

## ANALYSIS OF THE DISTRIBUTION OF JOINT MARITAL PROPERTY DUE TO DIVORCE AT THE LUBUK LINGGAU CLASS 1B RELIGIOUS COURT (CASE STUDY CASE NUMBER 358/Pdt.G/2025/PA.LLG)

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### Abstract

*This study examines the application of progressive legal theory and the theory of justice in the process of dividing joint property due to divorce at the Lubuk Linggau Religious Court. Progressive legal theory is utilized to examine the extent to which law can be applied flexibly to achieve substantive justice, while the theory of justice is used as a foundation for assessing the balance of rights and obligations between the litigating parties. The research methods used include normative juridical, empirical juridical approaches, and case studies, with the aim of providing a comprehensive understanding of the application of law in the field. The research results show that the synergy between the two theories allows for the application of law that is not only based on formal legality but also considers humanitarian values and a sense of justice. Nevertheless, its implementation still encounters obstacles in the form of clashes between moral values and the rigidity of formalistic law. Based on the analysis of Case Number 358/Pdt.G/2024/PA.Llg, the division of joint property was carried out according to the provisions of Article 97 of the Compilation of Islamic Law (KHI) and Article 37 of Law Number 1 of 1974, taking into account both the financial and non-financial contributions of each party during the marriage.*

*In this process, the judge has a central role in determining the amount of property division through the evaluation of evidence and arguments put forward by the parties. The resulting decision is considered to reflect the principle of justice, although there are still obstacles such as the limited understanding of the law by one of the parties. Factors that also influence the decision include the level of participation in the acquisition of property, the legal status of the disputed property, and the social and psychological conditions of the parties during the trial process.*

**Keywords:** Joint Property, Divorce, Theory of Justice, Religious Court, Confiscation and Execution

### I. INTRODUCTION

Marriage is a social institution that holds a fundamental position in human life. Through marriage, the family is formed as the smallest social unit that functions to maintain the continuity of the social order. Within the national legal system, provisions regarding marriage are regulated in Law Number 1 of 1974 concerning Marriage, which defines marriage as a physical and spiritual bond between a man and a woman with the aim of forming a happy and everlasting family based on the One Supreme God (Ketuhanan Yang Maha Esa). Although



normatively marriage is intended to achieve this ideal goal, social reality shows that not all marriages proceed harmoniously and end in happiness as expected.

Based on data from the Directorate General of the Religious Courts (Badilag) of the Supreme Court of the Republic of Indonesia (2023), the divorce rate in Indonesia reached approximately 516,000 cases, an increase of about 15% compared to the previous year. The main contributing factors to divorce include economic issues, continuous disputes, and infidelity in the household relationship. This condition indicates that divorce has become a complex social and legal phenomenon because it involves various aspects, including child custody rights, maintenance obligations, and the division of joint property.

One of the legal issues that most often causes debate in divorce cases is the division of joint property (*gono-gini*). Based on Article 35 and Article 37 of Law Number 1 of 1974, assets acquired during the marriage are included in the category of joint property, while inherited property, gifts, and bequests remain the private property of each party. However, these provisions do not provide a detailed explanation regarding the proportional division when a divorce occurs. Consequently, legal uncertainty and potential injustice arise, especially for the party whose contribution is non-financial, such as a wife who plays the role of a homemaker or domestic manager.

In the environment of the Religious Court, disputes regarding joint property often lead to differing interpretations and problems in proving ownership. A similar situation is also found at the Class 1B Religious Court of Lubuk Linggau, where this research was conducted. One case that reflects this problem is Case Number 358/Pdt.G/2024/PA.Llg, which highlights debates regarding the recognition of non-financial contributions in the division of joint property, and how judges attempt to balance aspects of justice with the applicable positive legal provisions.

Academic studies concerning the post-divorce division of joint property have been widely conducted, but a research gap is still found in the application of progressive legal theory and substantive justice theory. Rahayu (2021) argues that the application of positive law in joint property division cases tends to be formalistic, thus not fully reflecting a sense of justice for the economically disadvantaged party. Meanwhile, Sutrisno (2022) indicates that judges in religious courts often still interpret Article 37 of the Marriage Law textually without considering moral aspects, emotional contributions, or domestic roles within the household.

