

## **A Maqasid Shariah Review of the Contra Legem Judge's Decision in the Application of Article 97 of the Compilation of Islamic Law**

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### **Abstract**

*The dynamics of the application of Article 97 of the Compilation of Islamic Law in the distribution of joint property after divorce shows the phenomenon of contra legem carried out by judges to achieve substantive justice. This study analyzes the philosophical construction of Article 97 of the Compilation of Islamic Law and the judge's decision that deviates from the provisions of the 50:50 division through the perspective of Maqasid Shariah. The research method uses normative juridical with a qualitative approach, analyzing the Supreme Court Decision Number 266K/AG/2010 and the Decision of the Jakarta High Court of Religion Number 126/Pdt.G/2013/PTA. JK as primary data. The results showed that judges applied distributive justice by taking into account the factual contributions of each party, resulting in a proportional division of 75:25 and 67:33 that deviated from the normative provisions. The findings reveal that the approach of Maqasid Syariah through the principles of *hifdz al-mal* and *hifdz al-nafs* provides theological legitimacy for deviations for the sake of substantive justice. The research concludes the need for a reformulation of Article 97 of the KHI by integrating the principle of proportionality of contribution to create a legal framework that is more adaptive to contemporary social realities without sacrificing legal certainty.*

**Keywords: Justice; Common Property; Maqasid Shariah; Islamic Family Law**

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## **INTRODUCTION**

Marriage is a sacred bond that is expected to create a prosperous and harmonious family. However, reality shows that not all households are able to maintain the integrity of the relationship, so divorce is the last resort when conflicts cannot be resolved. The consequences of divorce not only have an impact on emotional and social aspects, but also cause complex legal problems, especially related to the division of joint property. The problem of joint property after divorce is often a source of prolonged disputes between ex-husband and wife. This is due to differences in perceptions regarding the rights and obligations of each party towards the assets acquired during the marriage period. When a divorce lawsuit is coupled with a joint property dispute, the legal settlement process tends to take longer and more complex due to fundamental differences of opinion regarding the proportion of the division that is considered fair. This condition not only harms both parties in terms of time and cost, but can also worsen an already tenuous relationship, so it is recommended that a lawsuit regarding joint property be filed separately from a divorce lawsuit to ensure efficiency and focus in resolving the case (Jamil & Nur, 2022).

From the perspective of Islamic law, the arrangement of common property is not found explicitly in the Qur'an or the Hadith. The absence of a firm statement on this concept is also not listed in the classical fiqh literature, thus causing differences of opinion among scholars. Some scholars argue that Islam does not recognize the concept of shared property because there is no clear evidence governing it, while others argue that it is impossible for Islamic law not to regulate this important aspect of domestic life, given that Islam regulates various details of human life comprehensively. Responding to this legal vacuum, Indonesian scholars compiled the Compilation of Islamic Law (KHI) as a legal instrument that regulates various aspects of Muslim life, including the issue of common property. Article 97 of the KHI expressly states: "A widow

or a divorced widower shall each receive one half of the joint property, unless otherwise stipulated in the marriage agreement." This provision provides a simple and predictable distribution formula, which is 50:50 (Afrizal & Kodri, 2022).

However, the implementation of Article 97 of the KHI in judicial practice shows an interesting phenomenon. The Religious Court as a judicial institution that has the authority to adjudicate Islamic civil cases, especially in the field of marriage and property acquired during the marriage, often does not apply this provision rigidly. As a country that adheres to the rule of law, all decisions and actions of state administrators must be based on applicable laws. Legal certainty, as stated by Gustav Radbruch, is a fundamental principle that states that the law must provide clarity and certainty in its enforcement so that the public can understand and follow it well. This principle emphasizes the importance of legal predictability, so that every individual can know with certainty the legal consequences of an act or deed. Legal certainty also serves to prevent uncertainty or abuse of power in the judicial process. On the other hand, law must also reflect substantive justice, as the concept of justice as fairness put forward by John Rawls, which emphasizes the equal distribution of rights and obligations by taking into account the concrete conditions of each individual (Andayani, 2022).

