

The Jurimetri Formulation of Court Decisions in the Division of Joint Property

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Abstract: This paper analyzes the results of court decisions on the application of jurimetric formulations in the division of joint property as an effort of justice. Jurimetry can be used as an option when the division of joint property regulated in the Compilation of Islamic Law does not guarantee justice to the parties. Jurimetry emphasizes the division of joint property based on the implementation of the obligations and responsibilities of each party while bound by marriage, so that the use of jurimetry will provide a greater sense of justice. The focus of this article is how the jurimetry formulation of court decisions in cases of division of joint property and its relevance to the principles of justice. This article is a literature research with a normative approach. The source of data in writing this article is court decisions regarding joint property. The result is that the application of jurimetry in the division of joint property can provide more justice for the parties. Parties who do not carry out their obligations in full will have their rights to joint property reduced in accordance with their actions. Conversely, parties who carry out their obligations in full will get rights in accordance with their actions. If both parties carry out their obligations in full, then both are entitled to the same amount of joint property. The recommendation of the results of this writing is that the judge can use this jurimetric formulation as a consideration in handling joint property disputes.

Keyword: Jurimetry, Joint Property, Justice and Legal Reform

Abstrak: Tulisan ini menganalisis hasil putusan pengadilan tentang penerapan formulasi *jurimetri* dalam pembagian harta bersama sebagai upaya keadilan. *Jurimetri* dapat dijadikan sebagai pilihan ketika pembagian harta bersama yang diatur dalam Kompilasi Hukum Islam kurang menjamin keadilan kepada para pihak. *Jurimetri* menekankan pembagian harta bersama berdasarkan pelaksanaan kewajiban dan tanggung jawab masing-masing pihak selama terikat tali perkawinan, sehingga penggunaan *jurimetri* akan lebih memberikan rasa keadilan. Fokus artikel ini adalah bagaimanakah formulasi *jurimetri* putusan pengadilan dalam perkara pembagian harta bersama dan relevansinya terhadap prinsip keadilan. Artikel ini merupakan penelitian pustaka dengan pendekatan normatif. Sumber data dalam penulisan artikel ini putusan pengadilan mengenai harta bersama. Hasilnya penerapan *jurimetri* dalam pembagian harta bersama dapat lebih memberikan keadilan bagi para pihak. Pihak yang tidak melaksanakan kewajibannya secara penuh maka hak atas harta bersama akan berkurang sesuai dengan perbuatannya. Sebaliknya pihak yang melaksanakan kewajiban secara penuh akan mendapatkan hak sesuai dengan perbuatan. Apabila kedua pihak melaksanakan kewajiban secara penuh, maka keduanya berhak atas harta bersama dengan jumlah yang sama. Rekomendasi hasil penulisan ini Hakim dapat menggunakan formulasi *jurimetri* ini sebagai bahan pertimbangan dalam menangani sengketa harta bersama.

Kata Kunci: Jurimetri, Harta Bersama, Keadilan dan Pembaharuan Hukum

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A. Introduction

Jurumetric formulation in the division of joint property is one of the strategies for dividing joint property in order to seek the realization of justice. This is because the provisions of the division of joint property with the principle of being divided in half with the amount of $\frac{1}{2}$ for the husband and $\frac{1}{2}$ for the wife can lead to an unfair position. Moreover, in the event that only one of the spouses is meritorious or has a contribution in obtaining the joint property or the dominance and stereotypical thinking factor that the husband has a higher position than the wife or vice versa, causing injustice in the division of joint property. Thus, to minimize the occurrence of injustice, the concept of jurumetry can be an option in the division of joint property.

This article analyzes several court decisions that stipulate the division of joint property deviating from the provisions that joint property is divided $\frac{1}{2}$ for the wife and $\frac{1}{2}$ for the husband as stipulated in articles 96 and 97 of the Compilation of Islamic Law. First, the decision of the Bandung High Court of Religion with Decision Number: 248/Pdt.G/2010/PTA Bdg, has canceled the decision of the Cimahi Religious Court with Decision Number, 96/Pdt.G/2010/PA Cmhi which gives half ($\frac{1}{2}$) of the joint property each between the widow and the widower. The decision of the PTA gives $\frac{1}{3}$ joint property to the widower and $\frac{2}{3}$ to the widow, with several considerations of benefit extracted from the causes and legal reasons in the appeal case submitted. Second, Cassation Decision Number 266 K/AG/2010 dated July 12, 2010 which upheld the Decision of the Yogyakarta Religious High Court Number 34/Pdt.G/2009/PTA.Yk. dated November 19, 2009 and Bantul Religious Decision Number 229/Pdt.G/2009/PA.Btl dated August 20, 2009 which decided that the wife received $\frac{3}{4}$ of the joint property, because the joint property was produced by the wife and the husband did not provide maintenance for the children and wife for 11 (eleven) years. Third, Supreme Court Decision Number: 266K/AG/2010 which gives a share to the widower $\frac{1}{5}$ of the share and $\frac{4}{5}$ for the widow, with the consideration that the former husband does not have a permanent job and has poor morals because he likes to get drunk so it is considered that the income of marital property is dominated by the wife's income.

