

A STUDY OF ISLAMIC LEGAL PHILOSOPHY OF THE CONCEPT OF COLLECTIVE PROPERTY IN INDONESIA BASED ON CORRECTIVE JUSTICE AND THE ISLAMIC EDUCATION MODEL

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ABSTRACT

Analysis of the Concept of Joint Assets in the Compilation of Islamic Law reviewed Based on Corrective Justice Values is an Islamic law study that discusses legal issues regarding joint assets. Based on the reality and legal developments that occur in Indonesian society, which is very dynamic, and from several court decisions, it was found that, in general, the panel of judges at the Religious Courts, in deciding cases for claims for the distribution of joint assets, did not depart from these laws and regulations, namely by dividing joint property equally (half share) between husband and wife. This rule causes many problems that occur when practicing the rulings of the religious courts, because not a few people consider that the distribution of joint assets does not fulfill a sense of justice. For this reason, it is necessary to understand in detail the distribution of joint assets based on the inculcation of Islamic values through education. This research model (mode of inquiry) is qualitative. While the approach used is philosophical legal research, In conclusion, this study shows that the distribution of joint assets between ex-husband and ex-wife, based on the value of corrective justice, should be divided according to the amount of effort between the two in obtaining assets during marriage, dividing equally (50:50, Article 97 KHI). is considered that there are times when not fulfilling a sense of justice is necessary when one party has committed an act that is detrimental to the other party (husband or wife) because it does not carry out what has become its obligation in the long term.

Keywords : Common Property, Compilation of Islamic Law, Islamic Education Model ,Corrective Justice.

1. INTRODUCTION

The issue of joint property (Utomo 1997) is a legal issue that has not been touched upon or thought of (*ghair al-mufakkar*) by earlier fiqh scholars because the issue has just emerged and has been widely discussed in this modern era. The concept of property and all its provisions are not found in the study of fiqh (Islamic law). It's just that, in classical Islamic fiqh, the issues that are often expressed are problems of living arrangements and inheritance laws. These two things have caught the attention of classical Islamic fiqh studies. In highlighting the problem of property in marriage,

Islamic law holds that the property acquired by the husband during marriage belongs to the husband, while the wife is only entitled to the maintenance given to her by the husband. However, the Qur'an and Hadith do not make it clear that the property acquired by the husband during the marriage belongs entirely to the husband and that the wife is only entitled to the husband's maintenance. The Qur'an and Hadith also fail to emphasize that property acquired by the husband through marriage is not solely his; the wife has a right to it as well (Alfarabi 2013).

Some of the opinions of Islamic law experts say that Islam does not regulate community property in the Qur'an. This opinion was expressed by Hazairin, Anwar Harjono, and Andoerraof and was followed by his students. Some other Islamic law experts say that it is impossible if Islam does not regulate this joint property, while other small matters are regulated in detail by the Islamic religion and the legal basis is determined. If it is not mentioned in the Qur'an, then this provision is regulated in the hadith, which is also a source of Islamic law (Manan 2006). The two opinions each have arguments: There is no known joint property except by way of *syirkah*.

Basically, in Islam, there is no mixing of joint assets between husband and wife because of marriage. The wife's assets remain the property of the wife and are fully controlled by the wife, and the husband's assets remain the property of the husband and are fully controlled by the husband. Therefore, a woman who is married in Islam is still considered capable of acting without the help of her husband, including in managing property, so that she can carry out legal actions in society (Jamil 1982). The argument that there is no joint property between husband and wife except by way of *syirkah*, among others, Surah Annisa verse 34 and At-Thalak verse 6.

Because the wife gets good protection regarding physical, mental, moral, and material living, housing, maintenance costs, and the children's education, it is the full responsibility of the husband as the head of the family. This means that the wife is considered passive in receiving what comes from her husband, so there is no joint property between husband and wife. As long as what is given by the husband to the wife outside of household expenses and the children's education, for example, gifts in the form of jewelry, is the right of the wife and cannot be contested by the husband, The assets earned by the husband remain the property of the husband unless there is a *syirkah*. According to traditional fiqh books, joint property can exist only when there is *syirkah*, which means that there is a mixing of husband and wife assets that cannot be differentiated. In other words, in Islam, joint assets are assets created through *syirkah* between husband and wife, resulting in a mixture of assets between one and the other (Manan 2006).

