



Islamic Family Law Reform in Indonesia: A Review of the Supreme Court's Decision on the Postponement of the Distribution of Joint Property

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Abstract

The settlement of joint property between husband and wife after divorce often ends up in the Religious Court, even reaching the level of cassation and judicial review (PK), such as in the Supreme Court Decision Number Register 159/K/AG/2018. In this case, especially related to disputes over joint property in marriages with minor children, the Supreme Court not only refers to the normative law contained in the law, but also considers a sense of justice and benefit. This research uses a qualitative descriptive method with an empirical juridical approach. This approach is referred to as empirical legal research because it focuses on analyzing the implementation of normative legal provisions directly (in action) in certain legal events in society. Primary data was obtained from Supreme Court decision No 159 K/Ag/2018, No 618/Pdt.G/2012/PA.Bkt, No 38/Pdt.G/2013/PTA.Pdg, No 88K/Ag/2015, No 159/K/AG/2018, No 99/Pdt.G/2023/MS, as well as laws related to the research being discussed. Secondary data is obtained from books, scientific articles and previous research results related to joint property and those that have the same discussion. Data collection techniques using literature study and qualitative data analysis are used to explore certain phenomena and find out the causes. The results showed that the Supreme Court judge in deciding this case used the method of legal discovery through legal interpretation, especially systematic interpretation and sociological interpretation. In the case, the judge postponed the division of joint property until the children of the disputing parties reached the age of mumayyiz, thus showing attention to aspects of substantive justice. Systematic and sociological legal interpretations by judges show that in resolving post-divorce joint property disputes, especially those involving minors, judges must consider the social realities that live in society to actualize justice. This emphasizes the role of judges not only as law enforcers, but also as guardians of the public good. This research concludes that legal discovery by judges through interpretation based on systematic and sociological approaches can realize concrete justice in society, especially in divorce cases involving children.

Keywords: Family Law, Joint property, Islamic Law



Abstrak

Penyelesaian harta bersama antara suami dan istri setelah perceraian seringkali berakhir di Pengadilan Agama, bahkan sampai ke tingkat kasasi dan peninjauan kembali (PK), seperti pada Putusan Mahkamah Agung Nomor Register 159/K/AG/2018. Dalam hal ini, khususnya terkait sengketa harta bersama dalam perkawinan dengan anak di bawah umur, Mahkamah Agung tidak hanya mengacu pada hukum normatif yang tertuang dalam undang-undang, tetapi juga mempertimbangkan rasa keadilan dan kemaslahatan. Penelitian ini menggunakan metode deskriptif kualitatif dengan pendekatan yuridis empiris. Pendekatan ini disebut sebagai penelitian hukum empiris karena menitikberatkan pada analisis terhadap pelaksanaan ketentuan hukum normatif secara langsung (*in action*) dalam peristiwa hukum tertentu dalam masyarakat. Data primer diperoleh dari putusan Mahkamah Agung No 159 K/Ag/2018, No 618/Pdt.G/2012/PA.Bkt, No 38/Pdt.G/2013/PTA.Pdg, No 88K/Ag/2015, No 159/K/AG/2018, No 99/Pdt.G/2023/MS, serta peraturan perundangan yang terkait dengan penelitian yang sedang dibahas. Data sekunder diperoleh dari buku-buku, artikel ilmiah dan hasil penelitian terdahulu yang berkaitan dengan harta bersama dan yang memiliki pembahasan yang sama. Teknik pengumpulan data menggunakan studi kepustakaan dan analisis data kualitatif yang digunakan untuk mengeksplorasi fenomena tertentu dan mengetahui penyebabnya. Hasil penelitian menunjukkan bahwa hakim Mahkamah Agung dalam memutus perkara ini menggunakan metode penemuan hukum melalui penafsiran hukum, khususnya penafsiran sistematis dan penafsiran sosiologis. Dalam perkara tersebut, hakim menunda pembagian harta bersama hingga anak-anak dari para pihak yang bersengketa mencapai usia *mumayyiz*, sehingga menunjukkan adanya perhatian terhadap aspek keadilan substantif. Penafsiran hukum secara sistematis dan sosiologis oleh hakim menunjukkan bahwa dalam menyelesaikan sengketa harta bersama pasca perceraian, khususnya yang melibatkan anak di bawah umur, hakim harus memperhatikan realitas sosial yang hidup dalam masyarakat untuk mewujudkan keadilan. Hal ini menekankan peran hakim tidak hanya sebagai penegak hukum, tetapi juga sebagai penjaga kemaslahatan umum. Penelitian ini menyimpulkan bahwa penemuan hukum oleh hakim melalui penafsiran berdasarkan pendekatan sistematis dan sosiologis dapat mewujudkan keadilan yang konkret dalam masyarakat, khususnya dalam perkara perceraian yang melibatkan anak.

Kata Kunci: Hukum Keluarga, Harta Bersama, Hukum Islam, Perceraian

Introduction

The term joint property according to Ter Haar means goods obtained by husband and wife during marriage. Meanwhile, in Indonesian law, it comes from customary law that applies to certain communities in Indonesia.¹ In general, common property familiar with the term "joint property" is the general public who is subject to double or twin custody. Among the natives who followed the patriarchal clan system, there were rarely public property.

¹ Nofri Andy.N and Siti Humairah, "Preservation of Uang Asap Tradition in Melayu Wedding: Maqâsid Shari'ah Perspective," *Shakhsiyah Burhaniyah: Jurnal Penelitian Hukum Islam* 7, no. 1 (January 31, 2022): 51-76, <https://doi.org/10.33752/sbjphi.v7i1.3938>; Soerojo Wignjodipoero, *Pengantar Dan Asas-Asas Hukum Adat, Gunung Agung*, 1995.

Common property is known as gono gini property in social practice in Indonesia.² "Other terms that correspond to the meaning of gono-gini property are, *haeruta sihareukat* (Aceh); *the sound property* (Minangkabau); *the use-kaya* property (Sundanese); *druwe gabro* (Bali); and *taboo goods* (South Kalimantan)."³

In the process, this legal pluralism is inseparable from a number of criticisms, including: (1) legal pluralism is considered not to put pressure on the limitations of legal terms used; (2) legal pluralism is considered to lack consideration of macro-socio-economic structural factors that affect the occurrence of legal centralism and legal pluralism. The development of legal pluralism in the legal change movement emerged through advocacy for indigenous peoples. In this context, legal pluralism is used to defend community lands that are forcibly taken by the state or private actors.

