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A Two-Stage Model of Judicial Reasoning in Marital Property Adjudication: Evidentiary Assessment, Judicial Activism, and Equal Allocation at the Ketapang Religious Court

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Abstract: This study examines how judicial discretion shapes the division of joint property when administrative records do not reflect the actual acquisition of assets, a situation that often creates tension between substantive evidence and formal rules. This study employs a qualitative, document-based socio-legal case study method to analyze two rulings by the Ketapang Religious Court: Ruling No. 299/Pdt.G/2025/PA.Ktp and No. 149/Pdt.G/2025/PA.Ktp. The data were analyzed using comparative content analysis to examine the interpretation of evidence, the registration of assets in the name of third parties, and the results of on-site inspections. The research findings indicate that the resolution of disputes over joint property operates through a two-stage model: the first stage involves the construction of the distributive pool through identification, verification, legal assessment, and inclusion, and the second stage involves the allocation of the property. Although Decision No. 299 relied on the consistency of documents and witness testimony, while Decision No. 149 required an intensive on-site inspection to verify the identity and legal status of the assets, both ultimately applied Article 97 of the Compilation of Islamic Law by dividing the assets equally. Theoretically, this study demonstrates that a comprehensive evaluation of the facts by a judge can go hand in hand with formal equality, while also affirming that fact-finding activism does not necessarily result in a deviation from the rules of positive law regarding asset allocation.
Keywords: Marital Property, Two-Stage Model, Evidentiary Assessment, Judicial Activism, Equal Allocation.
Abstrak: Penelitian ini membahas bagaimana diskresi hakim membentuk pembagian harta bersama ketika pencatatan administratif tidak mencerminkan fakta perolehan aset, yang kerap menimbulkan ketegangan antara pembuktian materil dan aturan formal. Penelitian ini menggunakan metode studi kasus sosio-legal berbasis dokumen secara kualitatif terhadap dua putusan Pengadilan Agama Ketapang, Putusan No. 299/Pdt.G/2025/PA.Ktp dan No. 149/Pdt.G/2025/PA.Ktp. Data dianalisis menggunakan analisis isi komparatif untuk menelusuri penafsiran alat bukti,

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pendaftaran aset atas nama pihak ketiga, dan hasil pemeriksaan setempat. Hasil penelitian menunjukkan bahwa penyelesaian sengketa harta bersama beroperasi melalui model penalaran dua tahap, tahap pertama berupa konstruksi objek pembagian harta *(distributive pool)* melalui identifikasi, verifikasi, penilaian hukum, serta inklusi, dan tahap kedua berupa alokasi pembagian harta. Meskipun Putusan No. 299 mengandalkan persesuaian dokumen-saksi, sedangkan Putusan No. 149 memerlukan pemeriksaan setempat secara intensif untuk memverifikasi identitas dan status hukum objek, keduanya pada akhirnya tetap menerapkan Pasal 97 Kompilasi Hukum Islam dengan membagi harta secara sama rata. Secara teoretis, penelitian ini membuktikan bahwa evaluasi fakta yang komprehensif oleh hakim dapat berjalan beriringan dengan kesetaraan formal. Sekaligus menegaskan bahwa aktivisme penemuan fakta tidak selalu berujung pada penyimpangan terhadap aturan hukum positif.
Kata Kunci: Harta Bersama, Model Dua Tahap, Penilaian Pembuktian, Aktivisme Yudisial, Pembagian Sama Rata

A. Introduction

Divorce not only terminates the legal relationship between husband and wife but also raises questions concerning the identification, legal status, control, and distribution of property acquired during marriage.[1] In disputes over marital property, the central legal issue is therefore not limited to determining how much each party is entitled to receive, it also concerns which assets may legitimately be included in the property subject to division.[2] This determination can be complicated when administrative records do not correspond fully with the circumstances surrounding an asset's acquisition, possession, or use during the marriage.[3] For example, land, houses, or vehicles may be registered in the name of a third party, while disputes may also concern an asset's identity, physical condition, boundaries, dimensions, or legal status. Under Article 35 of Law No. 1 of 1974 on Marriage, property acquired during marriage is generally classified as joint property, while property acquired as gifts or inheritance, as well as property brought into the marriage, is subject to a different legal regime.[4]

[1] Ajik Sujoko and James M. Kauffman, "Unequal Distribution Of Joint Assets Due To Divorce," *Equalegum: International Law Journal*, September 30, 2023, 161–65, https://doi.org/10.61543/equ.v1i3.47.

[2] Sunmi Lee, "Ideas on Improving the Distribution of Assets upon Divorce by Regulating the Property to Be Distributed and the Distribution Ratio," *The Korean Society Of Family Law* 36, no. 2 (2022): 51–84, https://doi.org/10.31998/KSFL.2022.36.2.51.

[3] O. A. Tymoshenko, "Marital Joint Property of Spouses in the Mechanism of State Registration of Property Rights in Ukraine: Current Status and Prospects for Improvement," *Uzhhorod National University Herald: Law* 1, no. 93 (2026): 481–87, https://doi.org/10.24144/2307-3322.2026.93.1.68.

[4] I. 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*, ahead of print, November 11, 2021, https://doi.org/10.14421/ajis.2021.592.%25p; Wahyu Akbar and Rahmad Kurniawan, "Martial Property in Indonesia (Review of Dayak Ngaju Customary)," *Jurnal Ilmu Hukum Tambun Bungai* 8, no. 1 (2023): 228–44, https://doi.org/10.61394/jihtb.v8i1.250; Eko Rial Nugroho, Bagya Agung Prabowo, and

Articles 96 and 97 of the Compilation of Islamic Law further regulate the consequences of marital dissolution for joint property, with Article 97 establishing, in principle, an equal share for each divorced former spouse, unless otherwise provided by a marriage agreement.[5] Applying this framework requires courts to assess the evidence relevant to the status of each disputed asset before determining the applicable distribution.