## II. RESEARCH METHODOLOGY

Normative-empirical legal research methodology is a research approach that examines the application of positive legal provisions and written legal documents to specific legal events occurring in practice. This approach aims to determine the extent to which the application of the law in a case *in concreto* aligns with the applicable laws and regulations, and to assess whether these legal provisions have been implemented appropriately and effectively in practice.



In this research, both normative juridical and empirical juridical approaches are used concurrently. Additionally, a case study approach is employed, focused on an in-depth analysis of a specific case relevant to the legal issue under study.

### 1. Case Approach

This approach is carried out by examining cases that are linked to the legal issue being researched. The cases studied are generally court decisions that have permanent legal force (*inkracht van gewijsde*), whether they occurred in Indonesia or other countries. The main focus of the case approach lies in analyzing the *ratio decidendi*, or the basis of the judge's legal consideration in issuing a decision. The analysis of this reasoning is important for both academic contexts and legal practice, as it can serve as a reference in resolving similar legal problems. It is important to distinguish between a case approach and a case study. The case approach emphasizes the study of a number of court decisions to gain an understanding of the application of law to a specific issue. In contrast, a case study is a more specific investigation of a single case by reviewing certain legal aspects, such as administrative law, criminal law, or constitutional law.

### 2. Conceptual Approach

The conceptual approach is based on the study of various doctrines, theories, and ideas developing within the discipline of law. Through an in-depth review of these legal concepts and theories, researchers can identify the fundamental ideas that form the basis for the emergence of legal definitions, principles, and norms related to the research issue. Understanding this conceptual aspect serves as the main foundation for the researcher in formulating structured, rational, and consistent legal arguments to answer the legal problems being studied.

The specification of this research is normative-empirical, which means it uses two types of data: primary data and secondary data. Primary data are obtained directly from the field through interviews with sources, respondents, or relevant authorities, as well as through observation of official documents at the Lubuk Linggau Religious Court, specifically case Number 358/Pdt.G/2024/PA.Llg. Secondary data are obtained through library research by examining legal materials in the form of laws and regulations, legal literature books, scientific journals, results of previous research, and other written documents relevant to the research focus.

Data collection in normative-empirical legal research can be done through several techniques, namely interviews, observation, and documentation. These techniques are used integrately to obtain a comprehensive picture of the application of law in the field while linking it to written legal norms. The goal of this research is to present a logical, systematic, and measurable analysis of the application of law in judicial practice. The data obtained from interviews and



document studies are analyzed using the normative-empirical method, combining the approach of written law and empirical facts in the field.

In empirical legal research, data analysis is generally conducted descriptively, which means describing the conditions and application of law as they are based on observations and interviews. However, this research also allows for the use of other relevant analyses to answer the problem formulation, either quantitatively or qualitatively, depending on the needs of the analysis and the depth of the discussion.

Thus, this normative-empirical legal research aims not only to understand how written law is implemented but also to assess the extent to which effectiveness and substantive justice can be achieved in judicial practice, particularly in cases of the division of joint property at the Lubuk Linggau Religious Court.

This research was conducted at the Class IB Religious Court of Lubuk Linggau, Jl. Yos Sudarso, No. 34 Taba, Air Kuti, Lubuk Linggau Ti.I District, Lubuk Linggau City, South Sumatra 31625. The research was carried out at the Class IB Religious Court of Lubuk Linggau for 6 months, from September 2024 to February 2025.

