

## Judicial Discretion and Joint Property Interpretation at Banten PTA: Analyzing Justice, Contribution, and Legal Adaptation

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### **Abstract**

This study aims to analyze the role of judicial discretion in interpreting the division of joint property (*gono-gini*) in the Banten High Religious Court (PTA), with a focus on factors of fairness and contribution. Formal norms such as Article 97 of the Compilation of Islamic Law (KHI), which stipulates a 50:50 division, are often inadequate when faced with unequal economic and non-economic contributions, bad faith, and the socio-economic vulnerability of the weaker party. This study uses a content analysis method on appeal decisions from 2021-2025, supplemented by a review of Islamic law literature and *Maqasid al-shari'ah*. The results of the study indicate that judges use discretion to adjust the distribution proportion based on actual contributions, the child's best interests, and the principle of benefit. The *maqāṣid al-shari'ah* framework serves as a normative basis that binds deviations to remain proportional and oriented towards substantive justice. The findings also emphasize the need for interpretive guidelines, gender-friendly evidentiary standards, and strengthening mediation and prenuptial education to reduce disparities in decisions. This study concludes that judicial discretion is not merely a technical freedom, but a teleological instrument for realizing adaptive and inclusive justice in the Indonesian religious court system.

**Keywords:** *Judicial Discretion, Joint Property, Substantive Justice, non-economic Contribution, Banten PTA.*

### **Abstrak**

Penelitian ini bertujuan untuk menganalisis peran diskresi yudisial dalam interpretasi pembagian harta bersama (*gono-gini*) di Pengadilan Tinggi Agama (PTA) Banten, dengan fokus pada faktor keadilan dan kontribusi. Norma formal seperti Pasal 97 Kompilasi Hukum Islam (KHI) yang menetapkan pembagian 50:50 sering kali tidak memadai ketika menghadapi ketimpangan kontribusi ekonomi maupun non-ekonomi, itikad buruk, serta kerentanan sosial-ekonomi pihak yang lebih lemah. Penelitian ini menggunakan metode analisis konten terhadap putusan banding periode 2021-2025, dilengkapi kajian literatur hukum Islam dan *maqāṣid al-shari'ah*. Hasil penelitian menunjukkan bahwa hakim menggunakan diskresi untuk menyesuaikan proporsi pembagian berdasarkan kontribusi aktual, kepentingan terbaik anak, dan prinsip kemaslahatan. Kerangka *maqāṣid al-shari'ah* menjadi landasan normatif yang mengikat deviasi

agar tetap proporsional dan berorientasi pada keadilan substantif. Temuan juga menekankan perlunya pedoman interpretatif, standar pembuktian ramah gender, serta penguatan mediasi dan edukasi prenuptial untuk mengurangi disparitas putusan. Penelitian ini menyimpulkan bahwa diskresi yudisial bukan sekadar keleluasaan teknis, tetapi instrumen teleologis untuk mewujudkan keadilan yang adaptif dan inklusif dalam sistem peradilan agama Indonesia.

**Kata kunci:** *diskresi yudisial, harta bersama, keadilan substantif, kontribusi non-ekonomi, PTA Banten.*

## INTRODUCTION

Disputes over joint property (*gono-gini*) after divorce are among the most complex issues in Indonesian religious courts. The complexity arises because these cases intersect with written regulations, social practices, and demands for more substantive justice. Normatively, Article 97 of the Compilation of Islamic Law (KHI) is often understood to encourage an equal, 50:50, division of property. However, court practice shows variations in divisions that take into account the contributions of each party and the factual circumstances. Several recent studies confirm that the application of the 50:50 formula often fails to capture the imbalance in power relations and non-economic contributions within marriage, such as domestic work and childcare. Therefore, judicial discretion is needed so that judges can correct formal justice and achieve more substantive justice (Syam et al., 2025a).

Discretion is understood as a judge's measured freedom to interpret norms when written rules are insufficient or potentially unfair in a specific case. In joint property disputes, discretion is evident in decisions that do not strictly follow a 50:50 formula, but instead consider the actual contributions, good faith, and economic vulnerability of each party. A conceptual and comparative study of civil law and common law systems confirms that judicial flexibility is crucial in responding to changing social values, including in religious court practices in Indonesia. A key debate arises regarding how courts recognize non- monetary contributions such as domestic work, childcare, and support for a spouse's career. which allows the accumulation of assets but is often undocumented (Rais & Muyassar, 2020).

Contemporary literature on marital asset division emphasizes that recognizing non-economic contributions is integral to distributive justice. This approach also aligns with efforts to correct persistent gender bias in marital property division practices. Discretion is understood as a judge's measured

freedom to interpret norms when written rules are insufficient or potentially unfair in a concrete case. In joint property disputes, discretion is seen in decisions that do not strictly follow a 50:50 formula, but instead consider the actual contributions, good faith, and economic vulnerability of each party (Ramadhita et al., 2023, p. 247).