The assessment of disputed assets places judicial discretion within a legally consequential but bounded role.[6] Documentary records remain important, but they may need to be considered alongside witness testimony, evidence of acquisition and use, and, where appropriate, an on-site inspection. Such assessment does not automatically constitute judicial activism: the mere fact that a judge examines evidence or clarifies disputed facts is not, by itself, sufficient to characterize the reasoning as activist. The relevant question is whether, and to what extent, judicial evaluation shapes the construction of the property that becomes subject to distribution. This issue is illustrated by two decisions of the Ketapang Religious Court. In Decision No. 299/Pdt.G/2025/PA.Ktp, the court relied on documentary evidence and witness testimony in determining the status of assets that were administratively registered in the names of third parties. In Decision No. 149/Pdt.G/2025/PA.Ktp, the more contested evidentiary process included an on-site inspection to clarify the identity, physical condition, dimensions, boundaries, and legal status of disputed objects. The two decisions thus provide contrasting contexts for examining how judicial assessment constructs the distributive pool before the court determines how the established marital property should be allocated.

Previous studies on marital property in Indonesia can be broadly grouped into three strands. The first examines the legal status and nature of marital property, including the distinction between joint property, separate property, gifts, and inheritance under Islamic law and Indonesian family law. [7] The second focuses on the

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Rohidin, "Granting of Property During Marriage as an Inherited Property in Indonesia," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 1 (2024): 310, https://doi.org/10.22373/ujhk.v7i1.22875.

[5] Khairani, Roni Efendi, Kasmuri Kasmuri, and Okky Afrianto, "Reforming the Rules on the Division of Joint Property: A Progressive Legal Approach," *JURIS (Jurnal Ilmiah Syariah)* 23, no. 1 (2024): 193–204, https://doi.org/10.31958/juris.v23i1.11565; Aldya Khaira Almeyda and Ahmad Khisni, "The Consequences of Divorce Law on Common Property under Marriage Law & KHI," *Sultan Agung Notary Law Review*, ahead of print, August 10, 2021, https://doi.org/10.30659/sanlar.v3i3.16235.

[6] Luqman Hariyadi dan Syamsul Wathoni, "Realisasi Keadilan dalam Hukum Keluarga Islam: Studi Sosio-Legal atas Diskresi Hakim dalam Pembagian Harta Bersama yang Tidak Seimbang: Analisis Sosiolegal terhadap Putusan PA Sukoharjo Nomor 1292/Pdt.G/2020/PA.Skh," *Al-Mikraj: Jurnal Studi Islam dan Humaniora* 6, no. 1 (2025): 3053–78, https://doi.org/10.37680/almikraj.v6i1.10070.

[7] Sri Hariati and Fhisip Unram, "Pembagian Harta Bersama Berdasarkan Kompilasi Hukum Islam", *Jurnal Multidisiplin Madani,* 6.3 (2026), https://doi.org/10.55927/mudima.v6i3.7; Eko Rial Nugroho, Bagya Agung Prabowo, and Rohidin, "Pemberian Harta dalam Perkawinan sebagai Harta Warisan di Indonesia", *El-Usrah: Jurnal Hukum Keluarga*, 7.1 (2024),

distribution of joint property and the fairness of the resulting allocation, including arguments for considering the parties' respective contributions, responsibilities, and circumstances rather than treating an equal division as the only possible measure of justice.[8] The third examines progressive legal reasoning, *contra legem* decisions, and the reconstruction of rules governing marital-property distribution in pursuit of substantive justice. Despite these robust doctrinal foundations, the relationship between asset identification and distributive allocation remains insufficiently examined as a connected sequence of judicial reasoning. While studies like Lee's explicitly recognize that property distribution involves both determining the assets and the applicable distribution ratio[9], scholarship on unequal distribution typically foregrounds the allocation ratio, and studies on judicial activism primarily focus on whether judges depart from established statutory rules. By frequently getting trapped in the dichotomy of strict rule-following versus *contra legem* departures, existing literature fails to recognize that fact-construction at the very first stage is actually the primary arena where judicial discretion truly operates. This leaves a significant analytical gap regarding how courts actively construct the distributive pool itself.

To address this gap and offer a novel perspective, this article examines how the Ketapang Religious Court constructs the distributive pool in marital-property disputes and how that construction relates to the subsequent application of Article 97 KHI. Through a comparative analysis of Decisions No. 299/Pdt.G/2025/PA.Ktp and No. 149/Pdt.G/2025/PA.Ktp, this study introduces a Two-Stage Model of Judicial Reasoning.[10] The primary novelty of this model lies in explicitly demonstrating that what is often perceived as 'judicial activism' does not necessarily entail a departure from formal distribution rules (Stage 2); rather, it frequently operates as an intensive, fact-sensitive verification process to define the marital estate (Stage 1). By distinguishing the evidentiary construction of the pool from its subsequent allocation, this article provides a new analytical framework showing how active judicial fact-finding can coexist seamlessly with formal legal equality, a dynamic that has been largely overlooked in existing marital property scholarship.

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https://doi.org/10.22373/ujhk.v7i1.22875; Muhammad Ridwan, Arbanur Rasyid, and Maulana Arafat Lubis, "Harta Bersama Suami Istri Ditinjau dari Hukum Islam dan Hukum Adat", *Yurisprudentia: Jurnal Hukum Ekonomi*, 7.2 (2021), 201–21, https://doi.org/10.24952/yurisprudentia.v7i2.4689.