### III. RESULTS AND DISCUSSION

#### A. Legal Basis

The constitutional basis guaranteeing the existence of the Religious Courts in Indonesia is stipulated in the Constitution of the Republic of Indonesia of 1945, specifically in Article 24 paragraph (1), which affirms that judicial power is an independent power to administer justice for the enforcement of law and justice. This provision guarantees that every judicial institution, including the Religious Courts, has the freedom to carry out its judicial functions without intervention from other powers. Operationally, the legal basis of the Religious Courts is regulated in Law Number 7 of 1989 concerning the Religious Courts, which has since been amended twice, most recently by Law Number 50 of 2009. Article 2 of this law states that the Religious Courts are one of the executors of judicial power authorized to provide legal services for the Muslim community in certain civil cases as regulated by law. Meanwhile, Article 2 paragraph (1) affirms that judicial power within the Religious Courts environment is exercised by the Religious Court (Pengadilan Agama) and the Religious High Court (Pengadilan Tinggi Agama).

According to the opinion of Hartono (1977: 95), there is a conceptual difference between the terms judicature/jurisdiction and court/institution. First, judicature/jurisdiction is understood as the duty or function of enforcing law and justice carried out by the judicial body. Second, court/institution is the organization or body that carries out this judicial function institutionally. Thus, judicature/jurisdiction is the judicial function, while court/institution is the institution that performs that function.



The Religious Courts fall under the category of special courts, along with the State Administrative Courts and the Military Courts. They are called special courts because their authority is limited to specific types of civil cases and are intended for a specific group of society, namely Muslims. In their institutional structure, the Religious Courts environment consists of two levels: the Religious Court as the court of first instance and the Religious High Court as the court of appeal. Both institutions play a direct role in the implementation of judicial power in the field of Islamic family law. The duties and authorities of the Religious Courts are regulated in Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning the Religious Courts. This article affirms that the Religious Courts are authorized to examine, decide, and settle cases between people who are Muslims in the fields of marriage, inheritance, wills, gifts, waqf (endowments), zakat (alms), infaq (donations), shadaqah (charity), and Islamic economics.

In addition to having a judicial function (judicial power), the Religious Courts also perform a number of other functions that support the administration of justice, including:

1. Supervisory function (*Fungsi pembinaan*): to foster the judicial apparatus within its environment.
2. Oversight function (*Fungsi pengawasan*): to oversee the implementation of judicial duties so that they proceed in accordance with laws and regulations and the code of ethics.
3. Advisory function (*Fungsi nasehat*): to provide considerations or legal advice to government agencies or the public if requested.
4. Administrative function (*Fungsi administratif*): covering the management of case administration, staffing, and court finance.
5. Coordinative function (*Fungsi koordinatif*): to establish cooperation with other institutions such as the Ministry of Religious Affairs (Kemenag), the Indonesian Ulema Council (MUI), and other Islamic community organizations in the implementation of religious duties such as *hisab* (astronomical calculation) and *rukyat* (sighting the moon).

Furthermore, the Religious Courts also have a legal service and public information function, including legal counseling and research facilitation. The implementation of this function is regulated in the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number KMA/144/SK/VIII/2007 concerning Information Disclosure in Courts, which emphasizes the importance of the principles of transparency and public access to judicial information. Thus, the Religious Courts do not only act as law enforcement and justice institutions for Muslims, but also as institutions that carry out educational, administrative, and social functions in order to realize a transparent, accountable, and just judicial system.

B. Division of Joint Property at the Lubuk Linggau Religious Court Case Number 358/Pdt.G/2024/PA.Llg Concerning a Lawsuit for the Division of Joint Property Due to Divorce

From the results of the author's interview with Mr. Ahkam Riza Kafabih, S.H.I as a member judge of the Class IB Lubuk Linggau Religious Court, he



explained, "In general, we can see in the judge's decision letter attached to the judge's decision results, but in summary, it emphasizes the contribution of each party in acquiring the joint property. Furthermore, concerning the contribution of both parties to the marital needs that occurred during the marriage, how big was their contribution? The religious court also does not set aside the rights and obligations of each husband and wife during the marriage because joint property is property acquired by either the husband or the wife during the marriage period, regardless of whether it was the husband or the wife who acquired it."

