Decisions in the Case of Joint Assets Based on Islamic Law and Legal Development."

[33] Rais, "The Settlement of Joint Property in Religious Courts of Indonesia: A Case in the Religious Court of South Jakarta."

[34] Muslimin and Fatma, "The Actualization of Justice in the Settlement of Joint Assets Due to Divorce: Comparative Analysis of Decisions of the Religious Courts."

[35] Ridwan et al., "Distribution of Joint Properties According to Balanced Justice Principle."

[36] Mahkamah Agung Republik Indonesia, Putusan Mahkamah Agung Republik Indonesia Nomor 107 PK/Ag/2016 (2016).

the mixing of property in polygamous families.[37] This decision is important for the reconstruction method because it confirms that tracing the origins, history of possession, and economic relations between households is necessary before the status and proportions of division are determined. The findings are in line with a study that places a plurality of legal sources and social practices as an important part of understanding marital property. [38] The judgment can be drawn to a methodological boundary: the judgment should not be treated as a collection of examples of the final result, but rather as a source of reasoning patterns. What is sought is not the number 3/4, 1/4, 60/40, or 1/2, but the element that explains why the proportion is considered appropriate in a particular fact. The recurring elements are the normative status of the asset, its origin and transformation, material and nonmaterial contributions, the implementation of obligations, and the impact of the application of the general formula. A synthesis of cutting-edge jurisprudence also shows a similar pattern: equal distribution is maintained when there is no distinguishing reason, while proportional adjustment can be made when contributions, domestic work, failure of maintenance, or the burden of care prove relevant.[39] This is the jurisprudential material that is then reconstructed.

Limitations of Sharing Common Property Based on KHI Norms

The first limitation is the issue of asset transformation. Article 94 of the KHI regulates the separation of assets based on marital relationships and contract time, but does not explain tracing techniques when assets change shape. Methodologically, changes in form should not break the relationship between rights and sources of their formation. Therefore, judges must test the traces of transactions: source of capital, date of acquisition, sales results, reinvestment, capital addition, and maintenance financing. The principle is tracing, not just labeling.

The second limitation is the assessment of contributions. Contributions are not synonymous with cash income. In the household, childcare, domestic work, support for spouses' businesses, and maintenance of assets can allow the other party to generate income. Rinaldo shows how the division of household roles in Indonesia is shaped by a gender script that places men as breadwinners and women in domestic roles, despite the more diverse social realities. Studies of wives as the main breadwinners and female migrant workers also show that distribution formulas that do not take into account

[37] A K Alhamdani et al., "Judges' Paradigm in Determining of Tirkah and Marital Property in Polygamous Families: An Analysis of Supreme Court Decision No. 107 PK/Ag/2016," *Jurnal At-Tadbir: Media of Law and Education* 36, no. 1 (2026): 7–12, https://doi.org/10.52030/v1dnjb49.

[38] M Musfira et al., "Beyond Joint Property? Examining Fiqh Munakahat, State Law, and Customary Practice in Aceh, Indonesia," *USRATY: Journal of Islamic Family Law* 4, no. 1 (2026): 28–48, https://doi.org/10.30983/usraty.v4i1.11587.

[39] Darmawan et al., "Istiḥsān and Judicial Recalibration of Marital Property Rights in Indonesia's Religious Courts," *Ahkam: Journal of Sharia Science* 26, no. 1 (2026), https://doi.org/10.15408/ajis.v26i1.50333.

contribution variations can result in substantive injustices.[40] If domestic work is not taken into account, the method of wealth distribution will be biased towards easily monetized contributions. Therefore, contributions need to be differentiated into: (a) asset formation contributions; (b) value development contributions; (c) maintenance contributions; and (d) domestic contributions that support family productivity.

The third limitation is the risk of subjectivity in discretion. Substantive justice should not be a term that frees judges from norms. Discretion should be limited by objective indicators: evidence of the origin of property, period of acquisition, proportion of capital, transformation of assets, material and non-material contributions, implementation of maintenance obligations, and consequences of distribution. Ramadhita, Ali, and Bachri (2023) show that discretionary functions in addressing inequality in family matters, but legitimate discretion still requires a transparent basis of evidence and argumentation.[41] The experience of the contribution system in Singapore also shows that an explicit analytical structure is important to increase certainty and predictability in a system that provides room for discretion.[42]