Responding to this criticism, there was a change in the value of the new law that peaked in the 1950s, especially judicial products began to emerge that abolished the obligation of the wife to obtain joint property. These conditions were changed into new values contained in various Supreme Court decisions, one of which was the Decision of the Supreme Court of the Republic of Indonesia No. 51 K/SIP/1956 dated November 7, 1956.⁴ Then there is a development as stated in the Norm contained in the Compilation of Islamic Law Article 97 that if there is a divorce between husband and wife, the property obtained during the marriage is divided in half between the husband and wife regardless of whose name the property is in, but what becomes the benchmark is as long as the property is obtained during the marriage bond other than the inheritance property, inheritance and grants obtained by each party.⁵ The next development occurred a change in deviation from the normative provisions in the law with the division of joint property based on the contribution of each husband and wife in obtaining joint property as stated in the Decision of the Bukittinggi Religious Court which has issued a decision Number 618/Pdt.G/2012/PA.Bkt. dated July 17, 2013 A.D. coinciding with the 8th of Ramadan 1434 H. which basically stipulates that the joint property is divided by the provision of 1/3 (one-third) of the part for the Plaintiff and the other 2/3 (two-thirds) part is the right of the Defendant and punishes the Defendant to hand over 1/3 (one-third) of the part that is the right of the Plaintiff, and 2/3 (two-thirds) of the part is the right of the Defendant with a

² Suherman, "Kedudukan Dan Kewenangan Peradilan Agama," *Al Masalahah Jurnal Hukum Islam Dan Pranata Sosial Islam* 1, no. 7 (2017); Suherman, "Kedudukan Dan Kewenangan Peradilan Agama Di Indonesia," *Al Masalahah Jurnal Hukum Islam Dan Pranata Sosial Islam* 1, no. 7 (2014).

³ Dwi Anindya Harimurti, "Perbandingan Pembagian Harta Bersama Menurut Hukum Positif dan Hukum Islam," *Jurnal Gagasan Hukum* 3, no. 02 (December 29, 2021): 149-71, <https://doi.org/10.31849/jgh.v3i02.8908>; Panal Herbet Limbong, Syawal Amry Siregar, and Muhammad Yasid, "Pengaturan Hukum Dalam Pembagian Harta Bersama Perkawinan Menurut Hukum Perdata Yang Berlaku Saat ini di Indonesia," *Jurnal Retentum* 5, no. 2 (September 24, 2023): 177, <https://doi.org/10.46930/retentum.v5i2.1346>.

⁴ Abdul Basith Junaidy, "Harta Bersama Dalam Hukum Islam Di Indonesia," *Al-Qanun* 17, no. 2 (2014); Junaidy Abdul Basith, "Harta Bersama Dalam Hukum Islam Di Indonesia (Perspektif Sosiologis)," *Al-Qanun* 17, no. 2 (2014).

⁵ Ibnu Elmi As Pelu and Ahmad Dakhoir, "Marital Property within the Marriage Law: A Debate on Legal Position and Actual Applications," *Al-Jami'ah: Journal of Islamic Studies* 59, no. 2 (November 11, 2021): 287-316, <https://doi.org/10.14421/ajis.2021.592.287-316>.

note, if it cannot be divided in kind, it can be done by auction or compensation, on the decision is essentially affirmed by the Padang Religious Court with Case No. 38/Pdt.G/2013/PTA. Pdg on December 17, 2013 and Cassation Decision Number 88 K/Ag/2015 of the Supreme Court dated February 11, 2015.

In the consideration of the Supreme Court with other views and considerations from the norms enshrined in Article 97 of the Compilation of Islamic Law with consideration of the division of joint property based on the contribution of each husband and wife in obtaining joint property as stated in the Decision, he bagged both the first-level decision, the appeal level and the cassation decision.

Then in the Supreme Court Decision Number 159/K/AG/2018 "That because the two children of the Plaintiff and the Defendant are in the care (hadhanah) of the Plaintiff and the two children are still minors who are still in dire need of a proper place to live, while if the common property in the form of a house must be divided in half, by itself the joint property becomes incomplete and very unbeneficial to the interests of the child's life, Therefore, the joint property cannot be divided until the two children are adults. By the legal method: If a joint property lawsuit has the potential to hinder the realization of the best interests of the child, then the lawsuit is declared unacceptable". The new value contained in the jurisprudence rule is that because the child from the marriage is still under the age of adulthood / not yet independent, the division of property with the husband and wife is suspended for the best interests and benefits for the child. Thus, the old concept can also change if it is not in accordance with the development of society, as a consequence the common property is not divided equally, but is adjusted to the situation and conditions as well as changes in society and or the best interests for the benefit of the children from the marriage.

The next development is the Decision of the Aceh Syar'iyah Court Number 99/Pdt.G/2023/MS. Aceh dated October 18, 2023 AD to coincide with the 3rd of Rabi'ul Akhir 1445 Hijri with the amar in principle Stipulating 1 (one) unit of permanent building/house (bricks, not bricks), covering an area of approximately 100 (one hundred) square meters built on the Defendant's inherited land, located in, Banda Aceh City, with the following boundaries: - West with vacant land belonging to the Defendant's family; - East with vacant land belonging to the Defendant's family; - North with vacant land belonging to the Defendant's family; - South side with the wall of the house/building (Sigli people); Is the common property between the Plaintiff and the Defendant, Stipulates that 50% (fifty percent) of the common property of the Plaintiff and the Defendant is the part of the Plaintiff, and the remaining 50% (fifty percent) is part of the Defendant, Punishes the Plaintiff and the Defendant or anyone who controls the object of the common property in dictum number 7 to suspend the division until the child of the Plaintiff and the Defendant as mentioned in article number 3 above until the child is an adult (aged 21 years). year)/independent will only be distributed and if it cannot be carried out voluntarily or in kind, then the distribution is carried out by auction through the State Auction Office, then the result is 50 (fifty) percent handed over to the Plaintiff and the other 50 (fifty) percent is handed over to the Defendant.

That in the decision of the panel of judges of the Aceh Syar'iyah court, from the sagi of the percentage of the division of common property, stipulates the division in accordance with the legal norms contained in the provisions of Article 97 of the Compilation of Slam Law but suspends the distribution of the joint property to the husband and wife until their children reach adulthood or are 21 years old, taking into account that the two children of the Plaintiff and the Defendant are in the care (hadhanah) of the Plaintiff and the two children are still minors who are still urgently need a decent place to live, while if the common property in the form of a house must be divided in two, by itself the joint property becomes incomplete and very unbeneficial for the interests of the child's life, therefore the joint property cannot be divided until the two children are adults. By the legal method: If a joint property lawsuit has the potential to hinder the realization of the best interests of the child, then the lawsuit is declared unacceptable".