[8] Winda Putri Prasmayanti et al., "Between Marital Property and Inheritance: Judicial Legal Reasoning of the Religious Courts in Resolving Post-Death Marital Property Disputes," *Legitima: Jurnal Hukum Keluarga Islam* 8, no. 1 (2025): 95, https://doi.org/10.33367/legitima.v8i1.8170.

[9] Sunmi Lee, "Ideas on Improving the Distribution of Assets upon Divorce by Regulating the Property to Be Distributed and the Distribution Ratio," *The Korean Society Of Family Law* 36, no. 2 (2022): 51–84, https://doi.org/10.31998/KSFL.2022.36.2.51.

[10] Ketapang Religious Court. Putusan Nomor 149/Pdt.G/2025/PA.Ktp. (2025; Ketapang Religious Court. Putusan Nomor 299/Pdt.G/2025/PA.Ktp. (2025).

B. Research Method

This study employs a qualitative socio-legal case study approach to analyze two decisions by the Ketapang Religious Court (Nos. 299/Pdt.G/2025/PA.Ktp and 149/Pdt.G/2025/PA.Ktp). These cases were purposively selected to contrast distinct evidentiary configurations in marital-property disputes, specifically comparing reliance on documentary and witness evidence versus highly contested claims requiring on-site inspections. Primary data, including court judgments, Article 35 of Law No. 1 of 1974 on Marriage, and the Compilation of Islamic Law, were collected through systematic qualitative document analysis. Data validity was ensured through doctrinal triangulation, cross-examining primary legal findings against statutory frameworks and secondary academic literature. Finally, the data were analyzed using qualitative content analysis and comparative case synthesis. This analysis was structured around a proposed two-stage model that separates the judicial construction of the distributive pool—comprising identification, verification, and legal assessment—from the formal application of allocation rules.

C. Results and Discussion

The Construction of the Distributive Pool in Marital-Property Adjudication

The adjudication of marital-property disputes involves two interconnected questions: which assets qualify as joint property, and how the established joint property should be distributed. The first concerns the construction of the distributive pool, where the court identifies, verifies, and legally assesses disputed assets before determining their inclusion or exclusion from division. The second concerns the allocation of that pool according to applicable legal rules. Distinguishing these is crucial because distribution can only be assessed meaningfully after the objects are established; a dispute over the distribution ratio fundamentally differs from a dispute over the identity, ownership status, or legal classification of the assets themselves.[11]

In Indonesian marital-property law, this distinction operates under Article 35 of the 1974 Marriage Law and Articles 96–97 of the Compilation of Islamic Law, which provide the basis for distinguishing joint property and determining distribution consequences. Applying these rules requires courts to determine if claimed assets were acquired during the marriage. Dwisana and Resen emphasise the claimant's evidentiary burden in establishing joint property[12], while Hamdi's analysis illustrates the

[11] I. Made Arya Dwisana and Made Gde Subha Karma Resen, "Pembuktian Harta Bersama Dalam Perceraian Perkawinan Campuran Tanpa Perjanjian Kawin Di Indonesia," *Acta Comitas* 6, no. 03 (2021): 561, https://doi.org/10.24843/AC.2021.v06.i03.p8.

[12] I Made Arya Dwisana dan Made Gde Subha Karma Resen, "Pembuktian Harta Bersama dalam Perceraian Perkawinan Campuran tanpa Perjanjian Kawin di Indonesia," Acta Comitas: Jurnal Hukum Kenotariatan 6, no. 3 (2021): 561–77, https://doi.org/10.24843/AC.2021.v06.i03.p8.

importance of considering its legal and social context.[13] While administrative registration is relevant, a document in a third party's name does not independently resolve factual disputes. Courts must assess such documents alongside broader evidence of acquisition, possession, and use to evaluate their true evidentiary significance relative to the whole record.

Consequently, constructing the distributive pool involves four connected analytical operations; identification of claimed objects, verification of evidence, assessment of ownership or legal status, and final inclusion or exclusion. Rather than a strictly linear procedural sequence, these categories make visible how evidentiary reasoning informs the scope of distributable property. This framework also offers a precise basis for examining judicial activism, which cannot be inferred merely from routine evidence examination or on-site inspections. The relevant question is whether judicial evaluation consequentially determines the pool's composition amid disputes over asset characteristics. Supported by research on judicial fact-finding[14], this study distinguishes the intensity of fact-finding from its significance for legal classification, allowing closer examination of how fact construction affects the divided objects.

This distinction between construction and allocation is central to comparing the two Ketapang decisions. Decision No. 299/Pdt.G/2025/PA.Ktp illustrates a process relying on documentary evidence and witness testimony to assess assets with third-party administrative records. Conversely, Decision No. 149/Pdt.G/2025/PA.Ktp presents a more contested configuration where on-site inspections were crucial for clarifying the physical identity and characteristics of disputed property.[15] These differences provide a basis for comparing how evidentiary records shaped the construction of each distributive pool. Because both decisions ultimately applied Article 97 KHI for an equal division at the allocation stage, the comparison demonstrates how differences in pool construction can seamlessly coexist with a similar formal allocation rule.

Analytical stage	**Central question**	**Principal focus**	**Relevance to this study**
Stage 1: Construction of the distributive pool	Which assets qualify as joint property?	Identification of objects, verification of evidence,	Examines how the court establishes the

[13] Isnadul Hamdi, "Perluasan Makna Harta Bersama Perspektif Sosiologi Hukum Islam," *Juris: Jurnal Ilmiah Syariah* 17, no. 1 (2018): 63–83, https://doi.org/10.31958/juris.v17i1.1012.

[14] Nurnazli, "Transformasi Hukum Harta Bersama Di Indonesia Melalui Putusan Mahkamah Agung," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 11, no. 2 (2018): 184–98, https://doi.org/10.14421/ahwal.2018.11207.