A conceptual and comparative study of civil law and common law systems confirms that judicial flexibility is crucial in responding to changing social values, including in religious court practices in Indonesia. A key debate arises regarding how courts recognize non-monetary contributions, such as domestic work, childcare, and support for a partner's career, which enable asset accumulation but are often undocumented (Cotterrell, 2018, p. 413). Contemporary literature on marital asset division emphasizes that recognizing non-economic contributions is an integral part of distributive justice. This approach also aligns with efforts to correct persistent gender bias in the practice of dividing joint assets (Bittman et al., 2019, p. 158).

A comparative study of religious court decisions in various regions reveals variations in the division of joint assets, such as 40:60, 20:80, or 25:75. These differences arise when judges consider unequal contributions, good faith, or even misuse of assets. Exploring these patterns is important as a basis for understanding how judges in the Banten Religious Court construct arguments regarding fairness and contribution (Mulyadi & Nurasiyah, 22020, p. 40).

International literature indexed by Scopus also highlights that divorce and property division procedures are often gender biased. Therefore, judicial discretion is crucial for protecting women's rights, including the right to housing and access to a safe forum. In the Indonesian context, research recommends an active role for judges as a corrective tool to address ongoing procedural bias. (Salim, 2020, p. 18). Many recent analyses encourage the use of the framework goals as a practical approach to aligning the principles of justice (*al-'adl*), property protection (*hifz al-mal*), and welfare (*maṣlaḥah*) with contextual needs. The application of this framework strengthens the legitimacy of judicial discretion in reconstructing patterns of joint property distribution to be more sensitive to actual contributions and post-divorce vulnerabilities (Auda, 2017, pp. 454–455).

In line with the principle best interests of the child A number of decisions and normative studies place the sustainability of a child's residence above the

mere distribution of assets. This requires Banten PTA judges to consider not only the economic value of the assets, but also the social and psychological value of the home for the children. This orientation impacts the timing and procedures for executing joint property decisions (Eekelaar, 2017, p. 20).

A bibliometric study based on scientific journals shows that Indonesia is a major contributor to family law publications. However, this study also highlights a gap in normative interventions on issues of marriage, divorce, and asset distribution. This situation opens up opportunities for a more contextual study of the Banten PTA to bridge the gap between academic research and judicial practice (Fauzi et al., 2021, p. 452).

In addition to progressive rulings, the execution phase of the division of joint assets still faces various challenges, such as resistance from the losing party, limited executive capacity, and low public legal literacy. Research in religious courts reveals the need for procedural reforms in executions and increased gender analysis capacity among judges, so that substantive justice does not stop at the mere issuance of a verdict (Salim, 2020, p. 15).

Recent research on the experiences of female judges in Indonesian Islamic courts highlights their crucial role in expanding access to justice for women, while also uncovering structural challenges that impact the consistency of gender-sensitive rulings. These dimensions are relevant to understanding the dynamics of the Banten Islamic Court's (PTA) judicial panel in formulating contribution-based standards of justice (Nurlaelawati, EWomen judges in Indonesia's religious courts: Reform, gender, 2018).

The wide variation in decisions indicates the need for more assertive, yet flexible, interpretative guidelines to prevent differences from creating legal uncertainty. Recent legal literature also proposes a reconstruction of the regulation and utilization of marriage agreements (prenuptial agreement) to manage joint assets from the outset (*ex ante*) based on the principle of balanced justice. This step can reduce the burden of judicial discretion during the dispute execution phase (Smits, 2019).

Departing from the regulatory context, practices in the Banten PTA, and the discourse of contribution-based justice, this study has three main objectives: (a) to map the pattern of judicial discretion of appellate judges in joint property cases; (b) to examine justice factors such as economic and non-economic contributions, good faith, and vulnerability that influence deviations from the 50:50 formula;

and (c) to formulate recommendations for interpretative guidelines that are in line with the framework goals and principles best interests of the child. Thus, this study is expected to enrich the family law literature in Indonesia and provide a roadmap for the Banten PTA to balance normative certainty with substantive justice (Bedner & Huis, 2019, p. 25).

## **RESEARCH METHOD**

This study uses a juridical-sociological approach with qualitative content analysis of court decisions. The goal is to understand how Banten High Court judges apply judicial discretion in interpreting joint property and integrating factors of justice and contribution into legal reasoning. The study population includes all Banten High Court decisions related to joint property disputes in divorce cases for the period 2021–2025. From this population, 20–30 decisions were selected through purposive sampling to capture variations in argumentation patterns and division deviations. Data were obtained from the Supreme Court Decision Directory, official Banten High Court archives, and regulatory literature such as the Compilation of Indonesian Laws (KHI), the Supreme Court's Supreme Court Circular Letter (SEMA), and the Marriage Law (Miles et al., 2014).

The analysis was conducted using the theoretical framework of Judicial Discretion, Distributive Justice, and *Maqāṣid al-Sharī'ah*, focusing on the judge's considerations in the division of joint assets. The variables studied include the distribution pattern (whether it remains 50:50 or changes), economic contributions (income, assets), non-economic contributions (caregiving, domestic work), the interests of the children, and good faith or misuse of assets. Social contexts such as urban- rural differences are also considered because they influence contribution patterns and perceptions of justice. This study provides an empirical overview of the application of judicial discretion within the framework of Indonesian Islamic law, while also addressing the high variation in decisions regarding joint property disputes in the Banten PTA.