If the assets of the husband and wife are united because of *syirkah*, it is as if they are additional assets because the joint business of the husband and wife during the marriage becomes joint property. If later the marriage is broken up due to divorce, then the *syirkah* assets are divided between the husband and wife according to the considerations to the extent where their efforts participate in trying to achieve *syirkah*, or it can also be divided in two.

2. LITERATURE REVIEW

2.1. Development and Perceptions of Islamic Education on the Importance of Common Assets

Law Number 1 of 1974 Concerning Marriage states that there are three causes for the breaking of the marriage bond, including the death of one of the spouses, the proposed divorce, and the divorce decision granted by the Religious Courts. Divorce has considerable consequences, one of which is the division of joint property. Joint property describes a collection of visible and invisible objects with values in them that are acquired jointly as long as the marriage bond between a husband and wife is still ongoing (Nawawi 2018).

The perspective of Islamic education provides an understanding of the law-related explanations that can be applied to several divorce conditions that occur. So that is something that really

needs to be understood. in order to avoid prolonged conflicts. Islam has provided a basis for determining several conditions for divorce with a fair concept in accordance with the recommendations set out in the Qur'an. This education can be carried out by way of consultation, sharing, and various other methods that are considered capable of adding insight to the distribution of joint assets. Another thing can be done with the discovery learning method, which is oriented towards understanding based on literature or even expert quotations.

2.2. Point of View of Islamic Law on Joint Property

According to Yahya Harahap, the viewpoint of Islamic law regarding joint property is in line with what was stated by Ismail Muhammad Syah, that joint searches for husband and wife should be included in the *rubu muamalah*, but apparently it was not discussed specifically. This may be due to the fact that in general, the authors of fiqh books are Arabs, who do not know the customs regarding joint search for husband and wife but only talk about sharing (*syirkah*) (Harahap 1991). However, Islamic law experts in Indonesia approach the Syarikat Abdan route with customary law. Such an approach does not conflict with the permissibility of making urf a source of Islamic law and is in accordance with the spirit of *al-'adatul muhakkamah*. This also inspired Islamic law experts in Indonesia, when formulating articles 85–97 of the Compilation of Islamic Law in Indonesia, to agree on the *abdan syirkah* as the basis for formulating the rules for joint assets of husband and wife in compilations.

In Article 91 of the Compilation of Islamic Law, it says that the following things are examples of joint property:

1. Joint property, as referred to in Article 85, can be in the form of tangible or intangible objects.
2. Tangible joint assets may include movable and immovable objects and other securities.
3. Intangible joint assets can be in the form of rights or obligations.
4. Joint assets can be used as collateral by one of the parties with the approval of the other party (Harahap 1991).

While Article 92 of the Compilation of Islamic Law reads: "A husband or wife without the consent of the other parties is not allowed to sell or transfer joint property" (Manan and Fauzan 2001). With regard to this joint property, the husband or wife have the same responsibility, and the joint property will be divided equally if the marriage has been broken up due to death, divorce, or a court decision. Regarding the division of joint assets in Indonesia, the Compilation of Islamic Law divides the shares 50-50, as explained in Article 97: The divorced widow or widower has the right to half of the joint property as long as it is not specified otherwise in the marriage agreement. In general, among the public and the academic community, there are legal arguments regarding the 50-50 (half-and-half) division regulated in the Compilation of Islamic Law, which is a division by applying the values of justice for ex-husband and wife regardless of the size of the effort of one of the partners in acquiring household assets.

The philosophy of the concept of joint property regulated by the Compilation of Islamic Law departs from the increasing role of women as wives in the household; sometimes this role is even considered an obligation by a group of people in Indonesia, such as taking care of the house and so on. In principle, the obligation to meet household needs is the husband's, but in today's modern era, it is possible for women/wives to also work to meet the material needs of the household. This, of course, will have an impact on the position of assets in the household, both during the marriage and after the divorce. According to the researcher's assumption, this argument is the legal basis for the birth of the concept of joint property in Indonesia, which is regulated in the Compilation of Islamic Law.