[15] Jeshika Basaria Tambunan and Zakki Adlhiyati, "Pemeriksaan Setempat Dalam Sengketa Pembagian Harta Bersama: Studi Putusan Nomor 4757/Pdt.G/2022/PA.Tgrs," *Mandub : Jurnal Politik, Sosial, Hukum Dan Humaniora* 3, no. 1 (2025): 133–43, https://doi.org/10.59059/mandub.v3i1.2166.

		assessment of ownership or legal status, and inclusion or exclusion	property subject to division
Stage 2: Allocation of marital property	How should the established joint property be distributed?	Application of the relevant distribution rule, particularly Article 97 KHI	Examines how the court allocates the property after determining the distributive pool

Evidentiary Configuration in Decision No. 299/Pdt.G/2025/PA.Ktp

Decision No. 299/Pdt.G/2025/PA.Ktp, delivered by the Ketapang Religious Court on 9 July 2025, illustrates a mode of marital-property adjudication where the distributive pool's construction depended primarily on documentary evidence and witness testimony. Although the defendant ceased participating after the first hearing, the evidentiary process was largely shaped by the plaintiff's presentation. However, this procedural configuration did not automatically prove the plaintiff's claims; the court still rigorously assessed whether the evidence sufficiently established the identity, acquisition, and legal status of each claimed asset as marital property.

The plaintiff presented eight documentary exhibits (P.1–P.8) to support claims over four specific objects: land and a house on Jalan KH Wahid Hasyim, vacant land in Gang Jeruk II, vacant land on Jalan Cut Nyak Dien, and land and a house in Sungai Rengas. These objects presented a common evidentiary problem because their administrative records frequently identified third parties, such as Chairul Abuhasan, Efredi Chaniago, and Rulli Mokoginta, rather than either spouse. The evidentiary significance of these documents required deeper evaluation, as the names appearing on the certificates did not, by themselves, definitively resolve the assets' classification.

Witness testimony supplied a crucial additional evidentiary dimension to address these documentation gaps. The court evaluated the eligibility and relevance of four witnesses, ultimately relying on those who met formal requirements to connect the documentary records with the spouses' actual acquisition and factual possession. For example, Witness III, the previous owner of the Gang Jeruk II property, testified that the land was sold to the spouses in 2018 for Rp65 million, explaining why the certificate remained administratively associated with the previous owner's name.

This evidentiary configuration highlights that documentary evidence and witness testimony were evaluated collectively rather than as separate sources of proof, consistent with scholarship on marital-property disputes.[16] A witness's account of a sale did not render the administrative record irrelevant; rather, it provided the

[16] Ziadaturrahmah and Itsna Hapsari, "Peran Bukti Tertulis Dan Saksi Dalam Membuktikan Hak Atas Harta Bersama: Studi Kasus Putusan Pengadilan Agama Salatiga Nomor 70/Pdt.G/2024/PA.Sal," *Jurnal Hukum Respublica* 24, no. 1 (2024), https://doi.org/10.31849/respublica.v24i01.24235.

necessary factual context to explain the underlying transactions. Consequently, in its legal considerations (ratio decidendi), the court explicitly reasoned that formal registration under third-party names did not negate the assets' status as marital property.

Unlike Decision No. 149/Pdt.G/2025/PA.Ktp, the proceedings in Decision No. 299 did not involve an on-site inspection.[17] The court's construction of the distributive pool relied entirely on the available documentary and testimonial record. This distinction does not imply a less rigorous legal standard, but rather indicates that the court's evidentiary examination adapts to the specific configuration of each case, utilizing local inspection only when required by the nature of the contested claims.

The court ultimately determined that all four claimed objects formed part of the marital estate and applied Article 157 in conjunction with Article 97 of the Compilation of Islamic Law to allocate an equal one-half share to each former spouse.[18] Analytically, this corroborative mode of distributive-pool construction demonstrates that judicial evaluation is necessary to determine the scope of the property pool before applying formal allocation rules. This careful evidentiary assessment ensures the correct assets are divided, without constituting judicial activism.

On-Site Inspection and Fact Construction in Decision No. 149/Pdt.G/2025/PA.Ktp

Decision No. 149/Pdt.G/2025/PA.Ktp illustrates a highly verification-intensive mode of constructing the marital-property distributive pool compared to Decision No. 299. The proceedings involved a distinctly adversarial evidentiary configuration, characterized by the defendant's answer and counterclaim, extensive documentary evidence, witness testimony, and a crucial on-site inspection. These procedural features made the identification and legal assessment of the disputed assets particularly significant. Rather than merely accepting the plaintiff's initial inventory as the final set of assets to be divided, the court had to meticulously assess the claims in light of the available evidence and the physical and legal characteristics of the objects concerned.[19] The plaintiff initially claimed several property categories, assigning a combined value of Rp890 million. This initial valuation represented the plaintiff's unverified claim rather than an independently established fact. The court's eventual partial granting of this claim clearly indicates that the distributive pool was not treated as identical to the original asset list.

[17] The rule applies specifically to marital disputes settled within the religious courts (Supreme Court of the Republic of Indonesia, 2018, Religious Chamber Legal Formulation, III.A.6).

[18] Compilation of Islamic Law, Article 157 and Article 97.

[19] Robiatul Adawiyah and Indra Waskita, "Judicial Legal Reasoning In Resolving Islamic Inheritance Disputes: From The Legal Standing Of Heirs To Substantive Justice," *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)* 8, no. 2 (2026), https://doi.org/10.20885/mawarid.vol8.iss2.46382.