In the context of the application of Article 97 of the KHI, there is a phenomenon of disparity in decisions that shows that judges often do not apply the provision of 50:50 division absolutely. Several court decisions show deviations from this formula, such as in Decision No. 266K/AG/2010 which divides joint property in a proportion of 3/4 for the wife and 1/4 for the husband. Likewise Decision Number 126/Pdt.G/2013/PTA.Jk stipulates a division of 2/3 for women and 1/3 for men. These deviations show that in practice, judges prioritize the principle of substantive justice by applying the Maqasid Shariah approach that considers the ratio legis of each case. This indicates that the judge is not only fixated on the normative aspect, but also considers material justice based on the roles and factual conditions of each party during the marriage period (Suhandi, 2023).

The diversity of these rulings raises fundamental questions about the effectiveness and relevance of Article 97 of the KHI in realizing true justice. The consequences of this disparity in judgments are very substantial in the context of civil law and family law, as they create legal uncertainty that is contrary to the basic principles of the Indonesian legal system. Inconsistency in the application of legal norms can reduce public trust in the justice system and cause injustice for justice seekers.

Joint property disputes are sensitive issues that require proper and fair legal handling. Therefore, an in-depth analysis of Article 97 of the KHI with the Maqasid Shariah approach is needed. The maqashid sharia approach offers an alternative solution that allows Islamic law to remain relevant in the Indonesian context without losing its fundamental characteristics. In order to ensure novelty in this article, several similar studies will be described. Previous research conducted by Efizal A. concluded that fairness in resolving joint property disputes does not always have to refer to the distribution of the same percentage. In some decisions, judges tend to deviate from the provisions of Article 97 of the KHI by considering the aspects of contribution and the factual conditions of the parties. Similarly, Rita Elviyanti's research analyzed the Bengkulu PA Decision Number 642/Pdt.G/2020/PA. Bn shows that although the division is in accordance with Article 97 of the KHI, it does not reflect true justice because it does not consider the role and contribution of each party during the marriage period.

In the context of contemporary Islamic law epistemology, the methodological construction based on sharia maqashid has become a fundamental paradigm in the reform of Islamic family law. Research (Faishal Nur & Effendi, 2023) identifies the urgency of the dynamization of Islamic law through a dialectic between text and reality to achieve substantive benefits, which indicates the relevance of the maqashid approach in the contextualization of classical legal norms. In line with this perspective, (Rohimah & Jamilah, 2024). In its analysis of

the implementation of the *contra legem* principle in the distribution of joint property after divorce at the Malang Regency Religious Court, it shows that the application of distributive justice by considering the legal facts of the trial results in a 70:30 proportional division which is actually more accommodating to the needs of the parties. These empirical findings confirm that the rigidity of the application of Article 97 of the KHI has the potential to create substantive injustices that are contrary to the essential purpose of sharia. (C. Tohari et al., 2022) further emphasizing the need for the reformulation of Indonesian Islamic law through the integration of legal texts with *al-ushul al-khamsah* and *maqashid al-syariah al-ammah* as an epistemological construction that is able to overcome philosophical confusion in the application of contemporary Islamic law.

The methodological dimension of *ijtihad* based on sharia *maqashid* as constructed by (Murtadlo, 2021) In his analysis of the Counter Legal Draft of the Compilation of Islamic Law, it shows that the progressive formulation of Islamic family law does not contradict the concept of Jasser Auda's sharia *maqashid*, as long as the legal *istinbath* process is carried out procedurally, systematically, and involves competent authorities. This perspective is reinforced by the findings of I. (I. Tohari & Kholish, 2020) which affirms that *ijtihad* based on sharia *maqashid* serves as a methodological conceptual foothold in the reform of Indonesian Islamic family law, which allows for legal formulation that is responsive to social dynamics without losing the normative identity of sharia. The convergence of the findings of the study indicates that the sharia *maqashid* approach offers a more comprehensive epistemological framework in analyzing the disparity of judges' decisions on Article 97 of the Criminal Code, where the principle of *contra legem* can be legitimized as a manifestation of substantive justice that is in line with the essential objectives of sharia.