In addition, many have researched related to common property, such as the results of research by Aminah Tanjung, the issue of timely distribution of inherited assets has significant implications for communities, with delayed distribution often resulting in more negative than positive outcomes. For this reason, the immediate distribution of inheritance following the death of an heir is generally encouraged. This distribution should occur only after essential costs, including the preparation and burial of the deceased, any outstanding debts, and valid wills, have been settled. This principle is reinforced in Indonesia's Compilation of Islamic Law (KHI), which outlines clear guidelines in Articles 187 and 188 regarding inheritance protocols. Article 187 specifies the process for inheritance distribution, while Article 188 addresses scenarios where family members decide not to share the inheritance (KHI, 1991). These articles support the concept that a swift distribution of assets is in the community's best interest, preventing potential conflicts and ensuring equitable allocation.⁶ Dan juga penelitian oleh Kukuh Pramono Budi, In alignment with these provisions, research conducted by Kukuh Pramono Budi underscores the significance of prioritizing the best interests of the child in legal proceedings, particularly in cases involving joint property or inheritance disputes. Drawing from the Convention on the Rights of the Child, which is referenced in both the KHI and the Supreme Court Circular Letter (SEMA), this principle has become a cornerstone in Indonesian legal frameworks. Budi's study identifies three distinct judicial perspectives on joint property lawsuits involving minors: 1) acceptance of the lawsuit due to the absence of an explicit legal restriction, 2) rejection of the lawsuit until the child reaches adulthood, and 3) acceptance of the lawsuit with postponed division until the child reaches adulthood. This nuanced approach reflects the legal system's attempt to protect minors' rights in inheritance matters while adhering to Islamic law.⁷

In addition, research by Asni Zubair, The need for inheritance law reform has grown in response to evolving social conditions in Indonesia, particularly regarding inclusivity

⁶ Aminah Tanjung and Mariadi Mariadi, "Implications of Postponing the Distribution of Inheritance from an Islamic Legal Perspective," *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 10, no. 2 (December 31, 2023): 233–46, <https://doi.org/10.32505/qadha.v10i2.7200>.

⁷ Kukuh Pramono Budi et al., "Adjudicating Joint Property Dispute in Islamic Jurisprudence: Balancing The Best Interests of The Child With A Focus on Residency," *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 2 (March 7, 2024): 245–66, <https://doi.org/10.18592/sjhp.v23i2.12278>.

across religious lines. Indonesian jurisprudence, particularly through the Supreme Court, has addressed these changes by interpreting inheritance rights more broadly. Article 209 of the KHI traditionally restricts inheritance rights to heirs of the same religion as the deceased. However, recent judicial decisions have expanded these rights through the concept of wasiat wājibah, or mandatory bequest, allowing non-Muslim heirs to receive a portion of the estate. This approach provides a means to bridge religious divides in inheritance matters, albeit with some tension regarding adherence to the quantitative limits set for wasiat wājibah. Critics argue that expanding wasiat wājibah without strict limits can undermine the core principles of Islamic inheritance law, raising questions about the balance between reform and tradition.⁸

Based on the above background and reading the previous research, the study examines and emphasizes more on aspects of the Supreme Court Decision on the Distribution of Common Property and its implications for the renewal of family law in Indonesia, and the Supreme Court Decision or more specifically on the jurisprudence of the Supreme Court. This is very important and interesting to be researched and analyzed, because in making decisions in a case, it is inseparable from the philosophical, sociological, and normative aspects, as well as the dignity and dignity of human beings that underlie the thinking of Supreme Court judges. The *ijtihad* of diverse judges will certainly provide its own insight into efforts to modernize and transform the law in Indonesia.

This research uses a qualitative descriptive method with an empirical juridical approach. This approach is referred to as empirical legal research because it focuses on analyzing the implementation of normative legal provisions directly (in action) in certain legal events in society. Primary data was obtained from Supreme Court decision No 159 K/Ag/2018, No 618/Pdt.G/2012/PA.Bkt, No 38/Pdt.G/2013/PTA.Pdg, No 88K/Ag/2015, No 159/K/AG/2018, No 99/Pdt.G/2023/MS, as well as laws related to the research being discussed. Secondary data is obtained from books, scientific articles and previous research results related to joint property and those that have the same discussion. Data collection techniques using literature study and qualitative data analysis are used to explore certain phenomena and find out the causes.

Joint Property of Marriage in Indonesia

Marriage Law No. 1 of 1974 defines joint property as property obtained during marriage. This means that the formation of joint property in marriage is from the date of the marriage until the marriage is dissolved due to divorce or death.⁹

Common property is one of the many types of property that a person has. In daily life, property has an important meaning for a person because owning property can meet the

⁸ Asni Zubair, Hamzah Latif, and Al Furqon Dono Hariyanto, "The Construction of Inheritance Law Reform in Indonesia: Questioning the Transfer of Properties through Wasiat Wājibah to Non-Muslim Heirs," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (June 27, 2022): 176, <https://doi.org/10.22373/sjhk.v6i1.12628>.

⁹ Undang-undang Perkawinan No. 1 tahun 1974, (Jakarta: Armas Duta Jaya, 1990). 27

needs of life reasonably and obtain a good social status in society.¹⁰ However, the joint property will be property that can no longer be called joint property when there has been a death divorce or divorce which in the Java area is generally called gono-gini property.¹¹

It is explained that gono-gini property in the encyclopedia of Islamic law is the joint property belonging to husband and wife that they obtained during the marriage period. In Indonesia society, each region has a different name to refer to property after the end of marriage, such as in Aceh it is called hareuta seuhareukat, in Minangkabau it is called treasure suarang, in the Sunda area it is called guna kaya or tumpang kaya, in Madura it is called ghuna ghana and there are still many other names of joint property.¹²

The division of common property is also not carried out arbitrarily, but the division of common property has rules regulated in the Marriage Law, and is regulated in the Compilation of Islamic Law, if the division of joint property cannot be resolved peacefully/familially,¹³ then the division of joint property is carried out through a trial process at the Religious Court based on a lawsuit filed by one of the parties, Both the husband and the interi party and make the other party an opponent and be processed in accordance with the provisions of the applicable procedural law in the examination of civil cases related to the settlement of the joint property.¹⁴ In general, the settlement of joint property disputes is guided by the provisions contained in Article 86 of Law Number 7 of 1989 concerning Religious Justice.¹⁵ While related to the portion of the division of common property as a result of divorce, the way of distribution is usually by dividing equally, each (husband and wife) gets 1/2 (half) of the gono gini property. This is in accordance with the provisions in Article 97 of the KHI and in line with the provisions in the Civil Code.¹⁶

¹⁰ Pelu and Dakhoir, "Marital Property within the Marriage Law: A Debate on Legal Position and Actual Applications."