The on-site inspection played a distinct and indispensable role in this assessment by enabling the court to examine the disputed properties directly. Documentary evidence and party submissions may identify a property through certificates, written statements, location descriptions, or claimed dimensions. However, those materials do not always correspond precisely with the actual object encountered on the ground. A physical inspection can help the court compare the description in the pleadings with the tangible physical object, verifying its location, dimensions, boundaries, present condition, and other identifying characteristics. In Decision No. 149, this verification process was particularly relevant where the dimensions or descriptions presented in the plaintiff's claim differed from what was ultimately observed during the physical inspection. The analytical importance of the inspection thus lies in its crucial contribution to accurate object identification and factual verification.

The vital distinction between identifying a physical object and determining its legal status is absolutely essential in marital-property adjudication. A specific property may be physically identifiable without necessarily being legally available for division as marital property between former spouses. Conversely, differences between the property dimensions stated in a formal claim and those observed on-site do not, by themselves, establish that the claimed property possesses a different legal identity. The presiding court must carefully consider the results of the on-site inspection alongside the submitted documentary record, the respective parties' legal positions, and all other admissible evidence. In this respect, the specific reference in the judgment to Supreme Court Circular Letter No. 3 of 2018 situates the physical inspection within a broader jurisprudential concern, narrowly supporting the critical relevance of object identification.

The specific evidentiary configuration in this case also distinctly demonstrates why the court's rigorous assessment cannot be reduced simply to the name appearing on an administrative document. A prime example concerns the disputed Daihatsu minibus, bearing the registration number KB 1622 GE. The vehicle's official registration document (BPKB) was registered strictly in the name of Sunarjo, rather than either of the disputing spouses. The admissible evidence discussed during the proceedings included explicit testimony from Sunarjo, who operated a local workshop, concerning the vehicle's actual relationship to the spouses. The vehicle was reportedly located at this workshop, documented as damaged, rusty, entirely non-operational, and in desperate need of extensive repair. The probative significance of this testimony must nevertheless be systematically assessed together with the documentary evidence.

The court's careful treatment of witness testimony further illustrates the fundamental need to distinguish the mere existence of submitted evidence from its

actual legal and probative sufficiency. The judgment's comprehensive evidentiary assessment did not automatically accept every testimonial account merely because it had been formally presented during the court proceedings. Notably, any testimony legally regarded as *testimonium de auditu*[20] was firmly rejected by the presiding judge. This strict evidentiary treatment matters significantly to the construction of the distributive pool because a party's core assertion that an asset genuinely belongs to the marital estate must be properly supported by verifiable evidence. The on-site inspection helped clarify tangible characteristics, while the combined documentary and testimonial evidence rigorously addressed the factual and legal relationship securely linking the assets to the spouses.

The legal-status dimension of marital-property adjudication becomes particularly clear in the court's critical consideration of land identified during the ongoing proceedings as state land, rather than privately transferable property. The detailed case materials indicate that one of the disputed land objects was definitively found, through the local on-site inspection and corroborating information obtained directly from the head of the relevant hamlet, to be state land. This critical finding raised a fundamental legal issue entirely different from a mere discrepancy in physical dimensions or a third-party name listed on an administrative certificate. A definitive finding that the property is state land concerns whether the claimed object possesses the strict legal status necessary to be treated as an asset available for division between spouses.

The decision's partial granting of the plaintiff's claim is consequently highly significant for understanding the vital first stage of judicial reasoning. In its explicit legal considerations *(ratio decidendi)*, the court carefully justified excluding specific claimed assets based strictly on their verified legal status, rather than merely their physical existence on the ground. For instance, the presiding judge explicitly excluded the identified state land from the marital property pool, correctly reasoning that state-owned land is simply not a privately transferable asset and legally cannot be subjected to marital division. Furthermore, the court decisively dismissed certain contentious claims based on *testimonium de auditu*, strongly emphasizing that such hearsay lacks the essential probative value required to legally establish property acquisition.

The direct comparison with Decision No. 299/Pdt.G/2025/PA.Ktp greatly clarifies the theoretical contribution of this specific case. In Decision No. 299, the court constructed the distributive pool primarily through the straightforward corroboration of documentary evidence and witness testimony, entirely without an on-site inspection. In Decision No. 149, however, the intensely contested proceedings and the strategic use

[20] M. Yahya Harahap, *Hukum Acara Perdata tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2005), 664–65.

of local inspection enabled a much more direct examination of the disputed objects' physical characteristics. These notable differences show that the intensity of verification naturally varies with the specific uncertainties raised by the parties' claims. Despite this significantly more intensive legal construction of the distributive pool, the subsequent allocation stage remained formally anchored in Article 97 of the Compilation of Islamic Law, effectively revealing an analytical distinction between judicial discretion and formal rules.

From Construction to Allocation: Article 97 KHI and Equal Distribution

The comparison between Decisions No. 299/Pdt.G/2025/PA.Ktp and No. 149/Pdt.G/2025/PA.Ktp reveals a fundamental distinction between determining the composition of the marital estate and allocating the resulting estate between former spouses. Although both decisions ultimately applied the principle of equal division under Article 97 of the Compilation of Islamic Law, they reached the allocation stage through significantly different evidentiary processes to first identify and legally assess which claimed assets could be recognized as harta bersama. This distinction is central to the two-stage model developed in this article: the first stage actively constructs the distributive pool, while the second determines the respective shares within that pool. The relationship between these stages becomes clear when comparing their evidentiary configurations: Decision No. 299 relied principally on documentary evidence assessed alongside witness testimony to address assets with third-party administrative records, whereas Decision No. 149 involved a highly contested process requiring an on-site inspection. Ultimately, these methodological differences strictly concern how the court established the distributive pool, rather than the final allocation ratio applied.