Although previous studies have identified the importance of contextualization in the distribution of common property, no one has comprehensively explored the philosophical construction of the essence of the formulation of Article 97 of the KHI in the approach of *maqashid sharia* and the *contra legem* analysis carried out by judges on article 97 KHI when viewed from the perspective of *maqashid sharia* can produce a more proportionate verdict. Justice in law refers not only to formal equality, but also to the division of rights and obligations that take into account the concrete conditions of the parties to the dispute (Nurhikmah, 2024). Based on the description above, this study aims to explore the essence of the philosophical construction of Article 97 of the KHI and analyze the counter *legem* of the judge's decision in the application of Article 97 of the Compilation of Islamic Law with the approach of *Maqasid Syariah* which is associated with the theory of justice. This research is expected to make a theoretical contribution in enriching academic studies in the field of family law, especially on the application of *Sharia Maqasid* in religious courts, as well as providing practical benefits for regulators, the community, and judges in realizing a fairer and more equitable system of sharing common property. Thus, this study seeks to answer two main problems: the philosophical construction of Article 97 of the KHI and how the application of the article is reviewed from the theory of justice associated with *Maqashid Sharia*. Through a comparative analysis of court decisions as empirical evidence, it is hoped that a pattern of law application can be found that is more consistent and able to provide legal certainty while fulfilling a sense of justice for the community.

## RESEARCH METHODS

This research uses the normative juridical method as stated by Soerjono Soekanto and Sri Mamudji, which focuses on doctrinal law research through the analysis of written legal materials. Peter Mahmud Marzuki emphasized that normative legal research aims to provide legal arguments as a basis for decision-making using legislative, conceptual, and case approaches. The legislative approach is carried out through a systematic analysis of Law Number 1 of 1974

concerning Marriage, the Civil Code, and the Compilation of Islamic Law. A conceptual approach is applied to understand the theoretical construction of substantive justice in the context of Maqasid Sharia. The case approach analyzes the Supreme Court Decision Number 266K/AG/2010 and the Decision of the Jakarta High Court of Religion Number 126/Pdt.G/2013/PTA. JK which has permanent legal force. The data collection technique uses literature studies with credible source documentation, including primary legal materials in the form of court rulings, secondary legal materials in the form of legal theories from experts, and tertiary legal materials in the form of dictionaries and legal encyclopedias. The data analysis applied content analysis with a hermeneutic approach to understand the substantive meaning of the judge's decision in the philosophical context of Maqasid Syariah and the substantive justice aspect of the division of joint property after divorce.

## RESULT AND DISCUSSION

### **Philosophical Construction of the Essence of the Formulation of Article 97 of the KHI in the Approach of Maqashid Sharia**

An in-depth examination of the essence of the formulation of Article 97 of the Compilation of Islamic Law reveals the complexity of legal constructions that involve philosophical dimensions in forming a paradigm of shared property distribution. The philosophical basis of this provision is rooted in the conceptualization of shirkah (communion) in the Islamic legal tradition, especially shirkah abdan and shirkah mufawadhah which developed into shirkah al-zawjain or conjugal communion in the context of contemporary marriage. This conceptual transformation reflects the evolution of understanding in line with the principles of maqashid sharia, especially in the aspects of property protection (hifdz al-mal) and family (hifdz al-nasl), which emphasizes the urgency of economic justice in the marital relationship. The evidence of the Qur'an in Surah Al-Baqarah verse 228 which states "And women have rights that are balanced with their obligations according to the ma'ruf way" is the theological foundation that affirms the principle of equality in the relationship between husband and wife, while the verse in Surah An-Nisa verse 19 about mu'asyarah bil ma'ruf (good association) strengthens the normative justification for the fair and proper distribution of property, including after divorce (Sawitri & Mansur, 2022). From the perspective of Islamic law, this provision reflects the principles of al-'adalah (justice) and shirkah (partnership) in the household, which, although not explicit in classical Islamic law, are the result of legal ijtihad that takes into account social developments and the need for fair legal protection for both parties in marriage (Saefullah, 2024).

This formulation process considers the complexity of the relationship between Islamic law, customary law, and the social reality of Indonesian society, which is reflected in the accommodation of the concept of "common property" which is not known in classical jurisprudence but has been integrated into the Indonesian family law system. The concept of equal division (half) reflects the adaptation of Islamic law to the values of equality and justice that have developed in Indonesian society, and is the result of a compromise between sharia principles and local wisdom that has been rooted in the traditions of archipelago communities such as gono-gini (Java), hareuta sihareukat (Aceh), and confinement goods (Kalimantan) (Sari et al., 2023).