¹¹ Dea Salma Sallom, "Interpretasi Terhadap Syarat Ijab Kabul Ittihad Al-Majlis Dalam Akad Nikah Perspektif Ulama Empat Madzhab," *Hukum Islam* 22, No. 2 (March 14, 2023): 152, <https://doi.org/10.24014/Jhi.V22i2.17428>; Ahmad Nur, "Status Perwalian Janda Pasca Perceraian Perspektif Hukum Islam Dan Perundang-Undangan Di Indonesia," *Al-Bayyinah* 2, No. 1 (June 29, 2018): 109–124, <https://doi.org/10.35673/Al-Bayyinah.V2i1.42>.

¹² Mengulik Ulang et al., "Hukum Dan Moral," *Jurnal Ilmu Hukum* 2, no. 1 (2021); Arrisman, *Hukum Perikatan Perdata Dan Hukum Perikatan Islam Di Indonesia*, 2020.

¹³ Abdul Qodir Zaelani, Syamsul Hilal, and Abdul Hanif, "Joint Property Inheritance Distribution Practiced by Community of Bandar Lampung," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 5, no. 1 (January 12, 2022): 101–114, <https://doi.org/10.30659/jua.v5i1.15561>.

¹⁴ Khoirunnisa Khoirunnisa and Rahmi Hidayati, "The Jurimetri Formulation of Court Decisions in the Division of Joint Property," *SMART: Journal of Sharia, Traditon, and Modernity* 3, no. 1 (July 30, 2023): 28, <https://doi.org/10.24042/smart.v3i1.16978>.

¹⁵ Lawsuits concerning child custody, child support, spousal support, and the joint property of spouses may be initiated concurrently with a divorce action or subsequent to the finalization of the divorce decree.

¹⁶ Ade Irwina Safitri, Zulis Mariastutik, and Muhammad Andri, "Pembagian Harta Gono Gini Menurut Perspektif Hukum Islam," *Justicia Journal* 11, no. 1 (March 21, 2022): 13–23, <https://doi.org/10.32492/jj.v11i1.11102>; Uswatun Hasanah and Chitra Latiffani, "Kajian Pembagian Harta Gono Gini Menurut Kompilasi Hukum Islam," *Journal of Science and Social Research* 1, no. 2 (2018): 137–40, <https://doi.org/10.54314/jssr.v1i2.220>; Anindya Harimurti, "Perbandingan Pembagian Harta Bersama Menurut Hukum Positif dan Hukum Islam."

Furthermore, in the division of joint property before determining its distribution, it must first be separated from the inherited property obtained by the husband and wife before the marriage takes place and the property obtained by the husband and wife as a gift or inheritance. This is because inherited property and property obtained through gifts or inheritance are property under the control of each party and are not objects of common property as long as the parties do not specify otherwise in the marriage agreement¹⁷ as stipulated in Article 87 paragraph (1) of the Compilation of Islamic Law.

That is, it does not matter whether the property obtained by the husband and wife in marriage comes from the wages of the husband or wife, is registered in the name of the husband or wife, and is obtained from the profits developed from the inherited property of the husband or wife. As long as the property is not otherwise specified in the marriage agreement, then the status remains a joint property that will be divided in half equally when the married couple divorces.

Basically, common property arises at the same time or as a result of an engagement in the form of marriage. The mixing of property in marriage is a consequence of the engagement which at the same time also causes legal consequences in the form of certain obligations that must be fulfilled by the binding party.¹⁸

In the household, the dichotomy of work in the domestic and public sectors is often untenable. The development of industrial society also encourages the fragility of the dichotomy between the idea of childcare and breadwinners. Economic urgency also often limits the choice of husband and wife not to get involved in production work.

KHI imposes domestic responsibilities on the wife. While the husband bears the maintenance and household expenses, including the cost of children's education. Such an arrangement marks the recognition that contributions to the domestic sector are as valuable as the public sector. The implication of the balancing obligation imposed on the married couple thus affects the amount of the division of the joint property when the two separate: "The widow or divorced widower is each entitled to one-half of the joint property, as long as it is not otherwise specified in the marriage agreement." This reads Article 97 of the KHI. Indeed, there is no explicit regulation that explains the quality of the role of husband and wife affects the division of common property.¹⁹

However, the meaning of the above can be found in several decisions that also consider the factor of fulfilling the obligations of husband and wife to the application of the a

¹⁷ Muhammad Hafis, Jumni Nelli, and Nia Elmiati, "Akibat Hukum Terhadap Perubahan Perjanjian Perkawinan Dalam Peraturan Menteri Agama Nomor 19 Tahun 2018," *Hukum Islam* 22, no. 2 (January 5, 2023): 1, <https://doi.org/10.24014/jhi.v22i2.19436>.

¹⁸ Budi et al., "Adjudicating Joint Property Dispute in Islamic Jurisprudence: Balancing The Best Interests of The Child With A Focus on Residency"; Zaelani, Hilal, and Hanif, "Joint Property Inheritance Distribution Practiced by Community of Bandar Lampung."

¹⁹ Wulan Dayu, "Perempuan Dalam Pusaran Perkawinan; Antara Hak dan Kewajiban," *Journal of Gender and Social Inclusion in Muslim Societies* 2, no. 2 (December 31, 2021): 84, <https://doi.org/10.30829/jgsims.v2i2.10047>; Abdul Basit Misbachul Fitri, "Hak Dan Kewajiban Suami Isteri Dalam Islam dan Hukum Perkawinan di Indonesia," *Usratuna: Jurnal Hukum Keluarga Islam* 3, no. 1 (December 31, 2019): 49–67, <https://doi.org/10.29062/usratuna.v3i1.154>; Aep and Saepulloh Darusmanwiati, "Hak Dan Kewajiban Suami Isteri," *Jurnal Qolamuna* 1, no. 1 (2015).

quo article. Where, the husband-wife partnership relationship that reflects the sound of Articles 80 (containing the husband's obligations) and 83 (containing the wife's obligations) will be rewarded with Article 97 which divides an equal portion of the joint property.