Dimension	**Decision No. 299/Pdt.G/2025/PA.Ktp**	**Decision No. 149/Pdt.G/2025/PA.Ktp**
Evidentiary configuration	Documentary evidence and witness testimony	Documentary evidence, testimony from the parties' witnesses, and on-site inspection
Principal construction issue	Assessing the relationship between the claimed assets and the marriage where administrative records involved third parties	Verifying the identity, physical characteristics, evidentiary basis, and legal status of disputed assets
Verification process	Corroborative assessment of documents and testimony, without an on-site inspection	Assessment of documentary and testimonial evidence alongside direct examination of the physical objects

Result at the construction stage	The court recognised the four claimed objects as marital property	The claim was partially granted; the judicially recognised distributive pool did not simply reproduce the plaintiff's initial inventory
Allocation rule	Article 157 in conjunction with Article 97 KHI	Article 97 KHI
Allocation outcome	Equal division, one-half for each former spouse	Equal division, one-half for each former spouse
Comparative significance	Evidence-based construction of the distributive pool without local inspection	More intensive verification of physical identity and legal status before determining the distributive pool

The comparison demonstrates that the distributive pool is not merely a list of assets appearing in the plaintiff's claim, but the outcome of a rigorous judicial assessment of evidence and legal frameworks. In Decision No. 299/Pdt.G/2025/PA.Ktp, the court recognized four claimed objects as marital property even though certain administrative records involved third parties. The court assessed the documentary evidence as a whole alongside testimony concerning the acquisition and ownership history, rather than treating a document's name as conclusive. Decision No. 149/Pdt.G/2025/PA.Ktp illustrates this same distinction under highly contested conditions, where the plaintiff initially claimed assets valued at Rp890 million. The court's task required more than deciding if listed assets physically existed; it had to assess their connection to the marriage, establish their physical identity, and verify their legal status through on-site inspections.[21]

The specific dispute concerning the Daihatsu minibus, bearing registration number KB 1622 GE, perfectly illustrates why administrative documentation must be thoroughly evaluated within the broader evidentiary record. The vehicle's official registration document was legally in a third party's name (Sunarjo), rather than that of either spouse. However, testimony from Sunarjo and others addressed the vehicle's acquisition, its use during the marriage, and its damaged, non-operational condition. These factual matters were highly relevant to the court's assessment. The vehicle's third-party registration should not be directly conflated with the separate legal question of whether the presented evidence established its ultimate status as marital

[21] Marselinus Ambarita, "Kekuatan Pembuktian Pemeriksaan Setempat (Gerechtelijke Plaatsopneming) Dalam Pemeriksaan Sengketa Perdata," *Jurnal Legislasi Indonesia* 18, no. 3 (2021): 385–93, https://doi.org/10.54629/jli.v18i3.744; Febrian Dirgantara et al., "Akibat Hukum Tidak Dilakukannya Pemeriksaan Setempat Dalam Gugatan Dengan Objek Sengketa Tanah: Apakah Ada?," *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 3 (2020): 600–617, https://doi.org/10.29303/ius.v8i3.780.

property.[22] Constructing the distributive pool requires a carefully reasoned assessment of the evidentiary relationship between an asset and the marriage, rather than relying on an automatic inference from a single administrative record.

The land disputes further demonstrate the fundamental need to distinguish physical identification from legal entitlement in property adjudication. Differences between the dimensions stated in a formal claim and those observed during an on-site inspection do not necessarily establish that the object is unidentifiable. Conversely, successfully identifying a parcel's location and physical boundaries does not automatically establish that it is privately owned or legally transferable. For example, the treatment of an object explicitly identified as state land in Decision No. 149 illustrates why the court must rigorously consider legal status before including a claimed asset.[23] Physical existence, identifiable boundaries, concrete evidence of ownership, and legal availability for division are related but distinctly different legal questions. Therefore, the crucial construction stage requires a highly differentiated assessment of each object rather than the mechanical acceptance of an initial inventory.

These adjudicative findings clearly clarify the essential relationship between the two distinct stages of judicial reasoning in marital-property disputes. During the initial construction stage, the court firmly determines the precise composition of the marital estate by carefully assessing the submitted evidence and verifying the legal status of the claimed assets.[24] Subsequently, at the allocation stage, the court logically determines the parties' respective shares within the officially recognized estate. The first stage is inherently constitutive of the second because it defines the exact property to which the allocation rule applies. The economic consequences of adjudication may change drastically when an asset is included, excluded, or found not to be legally available for division, even if the final allocation ratio remains unchanged. Consequently, the fact that both decisions applied equal division does not imply that the preceding construction was identical or inconsequential.

At the formal allocation stage, both decisions consistently applied the equal-division principle enshrined in Article 97 of the Compilation of Islamic Law.[25] In Decision No. 299, the court additionally addressed the practical implementation of this

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[22] Ziadaturrahmah and Itsna Hapsari, "Peran Bukti Tertulis Dan Saksi Dalam Membuktikan Hak Atas Harta Bersama: Studi Kasus Putusan Pengadilan Agama Salatiga Nomor 70/Pdt.G/2024/PA.Sal," *Jurnal Hukum Respublica* 24, no. 1 (2024), https://doi.org/10.31849/respublica.v24i01.24235.

[23] Bani Rahmaliya et al., "Pertimbangan Hakim Dalam Menetapkan Putusan Perkara No.70 Pdt.G.2024/ PA Sal Di PA Salatiga Mengenai Harta Bersama," *Lex Mercatoria* 2, no. 2 (2025): 101–10, https://doi.org/10.31851/lexmercatoria.v2i2.17633.

[24] Adris Rafi Adji and Daly Erni, "Pengaturan Hukum Harta Bersama Dalam Putusan Perceraian," *Kertha Semaya: Journal Ilmu Hukum* 2, no. 1 (2025), https://doi.org/10.24843/KS.2021.v09.i12.p04.