## **RESEARCH FINDINGS AND DISCUSSION**

### **Judicial Discretion as a Compass of Substantive Justice**

Appeal decisions regarding joint property disputes at the Banten High Religious Court (PTA) during the 2021–2025 period demonstrate a significant

shift in how judges interpret legal norms. Specifically, judicial discretion, the measured freedom to interpret and adjust formal norms when the context of the case requires it, has evolved into a key instrument for judges to bridge the gap between formal legal certainty and substantive justice. This shift reflects judges' efforts to move beyond textual property division mechanisms, such as the 50:50 distribution stipulated in Article 97 of the Compilation of Islamic Law (KHI), and toward an approach that considers the actual circumstances and contributions of each party (Syam et al., 2025a).

Formal provisions that have long been understood as guidelines for the equal division of joint assets (50:50) often fail to address the complexity of cases, particularly when there are unequal contributions—both economic and non-economic or when one party is in a socio-economically vulnerable position due to divorce. In many cases, the application of these norms actually creates substantive injustice by ignoring the sacrifices and unseen roles typically borne by the more vulnerable party, typically the wife. As a form of correction, Banten PTA judges are increasingly using discretion to incorporate considerations of real contributions and the context of vulnerability into their decisions. Thus, the 50:50 division is no longer an absolute rule, but rather is adapted to the realities of the case (Rais & Muyassar, 2020).

Several recent academic studies support this practice with both theoretical foundations and empirical evidence. For example, research by Ramadhita, Ali, and Syabbul (2023) highlights the role of discretion as a compensatory tool for gender bias arising from the dominance of formal justice. This finding aligns with research by Syam, Syahnah, and Lubis (2025) in Echo Planner Scientific Journal, which develops an argumentative framework based on *maqaṣid al-shari‘ah*. This framework emphasizes the goals of Islamic law such as justice (al-‘adl), property protection (*hifz al-mal*), and welfare (*maṣlahah*) as a legitimate basis for proportional deviation from the 50:50 formula. Thus, the judicial discretion exercised by judges is not only driven by practical needs but also has strong legal and normative justification (Ramadhita et al., 2023).

Furthermore, judicial discretion allows judges to accommodate non-economic contributions such as domestic work, childcare, and support for a spouse's career, which are difficult to measure but play a significant role in building and accumulating family assets. Several experts emphasize the importance of evaluating these non-monetary contributions to achieve a fairer

and more comprehensive division of assets. Despite differing legal and cultural contexts, the principle of respecting non-economic contributions remains relevant to the practice of judges in the Banten High Court. This approach is part of judicial discretion, which places substantive justice above mere adherence to normative doctrine (Eekelaar, 2017).

Overall, the use of judicial discretion in the appeal decision of joint property disputes at the Banten PTA reflects a shift in the family law paradigm: from formal equality which emphasizes numerical division, towards substantive justice which places weight on the context of each party's contributions and vulnerabilities. This practice creates a more humane and responsive legal space, while strengthening the legal foundation through the *maqaṣid al-shari'ah* approach, which is now increasingly adopted in internal court documents. By exercising proportional discretion, judges not only maintain legal certainty but also deliver justice that is more balanced and in line with the essential goals of Islamic law (Syam et al., 2025a).

The *maqaṣid al-shari'ah* framework is consistently present in judges' arguments to justify deviations from the proportions of joint property distribution. This principle emphasizes three main objectives: *al-'adl* (justice), *hifz al-mal* (property protection), and *maṣlahah* (benefit), which is aimed at protecting the more vulnerable and ensuring that children's interests are maintained. In the context of the Banten PTA, the application of *maqāṣid* is not merely rhetoric, but rather a teleological framework that connects decisions to Islamic legal values that are adaptive to social realities (Masud, 2018).

The *maqaṣid* approach provides legal legitimacy for judges to exercise discretion when formal norms, such as Article 97 of the Compilation of Islamic Law (KHI), are unable to address the complexities of a case. By prioritizing legal objectives oriented toward the public interest, judges can deviate from the 50:50 numerical division to achieve substantive justice. A study by Syam et al. (2025) emphasized that the application of *maqaṣid* in legal reasoning allows courts to integrate socio-economic, gender, and child protection dimensions into their decisions. Thus, the law does not stop at the text but moves toward broader goals (Syam et al., 2025b).

Thus, judicial discretion within the *maqashid* framework is not merely a technical discretion, but a teleological instrument that ensures the law functions as a means of achieving justice in a dynamic social reality. (Purwanto, 2025)

emphasized that the *maqashid* orientation strengthens judges' arguments for postponing asset distribution in the best interests of the child. This demonstrates that justice in Islamic family law is contextual and responsive to social change. This shift marks a transition from formal justice to substantive justice oriented toward the well-being of the family.

### **Good Faith and Asset Misappropriation: Proportional Redistribution as a Means of Justice**

In cases indicating waste or unauthorized transfer of assets, the Banten High Religious Court (PTA) Panel of Judges typically takes corrective action through proportional redistribution. This step is implemented by reducing the share of the violating party and increasing the share of the injured party. This approach is not simply a response to procedural violations, but rather an effort to restore the balance of rights and obligations within the framework of substantive justice (Syam et al., 2025b).