The analysis of Article 97 of the KHI from the perspective of justice theory shows that there is a dialectical relationship between various paradigms of justice and the principles of sharia maqashid in the settlement of common property cases. Aristotle's theory of distributive justice emphasizing the principle of proportionality based on contribution can be harmonized with the principle of hifdz al-mal in the sharia maqashid, although its application faces challenges related to shifting gender roles in contemporary family structures. John Rawls's theory of justice with

the concept of "justice as fairness" which prioritizes the protection of the disadvantaged is in line with the principle of hifdz al-nafs in maqashid sharia, especially in the context of power and economic asymmetry between husband and wife. Meanwhile, Thomas Hobbes's contractual theory that emphasizes agreement as the basis of legitimacy can be integrated with the principle of hifdz al-din, which hints at the need to respect moral and religious values in marriage agreements.

**Table 1.**

Comparison of the Application of Justice Theory in the Distribution of Common Property

Justice Theory	Key Principles	Application in Common Property Matters
Distributive (Aristotle)	Proportionality based on contribution	Distribution based on the proportion of each party's contribution
<i>Justice as Fairness</i> (Rawls)	Procedural justice and protection of the weak	Consider position inequality and provide protection to disadvantaged parties
Contractual (Hobbes)	Deal as a basis for legitimacy	Respect for the agreed marriage agreement
Maqashid Syariah	Protection of religion, soul, intellect, lineage, and property	A division that considers the benefits of all parties

Source: Processed from (Herdiyanti et al., 2022) and (Utami & Dalimunthe, 2023)

**Table 2.**

Application of Maqashid Syariah in Matters of Common Property

Elements of Maqashid Syariah	Description	Application in Common Property Matters
Hifdz (Religious Protection)	al-Din Ensure that decisions are in accordance with sharia principles	Divisions that take into account religious values and Islamic morality
Hifdz (Protection of Life)	al-Nafs Protect physical and psychological safety and well-being	Sharing that ensures the basic needs of all parties are met
Hifdz (Protection Reason)	al-Aql Ensuring the ability to develop of intellect	Divisions that take into account educational and self-development needs
Hifdz (Protection Lineage)	al-Nasl Protecting the interests of future generations	Divisions that consider the needs of children and their future
Hifdz (Property Protection)	al-Mal Ensure the use of property in accordance with sharia purposes	Fair and transparent division to avoid prolonged conflict

Source: Processed from (Suhandi, 2023) and (Firdaus et al., 2022)

The reinterpretation of the concept of shirkah in classical muamalah fiqh, especially shirkah abdan which can be revitalized to accommodate the non-material role of the wife in the household such as childcare and household management, shows the flexibility of Islamic law in responding to social change. An approach to legal pluralism that integrates the values of local wisdom with universal principles in Islam can be more effective in creating social cohesion and strengthening the institution of the family as the basic unit of society, in line with the principles of hifdz al-nasl in the maqashid sharia (Nurmila & Mahmudah, 2024).

The transformation of the gender paradigm in contemporary society requires a reconstruction of a more gender-sensitive understanding of fiqh munakahat, including in the aspect of sharing common property. The integration of the gender equality paradigm with the maqashid sharia in the division of common property can result in more substantive justice decisions, especially

considering the double burden that is often borne by women in modern marriages where the wife plays the role of not only the breadwinner but also the main manager of the household. A restorative approach that emphasizes the restoration of social relations and balance, rather than just the mathematical distribution of property, opens up space for a more holistic and sustainable settlement of common property disputes, oriented to context and social relations rather than the mechanical application of law (Mukhoniadi, 2023).