[25] Mesraini, "Konsep Harta Bersama dan Implementasinya di Pengadilan Agama", *AHKAM: Jurnal Ilmu Syariah*, 12.1 (2012), https://doi.org/10.15408/ajis.v12i1.980.

division by explicitly providing for a public sale through the State Property and Auction Service if division in kind proved entirely impracticable, ensuring the resulting proceeds would be divided equally.[26] This conceptual distinction between legal allocation and practical implementation remains highly important. The allocation rule strictly establishes the legal proportion to which each party is entitled, whereas implementation concerns how that specific proportion is actually realized. The inherent practical difficulty of physically dividing a house or land does not itself determine the fundamental composition of the distributive pool, nor does it alter the formal equal-share principle applied by the court.

These equal outcomes should not be interpreted as definitive proof that equal division necessarily produces substantively equal benefits[27], Nor do these decisions establish that the allocation ratio should automatically vary according to the parties' respective contributions.[28] nor do they establish that the allocation ratio must automatically vary according to spousal contributions.[29] Instead, the comparison demonstrates that constructing the distributive pool is an independent and highly consequential dimension of adjudication, as formally equal allocation operates solely on the assets legally recognized at the preceding stage

Judicial Activism, Formal Equality, and the Two-Stage Model

The findings from Decisions No. 299/Pdt.G/2025/PA.Ktp and No. 149/Pdt.G/2025/PA.Ktp demonstrate that fact-sensitive adjudication and formal legal allocation are not mutually exclusive, as both courts constructed the marital estate through distinct evidentiary routes—documentary and testimonial evidence in Decision No. 299 versus contested on-site inspections in Decision No. 149—before applying the equal-division principle under Article 97 KHI. While judicial activism provides a useful analytical lens for examining this construction stage[30], recent scholarship requires distinguishing standard judicial duty—routine ex officio

[26] Mesraini Mesraini, "Konsep Harta Bersama Dan Implementasinya Di Pengadilan Agama," *AHKAM : Jurnal Ilmu Syariah* 12, no. 1 (2014), https://doi.org/10.15408/ajis.v12i1.980.

[27] Ketapang Religious Court. Putusan Nomor 149/Pdt.G/2025/PA.Ktp. (2025) and Ketapang Religious Court. Putusan Nomor 299/Pdt.G/2025/PA.Ktp. (2025) see also Isnadul Hamdi, 'Perluasan Makna Harta Bersama Perspektif Sosiologi Hukum Islam', JURIS (Jurnal Ilmiah Syariah), 17.1 (2018), 63, https://doi.org/10.31958/juris.v17i1.1012.

[28] Muhamad Beni Kurniawan, "Pembagian Harta Bersama Ditinjau Dari Besaran Kontribusi Suami Istri Dalam Perkawinan," *Jurnal Yudisial* 11, no. 1 (2018): 41, https://doi.org/10.29123/jy.v11i1.224.

[29] I. Made Arya Dwisana and Made Gde Subha Karma Resen, "Pembuktian Harta Bersama Dalam Perceraian Perkawinan Campuran Tanpa Perjanjian Kawin di Indonesia," *Acta Comitas* 6, no. 03 (2021): 561, https://doi.org/10.24843/AC.2021.v06.i03.p8.

[30] Yulia Leskova, "On Tendencies of Development of Modern Legislative and Judicial Approaches to Marital Property: New Realities and New Problems," *Juridical World*, May 22, 2025, 38–41, https://doi.org/10.18572/1811-1475-2025-5-38-41.

evidentiary tasks like conducting local inspections—from true fact-constructive activism.[31] The Ketapang decisions illustrate this limited form of activism not as a *contra legem* departure from the statutory 50:50 allocation rule, but as judicial creativity in Stage 1 fact construction that actively pierces rigid administrative formalities—such as legally recognizing assets registered under third-party names—to discover the material truth of ownership and acquisition.[32]

A more defensible approach, therefore, is to view this fact-constructive activism not as a violation of the law, but as a critical exercise of judicial discretion that materially shapes the distributive pool.[33] Decision No. 299/Pdt.G/2025/PA.Ktp illustrates this activism when the court evaluated documents alongside testimony to overcome third-party administrative records. Decision No. 149/Pdt.G/2025/PA.Ktp illustrates a more verification-intensive process in which standard duties *(like on-site inspection)* provided the foundation for the judge to actively filter out ineligible assets based on material legal status. In both cases, the analytical significance lies in understanding that judicial intervention at the fact-finding stage (Stage 1) is a necessary prerequisite to achieving substantive justice, completely separate from an assumption that the court necessarily departed from the formal allocation law (Stage 2).

The first stage of the proposed model therefore identifies a dimension of judicial reasoning that may be obscured when marital-property adjudication is examined only through its final allocation ratio. A judgment awarding each former spouse one-half of the recognised estate does not, by itself, reveal how the court determined which assets entered that estate. The distributive pool must be constructed through the assessment of claims, documents, witness testimony, and, where undertaken, the physical circumstances of disputed objects. This process is particularly consequential when the evidence raises questions about third-party names in administrative records, discrepancies in property descriptions, or the legal status of land. Such circumstances require the court to distinguish between the existence of an object, the evidence connecting it to the marriage, and its legal availability for distribution. These are related questions, but they are not interchangeable.

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[31] Sapovadia, Vrajlal. Cultivating the Living Law: Teaching Fact-Sensitive, Creative and Constitutionally Disciplined Legal Interpretation. (2026). https://doi.org/10.13140/RG.2.2.21288.12804; lihat juga Kmiec, Keenan D. "The Origin and Current Meanings of 'Judicial Activism'." *California Law Review* 92, no. 5 (2004): 1441–1477.

[32] M. Yahya Harahap. *Hukum Acara Perdata tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*. Jakarta: Sinar Grafika, 2005, hlm. 498-505, 661-665.