This redistribution measure is based on the principle that actions detrimental to a spouse, such as embezzlement or asset transfer, should not be allowed to go unpunished. If the law is applied rigidly without considering bad faith, formal justice will fail to protect the injured party. Therefore, judicial discretion is a crucial instrument for correcting inequalities arising from dishonest management of joint assets (Tanjung et al., 2025).

The normative justification for this policy rests on the principle *hifz al-mal* (property protection) and prevention corruption (damage or harm), which is part of *Maqasid al-shari'ah*. Furthermore, this approach aligns with the concept of distributive justice, which emphasizes restoring the position of the injured party to maintain a balance of rights and obligations (Syam et al., 2025a). Thus, judicial discretion is not merely a technical measure but possesses strong normative legitimacy.

Theoretically, the framework against the law provides the basis that measured deviations from formal rules can be justified if they promote justice in a specific case. Emphasizes that flexibility in legal interpretation is necessary to avoid injustice arising from the literal application of norms. In the context of the Banten PTA, this principle allows judges to adapt their decisions to social realities and the behaviour of the parties, ensuring that the law remains relevant and does not lose its effectiveness (Arnall, 2022).

The implementation of proportional redistribution carries important implications: the need for clear interpretative guidelines to ensure that judicial discretion remains within the bounds of justice and does not lead to extreme disparities between decisions. These guidelines should include indicators of good faith, evidentiary mechanisms, and asset tracing procedures. The goal is to ensure that any deviation from the proportion is based on valid evidence and is oriented toward the public interest.

The normative justification for deviations in proportions in the division of joint property is rooted in the principle *hifz al-mal* (property protection) and prevention corruption (damage or harm). This principle is part of *maqāṣid al-shari‘ah* which emphasizes that the law must protect property rights and prevent unjust harm. In joint property disputes, the application of this principle ensures that parties harmed by dishonest acts such as embezzlement or diversion of assets receive adequate protection (Kamali, 2017).

In addition to protecting property, the concept of distributive justice is an important foundation in judges' arguments. Distributive justice emphasizes restoring a balance of rights and obligations between the parties, rather than simply the literal application of legal norms. Therefore, when one party is proven to have caused harm, the judge uses discretion to adjust the distribution proportions to reflect substantive justice. This approach demonstrates that the law is not merely procedural but also responsive to the behavior of the parties (Parkinson & Cashmore, 2020).

**Table 1. Comparison Table of Banten PTA Decisions 2021–2025**

No	Year	Decision Number	PA Origin & Issues	Division Order	Judge's Consideration	Pola
1	2021	910/Pdt.G/2021/PTA	PA appeal – A.Btn unequal contribution	Wife > Husband	Distributive justice; dominant contribution	Non-50:50
2	2022	83/Pdt.G/2022/PTA	Appeal – .Btn common property	1/2 : ½	There is no reason for deviation	50:50
3	2022	86/Pdt.G/2022/PTA	Appeal – portion .Btn objection	1/2 : ½	Legal certainty of Article 97 of the KHI	50:50
4	2022	71/Pdt.G/2022/PTA	Appeal – object .Btn of marital property	1/2 : ½	Objects proven to be joint property	50:50

No	Year	Decision Number	PA Origin & Issues	Division Order	Judge's Consideration	Pola
5	2023	7/Pdt.G/2023/PTA. Btn	Appeal – portion dispute	1/2 : ½	There are no significant omissions	50:50
6	2023	8/Pdt.G/2023/PTA. Btn	Appeal – joint property	1/2 : ½	Default KHI	50:50
7	2024	65/Pdt.G/2024/PTA .Btn	Tangerang PA Appeal – home	1/2 : ½	Joint assets, separate debts	50:50
8	2024	55/Pdt.G/2024/PTA .Btn	Appeal – assets	1/2 : ½	There is no specific evidence	50:50
9	2025	3/Pdt.G/2025/PTA. Btn	Appeal – objection of the party	1/2 : ½	Legal certainty	50:50
10	2025	35/Pdt.G/2025/PTA .Btn	Appeal – joint property	1/2 : ½	Pola dominan equal division	50:50

As an explanation based on table 1 above, throughout 2021–2025, the Banten PTA mostly upheld Article 97 of the KHI (divorced widows/widowers who are living are each entitled to half of the joint assets), so that the distribution of ½ : ½ became the baseline when there were no special circumstances. This is evident in decisions 83/Pdt.G/2022, 86/Pdt.G/2022, 71/Pdt.G/2022, 7/Pdt.G/2023, 8/Pdt.G/2023, 65/Pdt.G/2024, 55/Pdt.G/2024, 3/Pdt.G/2025, and 35/Pdt.G/2025. This trend is in line with the codification of KHI Chapter XIII (Articles 85–97) and the general practice of PA/PTA which strengthens legal certainty. Practical Implications: Equal division serves as a legal umbrella; PTA judges will stick to a 50:50 ratio if the evidence does not demonstrate factors that require substantive justice (e.g., unequal contributions or neglect of maintenance). This is consistent with the literature on religious court practice, which cites 50:50 as the basic rule for dividing joint assets. Decision 91/Pdt.G/2021/PTA.Btn provides a strong example that the Banten PTA can deviate from 50:50 when the facts indicate unequal contributions (e.g., house/car installments dominated by one party). This pattern aligns with developments in national jurisprudence (e.g., Supreme Court No. 266 K/AG/2010) and studies that confirm that maintenance obligations or economic contributions can shift the division from 50:50 to proportional; although the basic rule remains 50:50, judges weigh the facts to ensure fairness.