A divorce will bring various legal consequences, one of which is related to joint property in marriage. Law No. 1 of 1974 concerning Marriage regulates joint property, including: Article 35, 1) Declaring property obtained during marriage to be joint property. 2) The inherited property of each husband and wife and the property obtained by each as a gift or inheritance is under the control of each recipient, the parties do not determine otherwise.

Article 36, 1) Regarding joint property, husband and wife can act with the consent of both parties. 2) Regarding each other's property, husband and wife have the full right to perform legal acts regarding joint property. Article 37, 1) If the marriage is broken up due to divorce, the joint property is regulated according to their respective laws. In the explanation of Article 37 paragraph (1), it is emphasized that the respective laws are religious law, customary law and other laws related to the division of common property.²⁰

Joint property exists at the time of marriage while inherited property is obtained before marriage, but in reality in many families in Indonesia do not record the common property they own. In a marriage that is still new, the separation of inherited property and common property is still visible, but at the age of old marriage, it is difficult to explain in detail one by one.²¹

The most common thing that happens in Indonesia, which is the majority of Muslims today, is that after a divorce, regarding the position or division of common property between the divorced husband and wife, many people choose the Religious Court to resolve the dispute over the division of common property. The division of joint property according to the provisions of Article 37 of Law Number 1 of 1974 concerning Marriage is not expressly determined how much share of each divorced husband or wife, either divorced alive or divorced. In addition to Law Number 1 of 1974 concerning Marriage, in Indonesia there is also a Compilation of Islamic Law, which is related to the division of common property as stipulated in Articles 96 and 97 of the Compilation of Islamic Law, which states that the division of common property, both living and divorced, each gets half of the joint property.

Article 96 of the Compilation of Islamic Law reads; 1) In the event of a divorce, half of the joint property becomes the right of the spouse who lives longer. 2) The division of common property for a husband or wife whose wife or husband is missing must be

²⁰ Halil Khusairi and Ican Mandala, "Perkawinan Adat: Analisis Hukum dan Sistem Perkawinan di Kerinci Dalam Perspektif Hukum Islam," *Istinbath* 21, no. 2 (January 28, 2023): 227–42, <https://doi.org/10.20414/ijhi.v21i2.565>; Muhammad Habibi Miftakhul Marwa, "Model Penyelesaian Perselisihan Perkawinan Perspektif Hukum Adat dan Hukum Islam," *JURNAL USM LAW REVIEW* 4, no. 2 (November 27, 2021): 777, <https://doi.org/10.26623/julr.v4i2.4059>; Andy.N and Humairah, "Preservation of Uang Asap Tradition in Melayu Wedding: Maqāsid Shari'ah Perspective."

²¹ Khusairi And Mandala, "Perkawinan Adat: Analisis Hukum dan Sistem Perkawinan di Kerinci Dalam Perspektif Hukum Islam"; Marwa, "Model Penyelesaian Perselisihan Perkawinan Perspektif Hukum Adat dan Hukum Islam"; Andy.N And Humairah, "Preservation of Uang Asap Tradition in Melayu Wedding: Maqāsid Shari'ah Perspective."

determined until there is certainty of his actual death or legal death on the basis of a decision of the Religious Court.

Meanwhile, Article 97 of the Compilation of Islamic Law states: Widows or widowers who are divorced are each entitled to one-half of the common property as long as it is not otherwise specified in the marriage agreement.²² From the description above, it can be understood that the division of joint property because divorce can be done between the ex-wife and the husband with a certain division. In joint property during the marriage bond, it is possible that there is property belonging to each husband and wife. These can be in the form of immovable objects, movable objects and securities. While the intangible can be in the form of rights or obligations.

Implications of the Decision on Family Law Practice

Marital joint property in Indonesia is regulated in detail in Law No. 1 of 1974, Articles 35, 36, and 37. In article 35 (1) it is explained, property obtained during marriage becomes joint property. Article 36 regulates the status of property acquired by each husband and wife. In article 37, it is explained that if the marriage is broken up due to divorce, then the joint property is regulated according to their respective laws.²³ The division of common property in marriage (*gono-gini*) needs to be based on the aspect of justice for all parties related to the justice in question includes the understanding that the division does not discriminate against one of the parties. The interests of each party need to be accommodated as long as they are in accordance with the actual reality.²⁴

Divorce between husband and wife certainly has an impact, both on the division of joint property and in child care. In the Compilation of Islamic Law, it is emphasized that in the issue of child custody, the obligation of material and non-material care is inseparable. Parents must carry out duties together even though they have separated through divorce. Children who have not yet *mumayyiz* normatively determined to remain in the care of their mothers, while financing is the responsibility of their fathers, and when they are *mumayyiz* they can choose between their father or mother to act as their caregivers.²⁵

²² Inpres Nomor 1 Tahun 1991 tentang Penyebarluasan Kompilasi Hukum Islam, Hukum Perkawinan, Hukum Pewarisan Hukum Perwakafan, (Yogyakarta: Pustaka Yustisia, 2005). 36

²³ Hamdan Arief Hanif Hamdan and Yoni Irma Yunita, "Derajat Mahar Dalam Proses Perkawinan Tinjauan Fikih Munakahat," *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)* 5, no. 1 (May 5, 2023): 19-32, <https://doi.org/10.20885/mawarid.vol5.iss1.art2>; Siti Maryam et al., "Pembelajaran Fikih Munakahat Dalam Mewujudkan Keluarga Samawa Pada Komunitas Muslimat NU Dusun Gondang Barat Gondang Pace Nganjuk," *DHARMA: Jurnal Pengabdian Masyarakat* 3, no. ``1 (2023).

²⁴ Felicitas Marcelina Waha, "Penyelesaian Sengketa Atas Harta Perkawinan Setelah Bercerai," *Lex Et Societatis* 1, no. 1 (March 31, 2013), <https://doi.org/10.35796/les.v1i1.1310>.