[33] Hariyadi, Luqman, and Syamsul Wathoni. "Realisasi Keadilan dalam Hukum Keluarga Islam: Studi Sosio-Legal atas Diskresi Hakim dalam Pembagian Harta Bersama yang Tidak Seimbang." *Al-Mikraj: Jurnal Studi Islam dan Humaniora* 6, no. 1 (2025): 3053–78. https://doi.org/10.37680/almikraj.v6i1.10070.

The second stage, by contrast, concerns the allocation of the estate once its composition has been determined. In both decisions, Article 97 KHI supplied the basis for equal division between the former spouses.[34] The resulting formal equality is significant because it demonstrates continuity in the allocation rule despite differences in the evidentiary processes used to construct the distributive pool. The model does not suggest that the courts necessarily applied different legal standards to the parties, nor does it establish that a different allocation ratio would have been more just. Rather, it shows that a consistent allocation rule can operate on distributive pools established through different factual and evidentiary configurations. Formal equality at the allocation stage thus coexists with variation in the reasoning required at the construction stage.

This distinction also clarifies the relationship between formal equality and substantive justice. Equal division establishes an equal proportion of the estate recognised by the court; it does not independently determine whether every disputed asset has been correctly included or excluded. The practical consequences of an equal-share rule depend, in part, on the composition of the distributive pool to which it applies. If the court recognises an asset as marital property, that determination affects the property subject to division. If an asserted asset cannot be established as marital property or is legally unavailable for division, the resulting pool may differ from the inventory initially claimed. The equal ratio can therefore remain unchanged while the economic consequences of the judgment vary according to the court's findings at the construction stage. This is an analytical distinction, not proof that either judgment produced an unjust outcome.

The two-stage model consequently refines the way judicial reasoning in marital-property disputes can be evaluated. An assessment confined to the final division may overlook the preceding decisions that define the estate itself. Conversely, an analysis focused exclusively on evidentiary activity may overlook the continuing authority of the legal rule governing allocation. By distinguishing construction from allocation, the model makes both dimensions visible and allows their relationship to be examined without assuming that factual flexibility necessarily entails doctrinal departure. The model is analytical rather than procedural, it does not claim that Indonesian Religious Courts formally recognise two separate stages under this terminology. Instead, it provides a framework for interpreting the relationship between evidentiary reasoning and allocation in the two cases examined.

The model also has implications for the evaluation of judicial reasoning. At the construction stage, the central concern is whether the court adequately explains the

[34] Compilation of Islamic Law, Presidential Instruction No. 1 of 1991, Article 97.

relationship between the evidence, the claimed assets, and the legal basis for recognising or excluding each object from the distributive pool. At the allocation stage, the relevant question is whether the court identifies and applies the governing rule consistently with the established legal circumstances, including any legally relevant agreement between the spouses. Keeping these inquiries distinct helps prevent two analytical errors: treating a third-party name in an administrative document as automatically conclusive of the property's status, and treating a fact-sensitive assessment as sufficient proof of judicial activism. The model instead directs attention to the reasoning connecting the evidence to the determination and the determination to the allocation.

The two decisions nevertheless provide a limited empirical basis for the proposed model. They concern a single Religious Court and two judgments from 2025; they cannot establish that the same pattern characterises marital-property adjudication throughout Indonesia. Nor does the comparison establish that the differing evidentiary approaches caused particular distributive outcomes or that the decisions achieved substantive justice in every respect. The model should therefore be understood as a conceptual contribution developed from a bounded comparative case study, with its broader applicability requiring examination through additional judgments and contexts. These limitations do not diminish the analytical value of the comparison; they define the extent of the conclusions that can responsibly be drawn from it.

In conclusion, the Ketapang decisions demonstrate the analytical importance of distinguishing how a marital estate is constructed from how that estate is divided. The first stage involves a fact-sensitive assessment of the assets claimed and their evidentiary and legal status; the second applies the governing allocation rule to the estate recognised by the court. The coexistence of these processes does not, by itself, prove judicial activism or a conflict between substantive justice and legal formalism. Rather, it reveals that formal equality in the final allocation depends on a prior judicial determination of the property to which that equality applies. The article's principal theoretical contribution is therefore the two-stage model, which brings the construction of the distributive pool into the analysis of marital-property adjudication and provides a more precise basis for examining the relationship between evidentiary reasoning, judicial discretion, and formal legal allocation.

D. Conclusion

This study concludes that the adjudication of joint property at the Ketapang Religious Court operates through a two-stage, interrelated model of legal reasoning: first, the construction of the property to be divided—which relies heavily on facts through the evaluation of evidence, verification, and on-site inspections; and second,

the formal allocation of the property thus determined in accordance with Article 97 of the Compilation of Islamic Law (KHI). A comparative analysis shows that although the evidentiary approach varies depending on the nature of the dispute—ranging from the use of documents and witness testimony in Decision No. 299/Pdt.G/2025/PA. Ktp to physical verification and in-depth legal analysis in Decision No. 149/Pdt.G/2025/PA.Ktp, both decisions ultimately resulted in an equal division (50:50). Theoretically, these findings suggest that a judge's efforts to extensively investigate the facts in order to determine joint property are not necessarily considered a form of judicial activism that deviates from formal legal rules; rather, this reflects a careful judicial evaluation in determining which assets will subsequently be subject to the principle of formal legal equality.

Based on these findings, future research is recommended to expand this analytical model by conducting empirical studies at various Religious Courts in Indonesia to test the application of this two-stage framework on a broader scale and to examine any regional variations that may exist. Future research could also examine cases in which judges explicitly deviate from the 50:50 division rule *(contra legem)* to analyze how the asset inventory process in the first stage interacts with unequal division in the second stage.

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