The problem of joint property law referred to by researchers at this time is with the reality of the development of Indonesian society, which is very dynamic, and from several cases of court decisions, it is found that in general, the panel of judges of the Religious Courts, in deciding cases for claims for the distribution of joint assets, does not come out of the statutory regulations, namely by dividing equally (by half) joint property between husband and wife. This rule creates many problems that occur in practice in the religious courts because there are not a few who assess and assume that the distribution of joint assets does not fulfill a sense of justice if it is shared equally, while one party has committed an act that is detrimental to the other party because it does not carry out what has been said. become his obligation, and for the wife not to do anything more than his obligation, especially in the

long term, or issues arise because only the husband earns a living, while the wife only serves the husband as stipulated in traditional fiqh (sex) and does not take care of the household because housemaids, drivers, and baby sisters are provided, implying that there is no direct contribution in obtaining assets, and when divorced, each receives half of the joint assets, which is obviously not in accordance with the value of justice. This sense of injustice also arises when the wife works to fulfill household life while the husband does not have a job or is unable to work to meet household needs. Even though it should be the husband who is responsible for meeting all household living expenses, in conditions like this, the distribution of joint assets is deemed unfair if it is divided in half (two) between the husband and wife when a divorce occurs.

So far, there have been several decisions by judges at the Religious Courts regarding shared assets using the *contra legem* principle in order to fulfill the value of justice. The various problems of shared assets as explained above are the basis for researcher's needing to study more deeply to understand the concept of shared assets according to the Compilation of Islamic Law, which will then be analyzed through a corrective justice value approach.

3. RESEARCH METHOD

3.1 Types and Approaches

This is a qualitative study. While the approach used is philosophical legal research, namely research that will explore the values contained in the law and view them from a sociological angle, in this case, the law is conceived of as a social phenomenon (law in action) rather than as written law (law in a book). In sociological legal research, what has always been the main issue is the issue of the effectiveness of legal regulations, adherence to legal rules, the role of legal institutions or institutions in law enforcement, and the influence of law on social phenomena (Soekanto and Mamudji 1995). Regarding the KHI provisions regarding women's rights in this study, the outcome is how Islamic family law experts view the concept of sharing joint property.

3.2 Data Source

Because this research is focused on joint assets in KHI, the data sources in this study can be classified into two categories, namely;

1. Primary data that will be traced includes the Compilation of Islamic Law (KHI) and decisions of the Religious Courts.
2. Secondary data (Marzuki 2008) that will be traced from a number of books and research results that discuss the rights and position of women in relation to the main themes, namely joint property.

3.3 Determination of Research Subjects

The sample was determined in this study using the purposive sampling method. And one way is to use the "*snowball*" method, which is to find respondents and key informants. Based on these key informants, new informants will be obtained according to the needs of the research. The subjects of this study consisted of two, namely KHI and the views of Islamic private law experts.

3.4 Data Collection Techniques

In addition to tracing the articles contained in the KHI and collecting the decisions of religious courts in Indonesia as written sources, field data collection will be carried out by interviewing judges at Indonesian courts, namely, in-depth interviews by way of question and answer while face-to-face. When the interviewer and informant have a relatively long life, between the interviewer and the informant, or interviewee, with or without the use of an interview guide (Bugin 2007).

4. RESULT AND DISCUSSION

4.1 The Concept of Joint Property in the Compilation of Islamic Law

Joint property is one of the many types of assets owned by a person. Property has an important meaning for a person because, by owning property, he can meet the needs of life and, besides, he will also get a good social status in society. It is not only important in terms of its use (economic aspect), but also in terms of its regularity (legal aspect). Economically, people are used to struggling with the

assets they own, but legally, people do not understand much about the legal rules governing assets, let alone assets acquired by husband and wife during the marriage period (Damanhuri 2007).