Some previous research that discusses the division of joint property is Beni Kurniawan in his writing which analyzes court decisions on the division of joint property. Beni stated that the division of joint property can deviate from the provisions of the division of $\frac{1}{2}$ for the husband and $\frac{1}{2}$ for the wife. Wives can get a larger share of joint property than husbands if the husband does not carry out his responsibilities.(Kurniawan, 2018).

Another study by Nurnazli in his writing on the transformation of joint property law from procedural justice to substantial justice. Where the division of property is adjusted to the contributions and responsibilities of both husband and wife. Nurnazli emphasizes the gap in the transformation of legal reform in the division of joint property can be done through the decision of the Supreme Court Judge. The Supreme Court Judge's decision can become a jurisprudence that changes the perspective of procedural justice to substantial justice that can be followed by the next judge. (Nurnazli, 2018). The next research was conducted by Siah Khosyi'ah in her writing on distributive justice in the division of joint property explaining the provisions of article 97 of the Compilation of Islamic Law provides a flexible picture

in the division of joint property. The application of the article is very dependent on the case, it does not absolutely have to be applied to all. The article is a general provision that can be set aside. (Khosyi'ah, 2017). Then the research by Meli and friends in their writing which examines the Supreme Court Decision regarding the division of property explains that the Supreme Court's decision to give 1/3 of the joint property to the wife while 2/3 to the husband is a decision that reflects justice. The division is based on the contribution in producing joint property.(Melia et al., 2019).

From some of the previous research results, the natural Research GAP of this article is that the author more specifically examines the jurimetric formulation in the division of joint property and the relevance of the formulation to the principles of justice. This formulation of the division of joint property can be used as a comparison material for the joint property distribution system regulated by the Compilation of Islamic Law. Judges can use this jurumetry formulation as a consideration in handling joint property disputes. The author emphasizes the importance of applying jurumetry in the division of joint property to produce more just decisions. Jurimetry is the activity of investigating law with scientific methods such as mathematical logic, calculus and others.(Natsir Asnawi, 2016), (Loevinger, 1963). *Novelty* in this article is the jurimetry of the division of joint property and the reform of Islamic family law in Indonesia.

B. Methods

The method used in this article is qualitative, which aims to analyze the application of jurimetry in court decisions in cases of division of joint property. This article is a literature research by examining the decisions of religious court judges. The decision studied is a decision regarding joint property that is not in line with the provisions of article 97 of the Compilation of Islamic Law. The decision is a decision that leaves the standard of procedural justice and prioritizes substantial justice. Data sources are documents in the form of primary, secondary and tertiary legal materials. Primary legal materials used are court judges' decisions on joint property. For formulation materials, this paper uses case decision Number 0420/Pdt.G/2017/PA.Mt and case Number 0139/Pdt.G/2016/PA.Tnk. These two decisions are used as material for formulation because they are in line with the concept of jurimetry. Analysis using a normative approach (Mukhti Fajar & Achmad, 2015), where the writing uses normative analytics as the basis for analyzing the application of jurimetry. This approach is in accordance with the characteristics of library research that uses documents as the main data source in the research.

C. Discussion

1. Application of Jurimetry in Case Number 0420/Pdt.G/2017/PA.Mt

In the dispute over joint property case number 0420/Pdt.G/2017/PA.Mt. The Plaintiff (former wife) and the Defendant (former husband) are husband and wife who were married in 2001, and divorced according to the Deed of Divorce dated May 24, 2016. The plaintiff filed a lawsuit which was registered on March 08, 2017, and was decided by the Religious Court on December 19, 2017. The plaintiff filed a lawsuit because the joint property was under the control of the former husband. In

the dispute, the judge ruled that the joint property was divided with 1/2 share for the Plaintiff and 1/2 share for the Defendant.