²⁵ Hotnidah Nasution, "Implementation of The Principle of Ultra Petitem Partium in Deciding Children Livelihood in Divorce Lawsuit in Religious Courts," *Ahkam : Jurnal Ilmu Syariah* 18, no. 1 (January 12, 2018), <https://doi.org/10.15408/ajis.v18i1.7488>; Syifa Fachrunisa, Rezki Suci Qamaria, and Nurul Hanani, "Judges' Perspectives on the Determination of the Amount of Mut'ah, Childbirth Costs, and Child Sustenance in Divorce Cases (The Study on the Court's Decision Number 808/Pdt.G/2021/Pa. Kab. Kdr)," *El-Ushrah: Jurnal Hukum Keluarga* 6, no. 1 (September 26, 2023): 54, <https://doi.org/10.22373/ujhk.v6i1.15537>; Adi Nur Rohman, - Sugeng, and Hesti Widyaningrum, "Instrumentation of Ex-Officio Rights of Religious Courts Judge Related to

Divorce between married couples has a great impact on their children, especially their minor children who are in dire need of protection, not only protection from food, clothing, education but no less important protection to get a place to live, while in the provisions of post-divorce laws and regulations as former married couples are equally entitled to the distribution of common property obtained during the marriage bond, while the house of residence that is being occupied by the person who is designated as the holder of the right of custody does not have a place of residence other than the property that is *nota bene* as joint property that each of them wants to get his right to get the division of the joint property.

Court decisions are a process of thinking of *qâdî* (judges), both single judges and panel judges. In the judge's decision, the judge makes legal discoveries by exerting all his abilities and thoughts about the law in the case he is examining. The process of discovering this law in the study of *ushul fiqh* is called *ijtihad*. In the process of legal discovery, the judge uses the method of thinking by interpreting the normative provisions that lead to the judge's decision by harmonizing the law with the demands of the times or the situation and conditions of society.²⁶

Ijtihad of judges is indispensable to bridge the theory of formal justice with substantive justice. In an effort to achieve the value of justice, judges are free to make interpretations, legal discoveries, even according to progressive trends, judges are allowed to make legal creations if reality has required it.²⁷ Or at least provide a reinterpretation between formal truth and material truth so that it becomes a responsive and progressive truth. Thus, the discovery of law by judges or *ijtihad* of judges is very important in contributing to the development, development and renewal of national law.

The development of society has a great influence on the formation and change of legal products in Indonesia, both legislative and judicial products, namely legal products in the form of court decisions (*jurisprudence*). The acceleration of legal development through

Fulfilling Children and Wife's Rights Due to Divorce," *Jurnal Hukum & Pembangunan* 50, no. 2 (September 28, 2020): 361, <https://doi.org/10.21143/jhp.vol50.no2.2581>.

²⁶ Maroni Et Al., "Rekonstruksi Sistem Peradilan Pidana Korupsi Dalam Rangka Menunjang Pembangunan Nasional (Studi di Pengadilan Tindak Pidana Korupsi Pada Pengadilan Negeri Kelas IA Tanjung Karang)," *Jurnal Hukum & Pembangunan* 50, No. 4 (May 31, 2021): 937, <https://doi.org/10.21143/jhp.vol50.no4.2864>; Dauglas Fernandho, "Reformulasi Pembuktian Terbalik Dalam Memaksimalkan Pemeriksaan Perkara Money Laundering Dengan Predicate Crime Tindak Pidana Korupsi," *Litigasi* 19, No. 2 (January 1, 2020), <https://doi.org/10.23969/Litigasi.V19i2.922>; Setiyono Setiyono Et Al., "Rekonstruksi Kebijakan Terhadap Penetapan Saksi Pelaku Yang Bekerjasama Pada Perkara Tindak Pidana Korupsi Ditinjau Dari Aspek Kepastian Hukum Dan Aspek Kemanfaatan Dalam Sistem Peradilan Pidana Terpadu," *Jurnal De Lege Ferenda Trisakti*, September 27, 2023, 87-114, <https://doi.org/10.25105/ferenda.v1i2.18280>; Wisjnu Wardhana, Edi Yunara, and Mahmud Mulyadi, "Pengembalian Barang Bukti Kepada Yang Berhak Dalam Tindak Pidana Korupsi," *Locus Journal of Academic Literature Review* 2, no. 9 (2023); Irianto Tiranda, Fenty Puluhulawa, and Johan Jasin, "Konsep Ideal Penanganan Perkara Tindak Pidana Korupsi Pungutan Liar Berdasarkan Asas Peradilan," *Jambura Law Review* 1, no. 2 (July 29, 2019): 120-143, <https://doi.org/10.33756/jalrev.v1i2.2119>.

²⁷ Darmokoo Yuti Witanto & Arya Putra Negara Kutawaringin, *Diskresi Hakim: Sebuah Instrumen Menegakkan Keadilan Substantif dalam Perkara-Perkara Pidana*, (Bandung: Alfabeta, 2013). 26

legislation is more dynamic than legal products through litigation (judicial process).²⁸ Legal development through the legislature in the form of laws and regulations is an effort to form laws as *a tool of social change*, while legal development carried out by the courts is an effort to explore legal awareness and a sense of justice in the community in the form of decisions.

Several methods of legal discovery in the Islamic perspective are known as the method of legal discovery *al-bayan*, which encompasses the meaning of *al-tabayyun* and *al-tabayin*, which is a process of seeking clarity, providing explanations, efforts to understand (*al-fahm*), communication of understanding, obtaining meaning, and conveying meaning.³⁰ In its development, this method is also termed *hermeneutic* which is interpreted by interpreting, interpreting, or translating.

Progressive legal discovery is based on the values of law, truth, justice, ethics and morality. Progressive legal discoveries are able to give birth to new values in people's lives in accordance with the development of society, science and technology. So that judges' decisions that consider progressiveness can be accepted by the community, because they prioritize the principles of justice, truth, ethics and morality.³¹

Judges make legal discoveries to fill legal voids, so that in the end they can be used as a source of legal reform or the development of legal science. How should a Judge think in the context of legal discovery in order to produce a quality decision in resolving every dispute faced. The mainstream approach of legal science (doctrinal legal research) is not sufficient to provide sources of solving legal problems.

Judges in deciding disputes must not only read the formal texts of the Law normatively but must be able to reflect on the things behind the written provisions philosophically and the sense of justice and truth of the community. Although it is not easy for the Judge to make a decision that ideally must meet philosophical elements such as Justice (philosophical), legal certainty (juridical) and usefulness (sociological) at the same time. The approach to the philosophy of law is not only limited to the problem of legal objectives but also every fundamental problem that arises in society and requires a solution.³² The approach to legal sociology is related to studies that highlight the influence of society on the law and the extent to which the symptoms that exist in society can affect the law.³³

²⁸ Herman fikri, "Penerapan Undang-Undang No-5 Tahun 2011 Tentang Akuntan Publik Dalam kaitannya Terhadap Penegakkan Hukum Kejahatan Akuntansi," *jurnal ilmu hukum* 1, no. 2 (2015).