### **Contra Legem Analysis of Judges' Decisions in the Application of Article 97 of the Compilation of Islamic Law through the Maqashid Sharia**

The implementation of Article 97 of the Compilation of Islamic Law which regulates the equitable division of common property (50:50) in the practice of religious justice has experienced significant complexity, where courts often face a dilemma between the application of textual norms and the achievement of substantive justice. Through an analysis of both court decisions that have permanent legal force, namely Supreme Court Decision No. 266 K/AG/2010 and Jakarta High Court of Religion Decision No. 126/Pdt.G/2013/PTA. JK, was identified that there was a pattern of deviations from normative provisions based on considerations of contextual justice. The judge's consideration in this case shows a progressive approach by not necessarily applying mathematical division, but considering the real role and source of property acquisition, where even though the land certificate is in the name of the defendant and the construction of the house using a bank loan, the fact that the house is used together during the marriage and the payment occurs during the period of the marriage bond becomes the basis for determining the status of joint property (Rosa et al., 2024). At the appeal level, the Jakarta High Court of Religion through Decision No. 126/Pdt.G/2013/PTA.JK showed an interpretation consistent with a proportional approach, where in a dispute over joint property resulting from the sale of seeds and teak land which resulted in a profit of Rp15,892,885,000, the panel of judges determined the division with a composition of two-thirds of the share for the husband and one-third of the share for the wife based on the consideration that the role of the husband in managing the business was much more dominant than the wife.

**Table 3.**

Analysis Supreme Court Decision No. 266 K/AG/2010

Aspects	Legal Facts	Judge's Considerations	Implications of the Verdict
Marital Relationships	Husband and wife with two children; The relationship had lasted for 14 years before the divorce lawsuit was filed	There has been a rift in the household since 1998; separated house since 2008; disharmony caused by economic neglect	It is the basis for a divorce lawsuit (talak ba'in sughra) and a proportionate division of joint property based on contributions
Maintenance and Economic Contribution	The husband has not provided support for 11 years; wives are the backbone of the family and the sole source of income	The husband violates the normative obligations of Article 34 (1) of the Marriage Law and Article 80 (4) of the Criminal Code; Acquisition of 100% joint property from the wife	The judge ruled that the distribution was uneven: 3/4 of the property for the wife and 1/4 share for the husband as a form of distributive justice
Ownership and Management of Common Property	There are assets in the form of: land and buildings (2 locations), motor vehicles (3	All assets are acquired and managed by the wife without the husband's participation; wife proves	Asymmetric division (3/4 : 1/4) which deviates from Article 97 of the KHI but is in line with

	units), household furniture, and savings	the acquisition of assets with proof of transaction	the previous Supreme Court Jurisprudence (Decision No. 51K/AG/1999)
The Importance and Well-Being of Children	Two children, with a daughter in the care of his wife; Child support is charged to the husband of IDR 750,000/month per child	The judge considers the future of the child and the burden of care borne by the wife as a single parent	Protection of children's rights through the determination of hadhanah and adequate maintenance; Greater division of property for wives for the survival of children
Principles of Substantive Justice	The fact that there is a double burden carried out by the wife so that it is not balanced (wife 100% vs husband 0%)	Substantive justice demands correction to the normative provisions of Article 97 of the KHI	The judge applies the principle of contra legem for the sake of essential justice with a ratio of 3/4 : 1/4

The landmark decision in the Supreme Court Decision No. 266 K/AG/2010 shows the most progressive legal breakthrough, where the Supreme Court set the proportion of joint property distribution with a ratio of 3/4 for the wife and 1/4 for the husband, which explicitly deviates from the provisions of Article 97 of the KHI which requires a half-and-half division. This decision affirms two important doctrines in contemporary Islamic family law, namely the doctrine of contribution, which states that the division of joint property must take into account the real contributions of each party, and the doctrine of negligence, which states that parties who neglect normative obligations in marriage may lose some of their rights to the common property (Acfira, 2022).

### Judges' Considerations in Determining the Distribution of Common Property

An in-depth analysis of the judges' considerations in the both decisions reveals a paradigm transformation from formal justice to substantive justice in the distribution of common property. In Case No. 266 K/AG/2010, the Supreme Court expressly prioritized the principle of substantive justice over normative formal justice by stating that justice cannot be enforced if the division of common property is carried out mathematically and formally without considering the real role of each party, so that economic abandonment for 11 years becomes a determining factor in deviation from the normative provisions of the KHI. This decision shows the application of the contra legem principle for the sake of essential justice with a division ratio of 3/4 : 1/4 which deviates from Article 97 of the KHI, based on fundamental considerations in the form of substantive injustice that will occur if the division is carried out mathematically without considering the actual role, the existence of economic abandonment which is a violation of the normative obligations of the husband, and the fact that all joint property is proven to be obtained from income wife without the financial participation of her husband.