The term "*joint property*" in a household originates from "*urf*" or customs in a country that does not separate the property rights of husband and wife. In the English language, "joint property" comes from two words consisting of the words treasure and together. According to the Big Indonesian Dictionary, "wealth" means goods (money and so on) that become wealth and can mean valuable tangible and intangible wealth. Joint property means property that is used together (Pusat Pembinaan dan Pengembangan Bahasa Departemen Pendidikan dan Kebudayaan 1995).

According to Sayuti Talib in his book Indonesian Family Law, it says that joint property (*gono-gini*) is property obtained from their individual efforts or joint efforts during the marriage bond period (Thalib 1986). Muhammad Syaifuddin explained in his book Divorce Law that what is meant by "*joint property*" (*gono-gini*) is property acquired during marriage due to the work of the husband or wife. This means that joint property is property acquired during the period from the time of marriage until the marriage is broken up, either due to death or divorce (Syaifuddin 2013).

It is stated in the Compilation of Islamic Law, chapter 1, part f, that: "Marital assets," or *syirkah*, are assets that are acquired either alone or together with the husband and wife while the marriage bond lasts, and hereinafter referred to as "joint property," without questioning whether it is registered in the name of anyone.

The definition of joint property is also contained in Law Number 1 of 1974 concerning marriage. Chapter 35, verse 1, states that "*properties acquired during marriage become joint property*" (UU Nomor 1 Tahun 1974). From several definitions, it can be concluded that joint property is all wealth acquired by husband and wife jointly or individually during the marriage period.

Basically, there is no mixing of marital assets between husband and wife, or what is called "*joint property*". The concept of joint property originally came from customs or traditions that developed in Indonesia, and this concept was supported by positive law and Islamic law in force in Indonesia (Susanto 2008).

The legal basis for joint property can be traced through the following laws and regulations:

1. Marriage Law No. 1 of 1974 is referred to in Section VII under the heading "*Property in Marriage*". Joint assets are regulated in Section VII, in Chapters 35-37.
2. In the Compilation of Islamic Law, issues of joint property related to marriage agreements are regulated in Section VII concerning marriage agreements in Chapters 45-52, while the joint assets themselves are regulated in Section XII concerning marital assets in Chapters 85-97.

The explanation in Marriage Law Number 1 of 1974 is as follows Section VII Property in Marriage Chapter 35 :

1. Property acquired during marriage becomes joint property.
2. The inherited assets of each husband and wife and the assets each receives as gifts or inheritance are under the control of each as long as the parties do not specify otherwise (UU Nomor 1 Tahun 1974).

Explanation: From this regulation, it is understood that in marriage there are two categories of assets, namely, first joint property (Chapter 35, verse 1), namely assets acquired during the marriage with a final deadline for divorce or death, whether it is a joint venture or from each husband or wife. Both inherited assets (Chapter 35, verse 2). Regarding inherited property, Marriage Law No. 1 of 1974 states that each party has the right to regulate it independently. Therefore, inherited assets are not included in joint assets in marriage.

Meanwhile, regarding who has the right to manage joint assets, Marriage Law Number 1 of 1974 stipulates more clearly in the following provisions: Chapter 36

1. A husband and wife can act on property they own together if they both agree.
2. Regarding their respective assets, husband and wife have the full right to take legal action regarding their property. Chapter 37: If a marriage is broken up due to divorce, joint assets are regulated according to their respective laws (UU Nomor 1 Tahun 1974).

The explanation: In Chapter 36, it can be seen that the husband and wife are entitled to manage joint assets in marriage. Thus, one party cannot leave the other to take legal action on the joint property in marriage because their positions are balanced, namely as co-owners of the joint property.

Chapter 37 explains that if a husband and wife decide to divorce, then the joint property is regulated according to their respective laws. What is meant by "*the law*" respectively is religious law, customary law, and other laws. Other matters are explained in the compilation of Islamic law regarding joint assets as follows: Section XIII Marital Assets Chapter 85 The existence of joint assets in a marriage does not rule out the possibility of having property owned by each husband or wife, as attached to Chapters 86 and 87. The contents of the three chapters are the elaboration of the signs and the affirmation of the verses contained in Surah Al-Nisa [32:14]. Concerning disputes, Surah Al-Nisa verse 34 states that the husband and wife are responsible for safeguarding the assets attached to Chapters 88 and 89. If the husband does not carry out his obligation to provide for the family properly, even though he is capable, and does not issue rights to his family, then the wife is justified in taking her husband's property to meet the needs of herself and her children in a good manner with the mechanism regulated in Chapter 88, the settlement of which is carried out in the Religious Courts.