The simulation of the application of jurimetric analysis in the joint property dispute case number 0420/Pdt.G/2017/PA.Mt can be stated enumeratively as follows:

- a. Determining the factors that determine rights, namely the performance of each other's obligations during the marriage period. The obligations of each husband and wife have been emphasized, both in shara' and legislation.
- b. Quantification of Each Obligation into Specific Value Weights

At this stage, quantification or determination of the weighted value of each item of the husband and wife's obligations is carried out with reference to the general norm of the share of joint property, namely 1/2: 1/2. From the explanation of the obligations of each husband and wife, these obligations can be summarized in the following checklist:

No.	Husband's Obligation	Checklist
1.	Protecting his wife and children	X
2.	Mentoring his wife and children (life skills)	√
3.	Provide for his wife and children	X
4.	Provide housing for his wife and children	X
5.	Providing religious education to his wife and children	X

No.	Wife's Obligation	Checklist
1.	Devoted to husband physically and mentally according to what is justified by shara'	√
2.	Organizing household affairs as well as possible (physical service to husband and children)	X
3.	Guarding himself from actions in the social environment that cause slander	√
4.	Safeguarding property acquired during marriage	√
5.	Not receiving guests of the opposite sex without the husband's permission	√

After this identification, quantification (scaling) is carried out with weights or values obtained by multiplying each factor by the general share to which the husband and wife are entitled, namely (1/2). Each factor is assigned a value according to the number of obligation items. For the husband, because the items of obligation include five things, each of the husband's obligations is worth 1/5 which is then multiplied by 1/2 the general share of joint property. As for the wife, because the wife's obligation items are worth 1/5 which is then multiplied by 1/2 the general share of joint property. The scaling can be seen in the following matrix:

No.	Husband's Obligation	Scaling (Value Weight per Item)
1.	Protecting his wife and children	1/5 x 1/2 = 1/10
2.	Mentoring his wife and children (life skills)	1/5 x 1/2 = 1/10
3.	Provide for his wife and children	1/5 x 1/2 = 1/10
4.	Provide housing for his wife and children	1/5 x 1/2 = 1/10
5.	Providing religious education to his wife and children	1/5 x 1/2 = 1/10

No.	Wife's Obligation	Scaling (Value Weight per Item)
1.	Devoted to husband physically and mentally according to what is justified by shara'	$1/5 \times 1/2 = 1/10$
2.	Organizing household affairs as well as possible (physical service to husband and children)	$1/5 \times 1/2 = 1/10$
3.	Guarding himself from actions in the social environment that cause slander	$1/5 \times 1/2 = 1/10$
4.	Safeguarding property acquired during marriage	$1/5 \times 1/2 = 1/10$
5.	Not receiving guests of the opposite sex without the husband's permission	$1/5 \times 1/2 = 1/10$

Based on this scaling, it can be concluded that the value or share of joint property in general for each husband and wife is 5/10 share or 1/2 share. This share is then tested using a balance sheet based on the facts revealed at trial. The determination of shares using this balance sheet is flexible and accommodating because it can easily be implemented in various configurations of joint property cases. One positive thing about the application of this model is its consistency in ensuring the realization of consistency in the distribution of rights and obligations of each husband and wife to the share of joint property.

The next step is to determine the value of the share of joint property by using a balance sheet. The illustration is simple: each item of obligation is placed entirely on the balance sheet. Based on the facts proven at trial, the judge assesses what obligations were and were not carried out in good faith by each husband and wife. If, for example, the husband is proven to have failed to provide for his wife and children so that the wife then works for a living and from that they can buy a house and fulfill their daily needs, then the husband has neglected his two main obligations, namely providing maintenance and providing a place to live. Thus, the weight of the two obligations of 2/10 is transferred to the ex-wife so that the overall weight for the ex-wife is $5/10 + 2/10 = 7/10$ share. Meanwhile, the weight of the husband's share of the joint property after deducting the 2/10 is a total of 3/10 shares. So from the quantification checklist of each obligation into a certain value weight that has been stated, the weight of the division value is the husband 1/10 and the wife 9/10 share of the joint property.

2. Formulation in Case Number 0139/Pdt.G/2016/PA.Tnk

In the case of a joint property dispute case Number: 139/Pdt.G/2016/PA.Tnk. The Plaintiff is the former wife and the Defendant is the former husband. The couple married on December 28, 2002, and divorced according to the Deed of Divorce dated November 02, 2015. The Plaintiff filed a lawsuit which was registered on November 1, 2016, and was decided by the Religious Court on September 9, 2016. The joint property during the marriage consisted of several assets. The plaintiff filed a lawsuit because the joint property was under the control of the former husband. In the dispute, the judge decided that the joint property was divided with the provisions of 1/2 part for the Plaintiff and 1/2 part for the Defendant even though the plaintiff was proven to be nusyuz. Simulation of the jurimetric formulation of case number 0139/Pdt.G/2016/PA.Tnk, where there are facts that the Plaintiff is proven to be nusyuz, and the Defendant objects to dividing the joint property because of the Plaintiff's nusyuz behavior.