The Banten PTA not only assesses the portion, but also the accuracy of the procedure/proof. In the case of the decision (0057/Pdt.G/2019/PTA.Btn) it shows that the PTA refused to make *descent* as a consideration when the object is unclear (*obscur libel*); this emphasizes that certainty of the object (area, boundaries, status) is a prerequisite before determining the distribution portion. In decision 65/Pdt.G/2024/PTA.Btn, the PTA also regulates the auction mechanism if in-kind distribution is not possible, and orders the prior reduction of joint debt, a form of procedural order to ensure fair distribution.

The Normative Framework of the KHI Articles 96–97: establishes equal division as a general rule (50:50 for divorce; half for the surviving spouse). The Banten PTA used this as a baseline for the 2021–2025 period. Although the Qur'an does not formulate a "50:50 joint property" ratio, verses such as Q.S. An-Nisa' 32 (the right to what is earned), Q.S. An-Nisa' 34 (maintenance), and Q.S. Al-Baqarah 233 (proper financing) are often used as a basis for value. In classical Islamic jurisprudence, joint property is commonly analyzed as *partnership/ mufawadah* (power sharing/ total) to justify proportionality when unequal contributions this framework appears in many contemporary Indonesian studies.

Theoretically, the framework *against the law* legitimizes measured deviations from formal rules. This principle asserts that the application of the law should not sacrifice substantive justice for the sake of rigid adherence to the text. Emphasizes that interpretative flexibility is necessary to avoid injustice arising from the literal application of norms, especially in complex cases with social dimensions. In the context of the Banten PTA, this framework allows judges to interpret the law teleologically, oriented towards the goal of justice(Arnall, 2022).

Implementation *against the law* in joint property disputes shows that the judge's discretion is not an arbitrary act, but rather a step supported by legal theory and principles *goal*. By combining property protection, harm prevention, and distributive justice, judges ensure that decisions are not only normatively valid but also relevant to the socio-economic realities of the parties. This strengthens the position of discretion as a valid corrective instrument in the religious justice system.

The implication of this normative justification is the need for clear interpretative guidelines to ensure that judicial discretion remains within the bounds of justice. These guidelines should include indicators of good faith, evidentiary mechanisms, and transparent procedures for adjusting proportions.

With these guidelines, deviations from formal rules will not lead to extreme disparities between decisions but will instead serve as a means to achieve substantive justice in accordance with the objectives of Islamic law (Syam et al., 2025b).

### **“Best Interests of the Child” and Its Impact on Execution**

The results of the study show an increase in the application of the principles “*the best interests of the child*” (*best interests of the child*) in religious court practice, particularly in the Banten High Religious Court (PTA). This principle is used to delay the execution of the division of assets in the form of the sole house occupied by the child, as regulated in SEMA No. 1 of 2022. This approach shifts the focus of justice from merely the numerical division of parental assets to protecting the child's right to stable housing (Wadjo et al., 2020).

Postponing the execution of the sole ownership of a home is not merely a technical decision, but a strategic step to safeguard the psychological well-being of children after a divorce. Residential stability is seen as a crucial factor for a child's development, so the court prioritizes continued housing over the parents' individual interests in assets. Therefore, the principle *best interests* functions as a corrective instrument against property distribution practices that have the potential to ignore children's rights (Hasanah, 2025, p. 112).

This approach also reflects a paradigm shift in justice from formal justice to relational justice, which considers the social and psychological impact of legal decisions. In this context, housing is not simply a material object, but a symbol of a child's safety and sustainability. Therefore, the court postpones the execution until the child reaches a certain age or conditions that allow for a residential transition without disrupting their well-being (Sari et al., 2024).

### **Integration Principles *Best Interests* with the *Maqāṣid al-Shari‘ah***

Integration of principles *best interests of the child* with a frame *maqāṣid al-shari‘ah* strengthen the judge's normative arguments. *Discussion* emphasizes the objectives of Islamic law which include *hifz al-nasl* (protection of lineage) and *hifz al-nafs* (life protection), which aligns with child protection in family disputes. By combining these two frameworks, judges can justify delaying execution as legally valid and in line with public interest values (Rahmani & Sayuti, 2025, p. 238).

Synchronization between *goals* and principles *best interests* also emphasizes that the child's interests can trump the individual interests of parents regarding numerical distribution, as long as ownership rights are maintained. Execution is rescheduled proportionally to avoid permanent harm to either party, while ensuring the child retains access to safe housing (Mansur et al., 2024, p. 280).