The fourth limitation is the use of *maqāṣid* which is too abstract. Saying *ḥifẓ al-māl* or maṣlaḥah after the proportions of the division have been determined is not enough to make the *verdict of maqāṣidī*. *Maqāṣid* should work as a testing parameter. Protection of property means ensuring that proven economic rights are not erased by changes in the form of assets; prevention of tyranny means that the division does not give undue benefits to parties who neglect their obligations or benefit from the contributions of others; protection of families and vulnerable parties means that the domestic contributions and economic position of wives are not made invisible; while maṣlaḥah demands the existence of tangible benefits and the prevention of explainable losses, not just ethical claims. The use of *maqāṣid* in the reform of Indonesian family law also shows that the goals of justice, women's rights, order, and welfare must be translated into operational legal reasons.[43]

With these four limitations, the need for method reconstruction becomes clear. What is needed is not the replacement of Articles 94 and 97 of the KHI, but a reasoning procedure that makes the norm able to work on complex facts and at the same time limit the space for discretion.

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[40] Nasution, Tanjung, and Matsum, "The Position of the Wife as the Primary Breadwinner in the Division of Joint Property: A Legal Review of Decision No. 2388/Pdt.G/2023/PA. Im."

[41] Ramadhita, Mahrus, and Syabbul, "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia."

[42] Chan and Xu, "Trends in the Division of Matrimonial Property Based on Contribution: An Empirical Case Study Based on the Structured Approach in Singapore."

[43] F Arrasyid, P Pagar, and D Tanjung, "Islamic Family Law Reform in Indonesia through Supreme Court Circulars: A Maqasid Sharia Perspective," *Ulul Albab: Journal of Islamic Law Studies and Research* 6, no. 2 (2024): 208–25, https://doi.org/10.30659/jua.v6i2.29236.

Reconstruction of the Jurisprudential Method-Maqā *ṣidī* in the Distribution of Common Property

The reconstruction in this study is the process of systematizing patterns that have been scattered in norms, rulings, and literature into consistent work steps. The jurisprudential method-maqā *ṣidī* does not place *maqāṣid* as a substitute for KHI and does not make jurisprudence a source that stands outside the regulations. KHI norms remain the initial framework; jurisprudence explains how norms work when dealing with facts; *maqāṣid* tests whether the results of reasoning protect rights and prevent injustice. Thus, this reconstruction differs from simply "combining" jurisprudence and *maqāṣid*: it constructs an analytical sequence of repetitive patterns in several rulings, including contribution-based corrections, asset tracing, and discretionary restrictions.[44][45]

The following five stages are formulated from the synthesis. The first stage, the reading and classification of norms. The judge determines the initial categories of property based on Articles 85-94 of the KHI: inherited property, first marital common property, subsequent marital property, or property whose status is unclear. This stage produces a normative baseline and prevents the analysis from starting from abstract justice preferences.

The second stage is the tracing of the origin and transformation of the property. The judge builds a chronology of the assets that is formed by finding the answers from when they were obtained, from what source of funds, whether they were sold, inherited, granted, transferred, made into capital, or increased in value through investment. If the property changes shape, the relationship with the source of origin must be kept tracked as far as the evidence allows. At this stage, transaction documents, accounts, certificates, business books, and witness statements become relevant.

The third stage is the assessment of the contribution of the parties. Contributions are mapped not only at the time the assets are first acquired, but also at the formation, development, and maintenance of their value. Material contributions include income, capital, installment payments, and business management. Non-material contributions include domestic work, parenting, support for marital productivity, and household maintenance. This approach is in line with the idea of *substantive equality* in the distribution of marital property which demands recognition of non-monetary contributions and with the development of Indonesian judgments that make real contributions one of the bases of proportional distribution.[46][47]

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[44] Rais and Muyassar, "The Construction of Religious Court Judges' Decisions in the Case of Joint Assets Based on Islamic Law and Legal Development."

[45] Darmawan et al., "Istiḥsān and Judicial Recalibration of Marital Property Rights in Indonesia's Religious Courts."

[46] Ridwan et al., "Distribution of Joint Properties According to Balanced Justice Principle."

[47] Nasution, Tanjung, and Matsum, "The Position of the Wife as the Primary Breadwinner in the Division of Joint Property: A Legal Review of Decision No. 2388/Pdt.G/2023/PA. Im."