Meanwhile, Chapter 91 shows a modern nuance, such as securities (policies, bilyet giro, shares, and others). This shows that KHI has long anticipated the problems of the modern economy. However, the most important thing is that the use of said wealth, whether for the benefit of one party or the common interest, must be based on their agreement. Because in fact, in this way, the religious orders of *wa'asyiru hunna bi al ma'ruf* (treat them well) will be realized, which will ultimately lead to the achievement of the goal of marriage.

Regarding the protection of the rights of both parties, it is stated in Chapter 92 with the description that "husband or wife without the consent of the other party is not allowed to sell or transfer joint assets." Matters related to accountability for debts and credit are described in Chapter 93. Meanwhile, in matters related to the marital assets of a husband with more than one wife, they are regulated in Chapter 94. In addition, in the case of a wife's request to place collateral for joint assets, it is detailed in Chapter 95, and the process and provisions for the distribution of joint assets are explained in Chapter 96. In addition, the right of a divorced spouse to joint property is explained in Chapter 97.

Islamic law experts in Indonesia, when formulating articles 85–97 of the Compilation of Islamic Law, agreed to take *syirkah abdan* and *syirkah mufawadhah* as the basis for formulating the rule of joint property between husband and wife. The Compilation of Islamic Law used the *syirkah abdan* and *syirkah mufawadhah* approaches to customary law. This approach does not contradict the permissibility of making *'urf* a source of law and one soul with al-adat al-muhakkamah principles. It is known as *syarikah abdaan mufawadhah*. It is called *syirkah abdaan* because, in general, husband and wife in Indonesian society work together to earn a living for the family's daily life as well as a deposit for their old age and a legacy for their children after they die. Because the husband's partnership is unlimited, it is referred to as *syirkah mufawadhah*. Whatever they produce during their marriage is included in joint property, unless they receive it as a grant, gift, or inheritance for one of the husband and wife.

4.2 Distribution of Joint Assets based on Corrective Justice

Aristotle, in his work entitled *Nichomachea's Ethics*, explains his thoughts on justice. For Aristotle, virtue, namely obedience to the law (the polis law at that time, written and unwritten), is justice. In other words, justice is a virtue, and this is general.

According to Aristotle, in addition to general virtues, there is also justice as a special moral virtue, which is related to human attitudes in certain fields, namely determining good relations between people and balancing the interests of two parties. The measure of this balance is numerical and proportional similarity.

Aristotle defines justice as a division based on proportion or balance. He then divides justice into two, namely, distributive justice (*iustitia distributive*) and remedial or corrective justice. Distributive justice refers to the distribution of goods and services according to position (Dwisvimiari 2011). The distribution of equal proportions will be given to people who are the same; otherwise, people who are not the same will certainly get a different distribution, so that everyone is treated the same for the same things and treated differently for different things (Suliantoro and Runggandini 2018).

Included in distributive justice is the division of rights and obligations according to their proportions. Distributive justice is basically a moral guide that is most suitable for political processes related to the distribution of benefits and burdens in society (Miller 2017). Although it does not rule out the possibility of this theory of justice being used to analyze other issues (Darmodiharjo and Shidarta 2006), Corrective justice requires compensation or restoration to the original state as a means to balance imbalances due to injustice. As a result, the concept of corrective justice applies: punishment will atone for the crime; restitution will compensate for losses caused by default; and economic loss or damage will be recovered through beneficial actions (Fadhilah 2013). The concept of corrective justice serves as the foundation for considering the emergence of accountability to others (Kurniawan, Agustin, and Amalia 2018). In the realm of civil law, any action that harms another person due to negligence or intention can be a reason for filing a lawsuit. Therefore, the concept of "corrective justice" is closely related to civil lawsuits. In the concept of corrective justice, justice is the middle way between loss and gain. The judge is the right choice when a problem occurs because the judge is expected to be able to restore balance through a fair decision. Just action is the middle ground between acting unjustly and suffering injustice (Aristoteles 2004) (Budiarto, Yohanes; Wardani 2005).