**Table 4.**

Analysis of the Considerations of Case Number 126/Pdt.G/2013/PTA. JK

Considerations	Legal Facts	Analysis of the Panel of Judges	Consequences of the Verdict
Property Ownership Status	Land and house purchased during the marriage period with a deed of purchase in the name of the husband	Even though the payment has not been paid, the ownership status is still joint property according to	Assets are determined as legitimate objects of dispute in the division of common property

Article 35 of the Marriage Law			
Property Separation Agreement	The agreement is made after the purchase of the house and land, is not registered with the KUA, and is not known to a third party	The agreement does not meet the formal and material requirements according to Article 29 of the Marriage Law and does not apply retroactively	The agreement does not cancel the status of the object of dispute as joint property
Contribution to Marriage	Husbands work as doctors and lecturers with a fixed income; wives are not proven to work and contribute economically	The husband's contribution is very dominant in the acquisition of joint property; wife does not prove significant financial contribution	It is the basis for the proportional distribution of common property (2/3 : 1/3)
Alimony Obligations	Wife claims husband negligent in providing maintenance	Based on the trial evidence, the husband continued to provide for his income as a doctor and lecturer	Past Claims for Damages Denied
Wife's Personal Debt	The wife has a debt before the marriage which is then paid out of the joint income	A consideration in assessing the negative contribution of the wife to the household economy	Reinforcing the argument of unbalanced division
Application of Article 97 of the KHI	Article 97 of the KHI states that joint property is divided equally (50:50)	The judge interpreted that the article was conditional and had to consider the principle of balance of contributions	Proportional division (2/3 for husbands, 1/3 for wives)
Good Faith of the Parties	The wife was proven to be not transparent about personal property and debts before the marriage	The judge considered that there was bad faith from the wife which affected the balance of rights and obligations in the household	Influencing the judge's consideration in determining the proportion of property distribution

In Case No. 126/Pdt.G/2013/PTA. JK, the Jakarta High Court of Religion shows a contextual interpretation approach by determining the unequal distribution of joint property 2/3 for the husband and 1/3 for the wife, based on the consideration of the principle of proportionality of contributions where the economic contribution of the husband as a doctor and lecturer is much more dominant, the principle of balance of rights and obligations with the proof of the fulfillment of maintenance obligations by the husband while the wife has personal debts that are paid off from joint income, and the principle of good faith because of the wife's non-transparency regarding personal assets and debts before marriage. The panel of judges used a teleological interpretation of Article 97 of the KHI by considering the legal purpose, namely to realize substantive justice, in line with the principle of "al-adatu muhakkamah" and the principle of "al-muslimuna 'ala syurutihim" in Islamic law, thus showing that Article 97 of the KHI is not

absolute but can be interpreted contextually by considering the principles of proportionality and justice.

The findings of this study indicate the urgency of reformulating Article 97 of the KHI which is currently proven to be unable to accommodate the complexity of contemporary marriage dynamics, especially in cases where there is inequality of contribution and violation of marital obligations by one of the parties. The necessary reformulation includes the aspect of proportional contribution where the division of joint property is no longer based on the mathematical formula of 50:50 but on the calculation of each party's real contribution both material and immaterial, the aspect of responsibility and obligation with legal consequences for the party who neglects normative obligations such as maintenance and parenting responsibilities, aspects of specific marital conditions that are responsive to domestic violence, economic neglect, and power relations inequality, as well as aspects of protection of vulnerable parties, especially women and children who are often victims of power imbalances in households. Both decisions that were consistently analyzed showed that the rigid application of norms can give birth to injustice, so that the judge showed the courage to make legal discoveries (*rechtsvinding*) in order to realize substantive justice that is more in accordance with the context of the case, which emphasizes the importance of reforming Islamic family law to be more contextual and adaptive to the needs of society while adhering to the fundamental principles of Islamic law but with interpretation which is more progressive according to the times .