²⁹ Herman fikri.

³⁰ Herman Fikri.

³¹ Wahyu, "Penemuan Hukum Yang Berkarakter Hukum Progresif," *Jurnal Wasaka Hukum* 9, no. 1 (2021); Hervin Yoki Pradikta et al., "The Paradigm of Judge's Thoughts in The Settlement of Islamic Inheritance Cases And Their Implications on Family Law Renewal in Indonesia (Study on Supreme Court Decision Number 721 K/Ag/2015, Supreme Court Decision Number 218 K/Ag/2016, and Supreme Court," *SMART: Journal of Sharia, Traditon, and Modernity* 1, no. 2 (December 31, 2021): 161, <https://doi.org/10.24042/smart.v1i2.11037>.

³² Herman Fikri, "Penerapan Undang-Undang No-5 Tahun 2011 Tentang Akuntan Publik Dalam Kaitannya Terhadap Penegakkan Hukum Kejahatan Akuntansi."

³³ Herman Fikri.

In the decision departing from the Religious Court, at the cassation level, the Supreme Court's Decision can be in the form of the following:

1. Granting the appeal by annulling the decision of the Religious High Court, and adjudicating it on its own;
2. Reject the appeal from the cassation applicant because the decision of the High Court of Religion has been considered correct and correct;
3. Reject the appeal by improving the consideration or judgment of the Religious High Court;
4. Declaring that the appeal is inadmissible;
5. Declare the cassation application to be dismissed, and;
6. Cassation application withdrawn.³⁴

In principle, Indonesia does not adhere to the principle of "the binding force of precedent",³⁵ as embraced by the Anglo-Saxon countries, so that the authority of the panel of judges became so great in deciding cases. As a result, judges' decisions in similar cases tend to be disparities, which are characterized by substantive differences and between court decisions at the *judex facti* level and each other even though they refer to similar laws and regulations.

Judges and Legal Discoveries: Towards Reforming Islamic Family Law in Indonesia

In the latest development, many judges refer to the decisions of previous judges or the decisions of higher judges. This does not mean that the principle has changed to *the binding force of precedent*, but the decision is followed because the judge believes it to be followed.³⁶ Although it is known that Indonesia is a country that adheres to the civil law system, and on the other hand Indonesia also recognizes the existence of customary law or customary law. The pluralism of this legal system does not necessarily qualify Indonesia as an adherent of the principle of precedent in its judicial system. Because the principle of justice in Indonesia is that judges are not bound by previous judges' decisions regarding similar cases.

19th-century legal thought tended to enact law as quantitative empirical data and view it as logic (*hanterm van logische figuren*). Law enforcement is nothing but the application of the law by prioritizing the application of articles. The judge cannot play his creativity at all in handling the disputes he faces and resolves. The judge cannot do anything in resolving the dispute if no reference is found in the law, so the dispute is simply ignored.

These ideas were opposed by the school of realism, Paul Scholten,³⁷ It is stated that at this time it is necessary to be able to distinguish between the application of law (*rechtstoepassing*) and the discovery of law (*rechtswinding*). The law does exist in the law but it must still be found. Reading the law does not automatically read the law, because according to him, the law is not identical to the law.

³⁴ Herman Fikri.

³⁵ Herman Fikri.

³⁶ Herman Fikri.

³⁷ Herman Fikri.

The duties and functions of judges are regulated in the Judicial Power Law, which emphasizes that the main duties of judges are to examine, adjudicate and decide cases.³⁸ The judge is in charge of connecting the legal rules that are still abstract in the law with the concrete facts of the case being examined. The existence of the authority and responsibility of the judge has the consequence that judges are required to have a high responsibility in carrying out the task of upholding the law and justice.

According to Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, it is affirmed that "Judges and constitutional judges are obliged to explore, follow and understand the values of law and the sense of justice that live in society".³⁹ Judges and Supreme Court Justices have an obligation to carry out these duties, both in the form of legal inventions,⁴⁰ in the form of law creation, as well as in the form of assessing the specificity and feasibility of applying an existing law and regulation to legal events that occur in society. The mindset of judges who are still shackled by formal legality will result in law enforcement that tends to be unfair, which will hurt the community's sense of justice.⁴¹ Judges are not just "bouche de la loi" (mouthpieces of laws), but also give meaning or interpret a law through legal discovery activities (*rechtsvinding*) with relevant and correct methods, and even create new laws (*rechtscheeping*) through the decisions (judge made laws) that they produce.⁴² These decisions can ultimately be used as a reference for legal reform in Indonesia.

In enforcing the law, there are three elements that must be considered, namely legal certainty (*Rechtssicherheit*), usefulness (*Zweckmassingheit*), and justice (*Gerechtigkeit*).⁴³ According to Gustav Radbruch, these three elements are said to be the pillars of the legal mind (*idee des Rechts*). This legal mind will guide human beings in a legal life. These three basic values must exist in a balanced manner. But sometimes these three basic values are not in a harmonious relationship.

The principle of legal certainty does not contain absolute instructions that are only operated by the judge, but it contains a kind of freedom that is not small. The decline and damage in the hunt for justice through modern law is due to a game of procedures that raises the question of "whether the court seeks justice or victory". The judicial process in a country that is very *proceduralized* (*heavly proceduralized*) carries out the procedure well, and the procedure is placed above all else, even above the handle of substance (*accuracy of substance*). A system like this provokes satire of trials without truth.⁴⁴

³⁸ Herman Fikri.

³⁹ Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman

⁴⁰ Karter Jimmy Rotikan et al., *Bunga Rampai Pengantar Ilmu Hukum*, Eureka Media Aksara, 2022; Dkk Xavier Nugraha, *Iuris Muda : Bunga Rampai Ilmu Hukum*, CV Penerbit Harfeey, 2019.

⁴¹ Rotikan et al., *Bunga Rampai Pengantar Ilmu Hukum*; Xavier Nugraha, *Iuris Muda : Bunga Rampai Ilmu Hukum*.

⁴² Rotikan et al., *Bunga Rampai Pengantar Ilmu Hukum*; Xavier Nugraha, *Iuris Muda : Bunga Rampai Ilmu Hukum*.

⁴³ Rotikan et al., *Bunga Rampai Pengantar Ilmu Hukum*; Xavier Nugraha, *Iuris Muda : Bunga Rampai Ilmu Hukum*.