In practice, this policy requires courts to develop execution guidelines that are responsive to the interests of children, including mechanisms for assessing the social and psychological impact before execution. This also requires coordination with relevant institutions, such as first-instance courts and child protection agencies, to ensure that decisions truly reflect the principle of family welfare (Suhaili, 2025).

The implications of applying this principle are the need for consistency between decisions and strengthening judges' capacity to understand the psychological and social dimensions of family disputes. Therefore, postponing the execution of a single house is not merely a temporary solution, but part of a legal strategy oriented toward substantive justice and the protection of children's rights within the framework of Islamic law (Ngurawan et al., 2025).

### **Mediation in Banten PTA: Effectiveness, Limitations, and Implications for Discretion**

Empirical studies show that the success rate of civil religious mediation at the Banten High Religious Court (PTA) remains below national targets. One reason for this low success rate is the dominance of non-judge mediators, who often have limited understanding of the complexities of family law and the social dynamics underlying disputes (Ferdiansyah et al., 2025, p. 421). Mediation failures have a direct impact on the increasing number of cases proceeding to the decision stage. Consequently, the courts' workload increases and the use of judicial discretion at the appellate level becomes more intense. Discretion, which should ideally be used proportionally to correct inequalities, is now being exercised more frequently because agreements cannot be reached at the mediation stage (Sinaga, 2024).

Effective mediation should accommodate the interests of both parties, including sensitive issues such as the division of joint property and child custody. However, when mediation fails, disputes that could have been resolved amicably escalate into conflicts requiring formal adjudication. This not only

prolongs the resolution process but also increases the risk of disparities in verdicts between cases (Majid et al., 2024, p. 250). To address this issue, several recommendations have been put forward. First, training non-judge mediators to ensure they have adequate legal competence and negotiation skills. This training is crucial to ensure mediators are able to facilitate fair dialogue based on principles of substantive justice, not simply formal compromise (Syaroni & Widyaningrum, 2024).

In addition to training, the implementation of hybrid mediation is also recommended. This model combines face-to-face mediation with online technology, making access easier for parties with limited time or distance. Hybrid mediation is considered effective in increasing participation and accelerating the dispute resolution process, especially in areas with high mobility (Nahda et al., 2025). Regular evaluation of the effectiveness of mediation is also crucial. This evaluation can be conducted by measuring success indicators, such as the level of agreement reached, party satisfaction, and resolution duration. Through evaluation, courts can identify weaknesses in the mediation system and implement continuous improvements.

If these recommendations are implemented, the need for extreme discretion at the appellate level could be reduced. More cases would be resolved through agreements that are sensitive to each party's contributions and the child's best interests, thereby reducing disparities in decisions and the burden of adjudication in the Banten Religious Court. Thus, strengthening mediation is not only a procedural solution but also a strategy for achieving substantive justice in the religious justice system (Ferdiansyah et al., 2025).

### **Gender Dimension: Discretion as an Instrument for Mainstreaming Justice**

Scopus-indexed literature assesses that judicial discretion is one of the most effective instruments for reducing gender bias in divorce proceedings and joint property disputes. This bias often arises when women's access to judicial forums or housing rights is hampered by rigid procedural norms. In this context, discretion allows judges to tailor decisions to be more responsive to the social conditions and vulnerabilities of the parties involved (Ramadhita et al., 2023).

At the Banten High Religious Court (PTA), gender-sensitive discretionary practices are evident in the recognition of women's reproductive work and economic vulnerability as corrective factors in the division of joint property.

Judges no longer rely on a 50:50 formula, but instead consider non-economic contributions such as childcare and household management. This approach marks a shift from formal justice to substantive justice (Utomo et al., 2025).

Recognizing domestic work and childcare has significant implications for the legitimacy of decisions. Non-economic contributions are often marginalized because they are not financially recorded. By incorporating these indicators into legal considerations, judges create space for more inclusive justice and reduce the gender bias inherent in the family law system (Sridepi & Nurcahaya, 2024).

However, recognizing non-economic contributions through discretion alone is not sufficient; gender-sensitive evidentiary standards are needed for them to be legitimately recognized. These standards include the use of testimonials, circumstantial evidence, and assessments of the duration and intensity of domestic work. Without clear evidentiary mechanisms, non-economic contributions risk being overlooked again (Rais & Muyassar, 2020).

An internal guideline document containing a contribution indicator matrix is a strategic solution to address this issue. The matrix can include categories of economic and non-economic contributions, methods of proof, and proportional assessment weights. With this guideline, judges have a consistent reference point for assessing contributions, thereby reducing disparities in decisions between cases (Arifia et al., 2023).

Furthermore, these guidelines serve as a tool to mitigate the risk of procedural bias that often disadvantages women. When evidentiary standards are designed inclusively, women who have traditionally struggled to prove non-economic contributions will more easily gain legal recognition. This aligns with the principle of substantive justice, the primary objective of judicial discretion (Nurudin, 2016).

Strengthening gender-friendly evidentiary standards also supports consistency in decisions across religious court jurisdictions. This consistency is crucial for maintaining legal certainty and ensuring that justice is not only formal but also substantive. Thus, judicial discretion, supported by evidentiary guidelines, will be an effective tool for correcting gender inequality in community property disputes (Bardan, 2025). Overall, the integration of judicial discretion, recognition of non-economic contributions, and gender-friendly evidentiary standards creates a fairer and more responsive family law system to

social realities. This step not only reduces gender bias but also strengthens the legitimacy of decisions and increases public trust in religious courts.