The fourth stage is the testing of the need for correction of the mechanical division. The formula 1/2 : 1/2 remains the baseline when the facts do not show a compelling reason for deviation. Correction can only be made if there is sufficient evidence of inequality of contributions, transformation of assets that move value from one marital space to another, breach of obligations directly related to the formation of property, or the result of a manifestly disproportionate distribution. Decisions 266 K/AG/2010 and 197 K/Ag/2015 show that correction must be based on concrete facts and a ratio decidendi that can be tested. This approach is in line with studies that emphasize balanced justice in the division of common property and the need for proportional distribution when real contributions differ.[4849]

The fifth stage, the justification *of maqāṣidī*. After the status, asset history, contribution, and need for correction were analyzed, the judge tested the provisional results based on four parameters: *ḥifẓ al-māl*, prevention of tyranny, protection of families/vulnerable parties, and maṣlaḥah. If the outcome of the division removes traceable rights, favors negligence, ignores proven domestic contributions, or creates disproportionate economic losses, the outcome requires review. With this structure, *maqāṣid* serves as an argumentative control, not a slogan of legitimacy.

Table 1. Operational Model of Jurisprudential Method-Maqā *ṣidī*

No	Stages	Key Questions	Indicators/Evidence	Limits of Discretion	Output
1	Norm Classification	What is the initial status of the property according to KHI and the period of marriage?	Date of contract; time of acquisition; inheritance/grant; Article 85-94 of the KHI	It is not permissible to jump over normative classifications for the sake of abstract justice.	Baseline of the legal status of the property.
2	Asset Tracing	Where does wealth come from and how does it change shape/value?	Transaction footprint; source of capital; sales results; reinvestment; business documents; value increase	A change in name or form does not automatically remove the rights trace.	Map the origin and transformation of assets.
3	Contribution Assessment	Who contributes to the formation, development, and maintenance?	income; capital; installments; business work; domestic work; parenting; maintenance	Non-material contributions must be proven and linked to the family's economic life.	Matrix of Contributions of the Parties.

[48] Ridwan et al., "Distribution of Joint Properties According to Balanced Justice Principle."
[49] Nasution, Tanjung, and Matsum, "The Position of the Wife as the Primary Breadwinner in the Division of Joint Property: A Legal Review of Decision No. 2388/Pdt.G/2023/PA. Im."

No	Stages	Key Questions	Indicators/Evidence	Limits of Discretion	Output
4	Measured Correctio n	Does the apportionment baseline result in demonstrable injustice?	Inequality of contributions; violations of alimony; shifts in value between marriages; impact of distribution	Deviations from 1/2 : 1/2 require explicit factual and legal reasons.	Tentative proportio ns that can be accounted for.
5	Uji *MakkaYid i*	What are the results of protecting rights and preventing tyranny/mafsadat?	*Ḥifẓ al-māl*; anti-ẓ ulm; protection of the vulnerable; maṣlaḥah the real	Maqāṣid should not negate KHI; it serves to test and explain results.	Final legal and substantiv e justificatio n.

The table shows that the novelty of the method is not a mechanical merger between jurisprudence and *maqāṣid*. The novelty lies in the change of previously scattered considerations, such as the status of property, chronology, contributions, obligations, and justice, so that it becomes an analytical procedure that has order and control. Each stage produces the output necessary for the next stage so that the judge does not immediately jump from the facts to the claims of maṣlaḥah.

This method also limits the possibility of bias. For example, the fact that assets are registered in the husband's name does not automatically determine all rights. Moreover, the fact that the wife does not provide cash capital does not automatically mean that she does not contribute and the fact that Article 97 stipulates a half does not automatically justify deviations without evidence. In other words, the method works both ways: making room for substantive justice while controlling discretion to remain within the corridor of proof and norms.

Jurisprudence-Maqā *ṣidī* as a Model for Islamic Family Law Reform

The theoretical implication of this method is the shift in understanding of family law reform from a mere textual change to a reform of the way of reasoning texts. Judicial reform can occur when the same norms are read with procedures that are more transparent, evidence-based, and sensitive to the consequences of distribution. The history of Indonesian marriage law shows that the development of family law proceeds through a combination of legislation, judicial policy, and interpretation of judges.[50][51] Reform through judicial products and practices has also been analyzed in the perspective

[50] Theresia Dyah Wirastri and Stijn Cornelis van Huis, "The State of Indonesia's Marriage Law: 50 Years of Statutory and Judicial Reforms," *Ahkam: Jurnal Ilmu Syariah* 24, no. 2 (2024): 215–32, https://doi.org/10.15408/ajis.v24i2.38424.

[51] K Miichi, "Feminist Strategies in a Muslim Democracy: Case Study of the 2019 Marriage Law Revision in Indonesia," *Contemporary Islam* 19 (2025): 559–75, https://doi.org/10.1007/s11562-025-00599-8.

of maqāṣid,[52] while the study of marital property pluralism shows the need to pay attention to the interaction between fiqh, state law, and social practice. [53] Therefore, the systematization of reasoning is also a form of renewal, as long as it does not place judges above the law.