With the theory of corrective justice initiated by Aristotle, if it is linked to the concept of joint property in the Compilation of Islamic Law as a legal analysis, it will be seen how the law (the amount of rights to joint property) should be given to ex-wives and ex-husbands and whether to apply the distribution of 50/50 on joint assets to ex-husbands and ex-wives when breaking up marriage ties has created equality between the two. With this corrective justice theory, it will reformulate how the concept of shared property in Indonesia should be, as it is, and with analysis through corrective justice, it will rebuild the equality of the distribution of the joint property in Indonesia as it is, and with analysis through corrective justice, it will rebuild the equality of the distribution of the joint property in Indonesia as it is, and with analysis through corrective justice, it will rebuild the equality of the distribution of the joint property.

If one looks closely at the issue of joint assets in Indonesia, both in terms of determining joint assets and finalizing the distribution of joint assets, there is a connection with the pattern of marital relations between husband and wife. The pattern of marital relations is related to the rights and obligations exercised by the husband and wife. According to Scanzoni, quoted in Jony Eko Yulianto's research, if the husband is the breadwinner and the wife's duties are to provide household needs such as food for the husband and children and complete other household tasks, This pattern of marriage is called owner property; the wife has the duty to take care of the family. In the marriage pattern, the wife's property is subject to her husband as the head of the family (Yulianto 2016). The husband has strong power with the husband's role as a breadwinner, while the wife is still dependent on her husband, especially in economic matters because the wife does not work. The next pattern proposed by Scanzoni is head complement, in which the wife is the husband's complement (Yulianto 2016).

When viewed from the common property cases that the researchers examined, the pattern of marriage that was followed was a head-complement pattern, where the husband was not the boss in the household but the husband and wife complemented each other. This can be seen from the facts put forward by the plaintiff and defendant as well as the considerations of the Religious Court judges. that the husband earns a living outside the home and the wife performs her obligations as a housewife by taking care of family needs. In this case, the panel of judges still considers the issue of rights and obligations between husband and wife in settling joint property cases. As long as the rights and obligations are carried out and there is voluntarism between the two parties because they understand that husband and wife are not just roles but fill each other's deficiencies, there will be unity between husband and wife, both in terms of roles and by the plaintiff and defendant as well as the Religious Court judges' considerations. that the husband earns a living outside the home and the wife performs her obligations as a housewife by taking care of family needs. In this case, the panel of judges still considers the issue of rights and obligations between husband and wife in settling joint property cases. As long as the rights and obligations are carried out and there is volunteerism between the two parties because they are aware that husband and wife are not just a matter of roles but fill each other's deficiencies, then there will be unity between husband and wife both in terms of roles and assets, regardless of who gives more. This is also explained in Chapters 33 and 34, verses 1 and 2, of the Marriage Law. However, when one of the parties (the husband or wife) does not carry out their

obligations for a long time, the researcher is of the opinion that dividing joint assets based on the same portion between the two is not justice because one party (the husband or wife) is harmed.

So, according to the researchers, this is also why some judges of the Religious Courts use the *contra legem* principle to decide how to share joint property, so that it goes against Chapter 97 of the KHI and Chapter 37 of the Marriage Law. This is done to uphold the value of justice, and the decisions of the judges of the Religious Courts about how to divide joint assets based on corrective justice include:

1. Sidoarjo Religious Court Decision Number: 71/Pdt.G./2013/PA.Sda. In the verdict, the wife's share is greater than the husband's share. The wife gets 2/3 and the husband gets 1/3.
2. Brebes Religious Court Decision Number: 1048/Pdt.G/2009/PA. Bbs. In the verdict, the wife's share is greater than the husband's share. The wife gets 2/3 and the husband gets 1/3.
3. Mojokerto Religious Court Decision Number: 0521/Pdt.G/2013/PA.M. In the verdict, the wife's share is greater than the husband's share. The wife gets 2/3 and the husband gets 1/3.
4. Supreme Court Decision Number: 266 K/AG/2010. In the decision on the distribution of joint assets, the share is 3/4 for the wife and 1/4 for the husband.
5. Pekanbaru Religious Court Decision Number: 1914/Pdt.G/2018/PA.Pbr. In the verdict, the wife's share is greater than the husband's share. The wife gets 2/3 and the husband gets 1/3.
6. Lhoksukon Syar'iyah Court Decision Number: 168/Pdt.G/2014/MS-Lsk: stipulates that the plaintiff (husband) gets 1/3 of the share, while the defendant (wife) gets 2/3 of the joint property.

The decision of the judge of the Religious Court regarding the joint property above shows that the judge in certain circumstances uses the *contra legem* principle in his decision. Even though the distribution of joint assets has been regulated in the Compilation of Islamic Law in Chapter 97, the reality of trials and the legal dynamics that are developing in society mean that Chapter 97 cannot be applied. As a result, in order to reach a just decision, judges must depart from the established legal rules and apply the *contra legem* principle.

The panel of judges remains based on the existing provisions regarding the determination of the jurisdiction over joint assets; if it is proven that joint assets exist, then both parties have rights to these assets. Even though what the husband or wife gets is less than the part they get, the panel of judges has fulfilled the principle of justice. The judge's considerations and decisions can be seen from the pattern of the couple's relationship that has been described previously. This relationship pattern can support household harmony if it is carried out according to its purpose, namely to achieve a *sakinah mawaddah warahmah* family. If this relationship pattern is not carried out properly, such as the dominant wife being the main breadwinner while the husband does not work and does not try to replace the wife's role as a housewife, then the husband's rights are not naturally obtained. This is because the obligation can only be carried out by one party. The household will be solid if there is cooperation between husband and wife. With regard to joint property matters, if the wife is the main breadwinner in supporting and fulfilling all household needs and the husband replaces the wife's job as household manager, then there is a balance in the exercise of rights and obligations. Therefore, in the event of a divorce, the distribution of joint assets can be divided equally. However, if there is no comparability of rights and obligations during marriage (the wife as the main breadwinner), then the ex-wife, as a double burden (double work), has the right to get more shares than the ex-husband. And vice versa, if the wife during the marriage period does not carry out her obligations as a wife, such as taking care of children and other needs, then the wife gets less than the husband. But if the wife continues to carry out her obligations, she has the right to get as much as the husband.

5. CONCLUSION

Justice is a value that provides protection for rights guaranteed by law. The most basic demand of justice is to provide equal treatment and opportunity as well as a balance of legal protection between the parties to the dispute. Something can be considered fair in a legal context if it can be concretely actualized according to a balanced size, does not harm either party, and provides benefits. Finally, justice can be seen in relation to its empirical context by measuring the benefits of the value of justice. In other words, the parties will feel justice if they have provided what is reasonably acceptable to the parties and provides benefits without causing harm to other parties. Judges cannot judge a case that will be decided in accordance with the final provisions, such as the share that ex-husbands and ex-

wives get from joint property, and assume that this is fair. However, beforehand, the judge must depart from the situation and conditions in determining the portion obtained by the parties. The situation and conditions considered by the judge are how their household life was going when the marriage bond was still ongoing.

If the distribution of joint assets equally is considered to show no balance, then there must be actions that are in defense of one of the parties. Judges must take affirmative action by looking at situations and conditions such as the ones in this study. This can be done by looking at which party is the weakest in running the household during the marriage bond, which continues to reassess the rights and obligations of each party without anyone being harmed. Therefore, justice is not always identified as being equal, but justice can be fulfilled in terms of the distribution of joint assets by negotiating between parties and defending the party whose position is felt to be weakened without belittling the other party (corrective). Based on this, the foundation of Islamic values education related to the justice of joint asset distribution must seek a middle ground that does not harm one another. Problem solving must be done in delusion and to avoid conflict in the distribution of joint assets.

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