### **Framework Discussion as the Principle of Coherence of Appellate Decisions**

Frame work *Maqasid al-shari'ah*serves as a “purpose language” that unifies the variety of judicial decisions in joint property disputes. This principle ensures that any deviation from formal norms is carried out proportionally and based on valid evidence. With this orientation *goals*, judges can interpret the law teleologically, focusing on the goals of justice and welfare, not just literal adherence to the text (Auda, 2017).

Foundation *goals* This allows judges to integrate various important considerations into their decisions, such as actual contribution, good faith, and the child's best interests. This integration makes decisions more contextual and responsive to the socio-economic realities of the parties. Thus, Islamic law is not viewed as a rigid set of rules, but as a value system that adapts to family dynamics (Kaunang & Husain, 2025).

This approach also prevents the court from falling into the trap of formal justice, which is only oriented towards the distribution of numbers, for example 50:50. Instead, *goals*This allows judges to adjust the distribution proportions based on contribution and vulnerability, thereby achieving substantive justice. This is particularly relevant in the context of the Banten PTA, where socioeconomic variations influence contribution patterns within households (Suhaili, 2025).

In addition to providing flexibility of interpretation, the framework *goals* also acts as a tool of normative legitimacy. When judges deviate from formal norms, argumentation based on *goals*S trengthening the ruling's standing in the eyes of the law and society. Thus, deviation is not viewed as a violation, but as a corrective measure to achieve a higher legal goal, namely the welfare of the family (Mastura, 2022).

Implementation *goals* Consistently increasing public legitimacy of court decisions. The public sees that courts do not simply apply legal texts but strive to deliver real justice that is relevant to social conditions. This is crucial for building public trust in religious courts, particularly in sensitive matters such as divorce and division of joint property (Utami & Dalimunthe, 2023).

In PTA Banten, the consolidation of the framework *goals* Internal interpretive guidelines are an urgent need. These guidelines will help judges maintain consistency in decisions, reduce disparities between panels, and ensure that any deviations in proportion have a clear normative basis. With these guidelines, judicial discretion can be directed systematically and transparently. (Anam & Susantin, 2025).

In addition, the guidelines are based on *goal* can include practical indicators, such as economic and non-economic contributions, good faith, and the decision's impact on children. This indicator matrix will facilitate judges' comprehensive case assessments and strengthen the accountability of decisions. Thus, *goals* not only a theoretical concept, but also a practical instrument in the adjudication process (Wirayudha, 2025).

Overall, the implementation *goals* Using the term "language of purpose" in adjudication of joint property disputes creates a more adaptive, inclusive, and welfare-oriented legal system. This step not only reduces disparities in decisions but also strengthens the position of religious courts as institutions capable of addressing the challenges of substantive justice in the modern era (Yanatama, 2024).

### **Prenuptial Agreements: Shifting the Burden of Discretion from *Ex Post* to the *Ex Ante***

Recent Indonesian legal literature emphasizes the importance of a marriage agreement (*prenuptial agreement*) as an instrument for managing joint assets *ex ante*. This approach is considered capable of reducing the burden on judges' discretion. *ex post* When a dispute goes to court, having a clear agreement from the outset minimizes the potential for conflict regarding asset division, making the case resolution process more efficient and equitable. (Shomad & Hajati, 2025)

A prenuptial agreement serves not only as a formal document but also as a preventative mechanism to regulate the rights and obligations of each party. Clauses that acknowledge non-economic contributions, establish asset valuation mechanisms, and establish division procedures in the event of divorce provide greater legal certainty. Thus, disputes that typically require judicial discretion can be resolved based on a pre-established agreement (Fathuningtyas & Naryoso, 2021).

In the Banten Religious Affairs Office (PTA), this concept can be implemented through prenuptial education involving the Religious Affairs Office (KUA) and Marriage Registrars (PPN). This education aims to increase prospective couples' understanding of the benefits of prenuptial agreements, enabling them to make more rational and informed decisions before marriage. This step also supports the court's efforts to reduce the burden of complex cases in the future (Majid et al., 2024).

In addition to education, premarital mediation can be used as a means to formulate fair and proportional marital agreement clauses. This mediation allows prospective couples to openly discuss each party's expectations and contributions, so that the resulting agreement reflects the principle of balanced justice. Premarital mediation can significantly reduce the potential for future conflict (Firmansyah et al., 2024).

Explicit clauses in prenuptial agreements, such as the recognition of non-economic contributions and asset valuation mechanisms, would reduce the need for extreme deviations in court. Judges would no longer have to rely on broad discretion to interpret fairness, as division guidelines are already available in the document agreed upon by both parties. This increases legal certainty and reduces disparities in decisions between cases (Salsabila, 2024).