⁴⁴ Rotikan et al., *Bunga Rampai Pengantar Ilmu Hukum*; Xavier Nugraha, *Iuris Muda : Bunga Rampai Ilmu Hukum*.

The principle of the binding *force of precedent* is generally not embraced by judges in Indonesia as embraced by Anglo Saxon countries. Therefore, the authority of the panel of judges became so great in deciding the case. As a result, there are many disparities in the decisions of similar cases. This is characterized by a substantial sharp difference between legal products in the form of court decisions from one court to another. The enforcement of the right and fair law is not solely determined by the will of the judge but also the will and ability of the community to strive for correct and fair legal treatment. In other words, fair law enforcement is also determined by public awareness and participation, not solely the desire of law enforcement actors.

Judges must have high creativity and progressive thinking so that law enforcement is in accordance with the values built in society. Progressive judges according to Satjipto Rahardjo, where progressive courts have the principle that, "the law is for the people, not the other way around". If the people are the law, whatever the people think and feel will be dismissed because what is read is the words of the law. Progressive-minded judges who make themselves part of society, will always ask what role can I play in this reform period? What my nation wants with reform.⁴⁵

To make legal discoveries, judges use several methods, including the interpretation method or also called the juridical method and the legal construction method. This teaching on interpretation or interpretation has existed since the 19th century and was heavily influenced by Von Savigny. He gave a limit on interpretation as a reconstruction of the mind concluded in the law. Interpretation methods have since been divided into four types, namely: grammatical interpretation, systematic interpretation, historical and teleological.⁴⁶

Interpretation or interpretation of law is one of the most important factors to make the law dynamic and keep up with the times. But history records that there is an overwhelming battle between legal experts over whether or not such an interpretation or interpretation of the law is necessary. Whether the judge has the right to find or make laws and perform legal interpretations. Because to make laws is the duty of parliament, not the duty of judges.

The creative and innovative interpretation is a critique of the positivistic method of legal discovery that developed in the 19th century, influenced by the Triassic school of *Politica Montesquieu*. *Trias politica* provides a clear separation between the executive, legislative and judicial. The separation sets a firm limit for law enforcement so that judges should never enter the realm of making legal regulations. If the law contains defects or deficiencies, it must be returned to the legislature. It is not the judge's duty to reduce legal

⁴⁵ Wahyu, "Penemuan Hukum Yang Berkarakter Hukum Progresif"; Mawardi Mawardi, "Al-'Uqud Al-Murakkabah Sebagai Progresifitas Hukum Ekonomi Syariah Dalam Pengembangan Akad-Akad Perbankan Syariah di Indonesia," *Hukum Islam* 18, no. 2 (August 1, 2019): 69, <https://doi.org/10.24014/hi.v18i2.6693>; Ulang et al., "Hukum Dan Moral."

⁴⁶ Wahyu, "Penemuan Hukum Yang Berkarakter Hukum Progresif"; Mawardi, "Al-'Uqud Al-Murakkabah Sebagai Progresifitas Hukum Ekonomi Syariah Dalam Pengembangan Akad-Akad Perbankan Syariah di Indonesia"; Ulang et al., "Hukum Dan Moral."

defects and vacancies, so there is no need for judges to interpret the law or even legal discoveries.⁴⁷

The above school received criticism from adherents of the late 19th century school of realism, which was a strong school of thought in the United States. It is this trend that lowers the power of the laws produced by the legislature. This school is of the view that there is no one center, but the sources of the law are spread across various sources. Since power is no longer monopolized by the legislature, judges emerge as lawmakers (*Judge Made Law*).

The rule of law cannot be relied upon to answer such a complex world of life because the rule of law is not the axis of a weighty decision. After all, the real truth lies not in the law, but in the reality of life. This is the starting point of the theory of judicial freedom carried out by Oliver Holmes and Jerome Frank (an exponent of American legal realism).⁴⁸

Based on the above description, it can be explained that the results of legal findings in judges' decisions always consider the principles of justice and benefit, without overriding the legal principles contained in laws and regulations. In the end, the judge's decision can serve as a source of legal reform in Indonesia and become a valuable study material in the legal discipline. Thus, even though Indonesia adheres to a written legal system, the doctrine of precedent or *stare decisis* is still considered by judges in efforts to find a law. Legal reform through laws and regulations aims to realize the unification of law in Indonesia. These laws and regulations are binding for all members of the community as long as they are still valid and have not been replaced by new regulations.

Conclusion

The results of the study concluded that the method of legal discovery used by Supreme Court judges involves legal interpretation methods, especially systematic and sociological interpretation. Systematic interpretation is carried out by linking laws and regulations with other legal regulations and considering various factors and backgrounds in disputes over the division of common property. Sociological or teleological interpretation is used to adapt the law to current social conditions that are not always in accordance with existing laws. In this case, the judge postponed the distribution of joint property until the children of the disputing parties reached the age of *mumayyiz*, thus showing concern for the aspect of substantive justice. Systematic and sociological legal interpretations by judges show that in the settlement of joint property disputes after divorce, especially those involving minors, judges must consider the social realities that live in society to actualize justice. This

⁴⁷ Yuliani Tarais and Hartini Hartini, "Qualification of Child Status from Unregistered Polygamous Marriage without Marriage Validation (Study of Religious Court Decisions from 2019-2022)," *Pandecta Research Law Journal* 18, no. 1 (June 23, 2023): 112-22, <https://doi.org/10.15294/pandecta.v18i1.45534>; Pradikta et al., "The Paradigm of Judge's Thoughts in the Settlement of Islamic Inheritance Cases and Their Implications on Family Law Renewal in Indonesia (Study on Supreme Court Decision Number 721 K/Ag/2015, Supreme Court Decision Number 218 K/Ag/2016, and Supreme Court."

⁴⁸ L Bernard et al., *Teori Hukum: Strategi Tertib Manusia Lintas Ruang Dan Generasi*, Genta Publishing, 2010; Yessy Meryantika Sari, "Legal Protection for Customer Segregated Account Owner from Loss Due to the Bankruptcy of Futures Brokerage Firm," *Jurnal Dinamika Hukum* 16, no. 2 (May 10, 2016), <https://doi.org/10.20884/1.jdh.2016.16.2.512>.

emphasizes the role of judges not only as law enforcers, but also as guardians of the interests of the community. This study concludes that legal discovery by judges through interpretation based on a systematic and sociological approach can realize concrete justice in society, especially in divorce cases involving children.

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