The practical implications mainly lie in the standardization of the questions that must be answered in the case. Courts can develop evidentiary guidelines regarding the origin of assets, changes in form, sources of capital, direct and domestic contributions, and the relationship between the breach of alimony obligations and the formation of property. This kind of standardization is more useful than an abstract list of principles because it helps judges explain why certain facts are relevant and how they affect the outcome. Beyond adjudication, clear mapping of property and contribution status can also help mediate joint property disputes for the parties to negotiate based on identified objects and claims.[54]

Women's protection in this method is not provided through the assumption that women are always the aggrieved party, but rather through mechanisms that make their contributions and vulnerabilities visible and tested. The first wife is protected because the traces of property values formed before polygamy must be traced; the subsequent wife is protected because her contribution to the development of assets after marriage is not automatically erased by the history of the asset; and the husband remains protected because any contribution claims must be proven. This protection relates to the legal recognition of Indonesian Islamic family law of women's financial rights during and after marriage, including the right to joint property.[55] Thus, the method is oriented towards evidence-based justice, rather than automatic partiality to one gender.

Another important limitation is that maqāṣid should not be used to ignore KHI. *Ḥifẓ al-māl* and maṣlaḥah serve as evaluative principles that work once normative status and facts have been mapped. This position avoids two extremes: formalism that ignores the consequences of injustice and purpovisism that is too free from the legal text. The jurisprudential *method-maqāṣidī* is precisely built to maintain a balance between certainty, proof, and substantive justice.

In further development, this model can be tested through a broader set of judgments and developed into a matrix of proof or guidelines for religious courtrooms.

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[52] Arrasyid, Pagar, and Tanjung, "Islamic Family Law Reform in Indonesia through Supreme Court Circulars: A Maqasid Sharia Perspective."

[53] Musfira et al., "Beyond Joint Property? Examining Fiqh Munakahat, State Law, and Customary Practice in Aceh, Indonesia."

[54] E S Syafei and S Djazimah, "Mediation in the Settlement of Joint Marital Property Disputes: A Study at Tanjung Karang Religious Court, Lampung," *Samarah* 5, no. 2 (2021): 867–91, https://doi.org/10.22373/sjhk.v5i2.9039.

[55] S L Sulistiani and I Nurrachmi, "Hak Finansial Perempuan Dalam Keluarga Menurut Hukum Keluarga Islam Di Indonesia," *Musãwa Jurnal Studi Gender Dan Islam* 20, no. 2 (2021): 175–85, https://doi.org/10.14421/musawa.2021.202.175-185.

Further research also needs to test consistency between regions and between types of cases, especially cases involving family businesses, productive assets, assets transferred to third parties, or unregistered polygamous marriages.

Conclusion

Article 94 of the KHI has provided an important normative foundation for the separation of common property in polygamous marriages, but it has not provided an operational procedure for dealing with assets that are mixed, deformed, developed in value, or constructed through non-uniform contributions. Therefore, the main problem with the division of common property in polygamy is not the absence of norms, but rather the methodological gap between general norms and complex facts of the case.

Jurisprudence analysis shows that judges have used the consideration of contribution and the exercise of obligations to correct mechanical divisions. Supreme Court Decision No. 266 K/AG/2010 shows an important pattern of ratio decidendi: the general formula remains the baseline, but can be corrected based on solid facts regarding the formation of assets and the negligence of obligations. This pattern confirms that discretion must be based on evidence and legal reasons, not subjective intuition.

The novelty of this article lies in the reconstruction of scattered and caustic considerations into a five-stage jurisprudential method-maqā *ṣidī*, namely; (1) classification of norms; (2) tracing of the origin and transformation of assets; (3) assessment of contributions; (4) measured corrections to mechanical divisions; and (5) justification *of maqāṣidī*. This method places *ḥifẓ al-māl*, the prevention of tyranny, protection of the vulnerable, and maṣlaḥah as evaluation parameters that work in tandem with KHI, rather than as a reason to get rid of written norms. Theoretically, this method suggests that the reform of Islamic family law can take place through the reconstruction of judicial reasoning methods. Practically, it offers a basis for standardization of indicators of property origin, contributions, asset transformation, and distribution proportional correction limits. Further testing of the broader corpus of judgments remains necessary so that this method can be evaluated for consistency and developed into more technical guidelines.

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