The implementation of prenuptial agreements also has a positive impact on protecting women's rights. With clauses recognizing non-economic contributions, domestic work and childcare are no longer marginalized. This agreement serves as an instrument that ensures substantive justice while reducing gender bias that often arises in joint property disputes (Ramadhita et al., 2023). However, the successful implementation of prenuptial agreements requires regulatory support and extensive public awareness. The government and judicial institutions need to provide standard, easy-to-understand agreement formats and provide access to legal consultation for prospective couples. Without this support, prenuptial agreements risk becoming merely formal documents that are ineffective in preventing disputes (Anggraini, 2024).

Overall, the use of a marriage agreement as an instrument for managing joint assets is *ex ante*. This is a strategic step towards creating a more adaptive and justice-oriented family law system. In the Banten PTA, the integration of prenuptial education and premarital mediation will strengthen the

implementation of this concept, allowing the courts to focus on resolving more complex cases and reducing reliance on extreme discretion (Majid et al., 2024).

### **Execution Obstacles and Procedural Improvement Agenda**

The execution phase in joint property disputes is often the most crucial point in the religious court process. The obstacles that arise are not only technical but also reflect the social and psychological complexities of the parties. One major obstacle is resistance from the losing party, who often refuses to enforce the decision for various reasons ranging from dissatisfaction with the verdict to attempts to retain assets due to emotional attachment (Miasiratni, 2025, pp. 8–9).

This resistance is often reinforced by sentimental values attached to assets, particularly homes, which hold emotional significance for families. Even when the court has determined the distribution proportions, the losing party often objects or delays execution, citing the interests of the children or psychological attachment to the home. This situation prolongs the execution process and increases the burden on the courts (Ardiansyah et al., 2025).

Besides resistance, disputes over asset valuation also pose a significant obstacle. Differing perceptions of market value and sentimental value often trigger new conflicts. For example, parties with an emotional attachment to a home tend to value the asset higher than the market value, thus rejecting established sale or division mechanisms. This requires the court to conduct a time-consuming and costly revaluation (Safitri & Purwaningsih, 2025).

The limitations of the execution mechanism further exacerbate the situation. Lengthy and bureaucratic execution procedures often render the implementation of decisions ineffective. In some cases, courts face technical obstacles such as lack of coordination with relevant authorities or limited resources to carry out forced executions. As a result, decisions that should provide legal certainty actually create new uncertainty (Afifa & Ramadhani, 2025).

Studies of religious civil cases in Banten and other regions emphasize the need for reform of the execution mechanism to make it more responsive and efficient. This reform includes simplifying procedures, strengthening inter-agency coordination, and implementing technology to expedite the execution process. With these steps, courts can reduce structural barriers that have hampered the implementation of decisions (Rofiah, 2025).

In addition to procedural reform, improving legal literacy among the parties is also a key factor. Many parties resist execution due to a lack of understanding of the legal consequences of court decisions. Publicizing rights and obligations after divorce, including the enforcement mechanism, can help reduce resistance and expedite the implementation of decisions (Ramadhan et al., 2025).

Legal literacy also plays a role in reducing conflicts related to asset valuation. With adequate understanding, parties can accept an objective and transparent valuation mechanism. This will reduce the potential for new disputes and strengthen trust in the judicial system. Therefore, courts need to collaborate with relevant institutions to provide information that is easily accessible and understandable to the public (Sembiring et al., 2024).

Overall, the obstacles to enforcement in joint property disputes require a comprehensive approach, encompassing procedural reform and increased legal literacy. By addressing resistance from losing parties, valuation disputes, and limitations of the enforcement mechanism, courts can ensure that decisions are not only normatively valid but also effective in practice. This step will strengthen legal certainty and substantive justice in the religious justice system.

## CONCLUSION

This study confirms that judicial discretion plays a strategic role in interpreting the division of joint property in the Banten High Religious Court (PTA), especially when formal norms such as Article 97 of the Compilation of Islamic Law (KHI) are unable to address the complexities of the case. The findings indicate that judges use discretion to accommodate substantive justice factors, including economic and non-economic contributions, good faith, and the socio-economic vulnerability of the weaker party. Furthermore, the principle of the child's best interests (*best interests of the child*) and the *maqaṣid al-shari'ah* framework serve as a normative basis that strengthens the legitimacy of deviations in the proportions of property distribution. This approach shifts the paradigm from formal justice to relational justice that is responsive to social realities, while simultaneously reducing gender bias through the recognition of reproductive work and domestic contributions.

Practically, this research emphasizes the need for clear interpretative guidelines to maintain consistency in decisions and reduce disparities between

tribunals. These guidelines should include indicators of economic and non-economic contributions, gender-appropriate standards of proof, and a matrix.*best interests* Children's rights are in line with SEMA No. 1 of 2022. Furthermore, strengthening mediation, developing SOPs for asset tracking and valuation, and providing prenuptial education through the Office of Religious Affairs (KUA)/VAT (Village and Village Tax Office) are preventive strategies to reduce the escalation of disputes to the appeal level. With these steps, the Banten PTA can create a more adaptive, inclusive, and family-oriented judicial system. Academically, this study enriches the Indonesian family law literature by emphasizing that judicial discretion is not merely a technical discretion, but rather a teleological instrument for realizing substantive justice within the framework of Islamic law.

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