"Therefore, the court also looks at and puts forward the principle of justice during the division of the joint property in the main case. This is because if the court divides it 50:50, while the roles of each party are not equal, then one party is considered treated unfairly. This is different in a situation like this: a man is the head of the household, he has the obligation to provide for his children and wife, he works full time to earn money, and his wife stays at home assisting her husband, serving her husband, raising their children, etc. In that case, they are evenly matched, having the same roles, both fulfilling their obligations and both providing their partner's rights and both contributing to the household. This differs from Case 358/Pdt.G/2024/PA.Llg, where the court saw a significant imbalance; one party was more dominant in meeting family needs and the other party was less dominant, meaning their role was less prominent in the household. Because of that, the court gave an unequal division to fulfill the principle of justice based on contribution."

Analysis of the Judge's Decision in Case 358/Pdt.G/2024/PA.LLG and Its Correlation with Progressive Legal Theory:

1. Summary of the Judge's Decision Based on the decision in case Number 358/Pdt.G/2024/PA.LLG, the judge decided that:
  - a. The joint property is divided 50:50 between the ex-husband (Saripudin) and the ex-wife (Sigadis), in accordance with Article 97 of the Compilation of Islamic Law (KHI).
  - b. If the property cannot be divided physically, it will be auctioned through the State Auction Office and the proceeds divided in two.
  - c. The defendant (Sigadis) is charged a late fee (*dwangsoom*) of Rp1,000,000 per day if she does not execute the decision on time.
  - d. The judge granted child support (*nafkah anak*), *iddah* maintenance (*nafkah iddah*), *mut'ah* maintenance (*nafkah mut'ah*), and *madhiyah* maintenance (maintenance that has not been paid during the marriage).
2. Correlation with Progressive Legal Theory Progressive legal theory developed by Satjipto Rahardjo emphasizes that law must not rigidly adhere only to written rules, but must be flexible and oriented towards substantive justice:
  - a. Judges Do Not Only Rely on Formal Law, but Also Consider Social Aspects
    - (1) The 50:50 division is indeed in accordance with the rule in Article 97 KHI, but the judge also considered the economic and social aspects post-divorce by mandating the payment of child support and other



maintenance.

(2) This approach reflects progressive law, because the judge does not just divide the property, but also looks at the impact of the divorce on the welfare of the wife and children.

b. Judges Guarantee Execution of Decisions with *Dwangsoom* Sanctions

(Compulsory Money) (1) In many cases, court decisions are difficult to

execute because the losing party refuses to comply. (2) With

the *dwangsoom* sanction (Rp1,000,000 per day of delay), the judge

ensures that the decision has coercive power, which aligns with the

progressive legal principle that law must truly be applicable in practice, not

just text in regulations.

c. Judges Consider the Wife's Economic Role in the Household

(1) In the court proceedings

#### IV. CONCLUSION

Based on the research results of Case Number 358/Pdt.G/2024/PA.Llg at the Class 1B Religious Court of Lubuk Linggau, the division of joint property in divorce is carried out in accordance with the principle of justice as stipulated in Article 97 of the Compilation of Islamic Law (KHI) and Article 37 of Law Number 1 of 1974 concerning Marriage. In this case, the division of joint property was conducted by considering the contributions of each party during the marriage, both financial and non-financial contributions.

The judge plays an important role in determining the proportion of the division of joint property, including considering the evidence and arguments put forward by the parties. This study shows that the decision-making process has fulfilled the principle of justice, despite obstacles such as a lack of legal understanding by one of the parties.

Several factors influencing the division of joint property include the level of participation of each party in acquiring the property, the legal status of the item (separate property or joint property), and the psychological or social conditions of the parties during the trial process.

Optimization of Mediation: The Religious Court needs to maximize the mediation function to achieve a peaceful solution that reflects substantive justice for the parties, in accordance with the principles of progressive law. Legal Education: Conduct socialization to the community about the importance of managing joint property and the rights of each party in a divorce so that they better understand the legal implications.

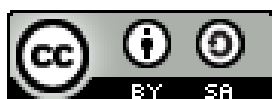
Strengthening the Role of Judges: Judges are encouraged to act more as humanistic facilitators of justice, by considering the socio-economic conditions of the parties, and daring to exercise discretion that favors substantive justice.

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