The integration of distributive justice theory with the principles of Maqasid Shariah in the reformulation of Article 97 of the KHI creates a normative framework that is able to accommodate contextual variations in modern husband-wife relations while still being grounded in the fundamental values of Islamic law that emphasize the protection of property (*hifz al-mal*) and human dignity (*hifz al-nafs*). This approach is in line with the findings of Zuhriandi, Lubis, and Nurcahaya who emphasize the importance of the perspective of *maslahah murshalah* in the distribution of common property (Zuhriandi et al., 2023), and Irwan who underlined the relevance of Maqashid Syariah in contemporary property management (Irwan, 2021). The proposed reformulation not only aims to strengthen the coherence between textual norms and contemporary social realities, but also provides a more comprehensive frame of reference for judges in adjudicating common property disputes, while maintaining the legal certainty that is a fundamental characteristic of Article 97 of the KHI while incorporating the flexibility necessary to achieve substantive justice in each case at hand.

The implementation of Article 97 of the Compilation of Islamic Law in judicial practice shows the complex dynamics of interpretation, especially when dealing with special situations that require a substantive justice approach. Both decisions show fundamental similarities in identifying certain circumstances as the main parameters of modification of the division of joint property, especially related to the negligence of one party in carrying out marital responsibilities and the existence of a double burden borne by one spouse.

**Table 5.**

**Joint Analysis of Supreme Court Decision No. 266 K/AG/2010, and PTA. JK No. 126/PDT. G/2013/PTA.JK**

Aspects	Supreme Court Decision No. 266 K/AG/2010	Decision of PTA Jakarta No. 126/Pdt.G/2013
Economic Contribution of the Parties	Dominant wife: - Husband has not provided for 11 years - Wife is the backbone of the	Dominant husband: - Husband of a doctor/lecturer with a fixed income - Wife not proven to work -

	family - Wife's contribution 100%	Wife has personal debts before marriage
Special Legal Issues	- Violation of maintenance obligations (Article 34(1) of the Marriage Law & Article 80(4) of the KHI) - Economic neglect of 11 years	- Invalid property separation agreement - Not registered with the KUA - Not meeting the formal requirements of Article 29 of the Marriage Law
Approach to Interpretation of Article 97 KHI	Contra legem: - Judges apply substantive justice - Correction of normative provisions - Reference MA No. 51K/AG/1999	Conditional interpretation: - Article 97 is conditional - Consideration of balanced contribution - Not absolute 50:50
Final Split Ratio	3/4 : 1/4 (75% : 25%) - For wife: 3/4 - For husband: 1/4 - Most extreme deviation	2/3 : 1/3 (67% : 33%) - For husband: 2/3 - For wife: 1/3 - Moderate proportionality
Key Determinants	- Old economic neglect - 100% wife's contribution - Children's interests - Substantive justice	- Dominance of the husband's contribution - The wife does not contribute - Good faith

The main complaint that arose in the both cases arose to the violation of fundamental obligations stipulated in Article 34 Paragraph 1 of Law Number 1 of 1974 concerning Marriage and Article 80 of the Compilation of Islamic Law, where the husband is obliged to bear the maintenance of the birth of the wife which includes basic needs such as shelter, food, clothing, and other necessities of life (Yaswirman, 2013). The judge's interpretation of the concept of dual responsibility shows a recognition of the contemporary socio-economic reality, where when the husband neglects his obligations, the wife is forced to bear the double burden of earning a living while still carrying out her domestic functions. This phenomenon creates a role imbalance that requires correction through a proportional wealth distribution mechanism.

## CONCLUSION

This study found that Article 97 of the Compilation of Islamic Law (KHI), which regulates the equal division of joint property (50:50) after divorce, has not fully met the principle of substantive justice. Although it provides normative legal certainty, the application of this article is often faced with the reality of inequality of roles between couples during the marriage period. Based on the analysis of Maqasid Shariah, it is evident that the proportional approach based on actual roles is more reflective of true justice. This is reflected in a number of religious

court rulings that deviate from mathematical provisions in order to achieve a fair balance. Thus, Islamic family law needs to be directed at the application of norms that are more adaptive and responsive to the socio-economic dynamics of the ummah.

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