The simulation mechanism of the application of the jurimetric analysis can be enumerated as follows

- a. Determining the factors that determine rights, namely the performance of each other's obligations during the marriage period. The obligations of each husband and wife have been emphasized, both in shara' and legislation.
- b. Quantification of Each Obligation into Specific Value Weights

At this stage, quantification or determination of the value weight of each item of husband and wife's obligations is carried out with reference to the general norm of the share of joint property, namely $\frac{1}{2} : \frac{1}{2}$. From the explanation of the obligations of each husband and wife, these obligations can be summarized in the following checklist:

No.	Husband's Obligation	Checklist
1.	Protecting his wife and children	√
2.	Mentoring his wife and children (life skills)	√
3.	Provide for his wife and children	√
4.	Provide housing for his wife and children	√
5.	Providing religious education to his wife and children	√

No.	Wife's Obligation	Checklist
1.	Devoted to husband physically and mentally according to what is justified by shara'	X
2.	Organizing household affairs as well as possible (physical service to husband and children)	X
3.	Guarding himself from actions in the social environment that cause slander	√
4.	Safeguarding property acquired during marriage	√
5.	Not receiving guests of the opposite sex without the husband's permission	√

After this identification, quantification (scaling) is carried out with weights or values obtained by multiplying each factor by the general share to which the husband and wife are entitled, namely $(\frac{1}{2})$. Each factor is assigned a value according to the number of obligation items. For the husband, because the items of obligation include five things, each of the husband's obligations is worth $\frac{1}{5}$ which is then multiplied by $\frac{1}{2}$ the general share of joint property. As for the wife, because the wife's obligation items are worth $\frac{1}{5}$ which is then multiplied by $\frac{1}{2}$ the general share of joint property. The scaling can be seen in the following matrix:

No.	Husband's Obligation	Scaling (Value Weight per Item)
1.	Protecting his wife and children	$\frac{1}{5} \times \frac{1}{2} = \frac{1}{10}$
2.	Mentoring his wife and children (life skills)	$\frac{1}{5} \times \frac{1}{2} = \frac{1}{10}$
3.	Provide for his wife and children	$\frac{1}{5} \times \frac{1}{2} = \frac{1}{10}$
4.	Provide housing for his wife and children	$\frac{1}{5} \times \frac{1}{2} = \frac{1}{10}$
5.	Providing religious education to his wife and children	$\frac{1}{5} \times \frac{1}{2} = \frac{1}{10}$

No.	Wife's Obligation	Scaling (Value Weight per Item)
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1.	Devoted to husband physically and mentally according to what is justified by shara'	$1/5 \times 1/2 = 1/10$
2.	Organizing household affairs as well as possible (physical service to husband and children)	$1/5 \times 1/2 = 1/10$
3.	Guarding himself from actions in the social environment that cause slander	$1/5 \times 1/2 = 1/10$
4.	Safeguarding property acquired during marriage	$1/5 \times 1/2 = 1/10$
5.	Not receiving guests of the opposite sex without the husband's permission	$1/5 \times 1/2 = 1/10$

Based on this scaling, it can be concluded that the value or share of joint property in general for each husband and wife is $5/10$ share or $1/2$ share. This share is then tested using a balance sheet based on the facts revealed at trial.

The next step is to determine the value of the share of joint property by using a balance sheet. The illustration is simple: each item of obligation is placed entirely on the balance sheet. Against the facts proven at trial, the judge assesses what obligations are carried out and not carried out in good faith by each husband and wife. Thus, when the wife does not carry out obligations (nusyuz), the weight of two obligations of $2/10$ is transferred to the former husband so that the overall weight for the former husband is $5/10 + 2/10 = 7/10$ shares. Meanwhile, the weight of the ex-wife's share of the joint property after deducting the $2/10$ is a total of $3/10$ shares.

So from the quantification checklist of each obligation into a certain value weight that has been stated, the weight of the division value is the husband $7/10$ and the wife $3/10$ share of the joint property.

3. Jurimetry and its Relevance to the Principle of Justice

In the context of determining the share of joint property, if we re-understand the legal norms governing the legal relationship between husband and wife in marriage, it appears that our laws require equality and propriety in the relationship between husband and wife. Equality includes equal rights and obligations in the household. Meanwhile, decency relates to how each fosters mutual affection, understanding, and support for each other in carrying out their respective duties and responsibilities in the family.

Articles 30 and 31 of Law No. 1/1974 on Marriage explicitly emphasize the equal position of husband and wife in marriage. It is emphasized in Article 30: "Husband and wife have a noble obligation to uphold the household, which is the foundation of society". Then Article 31: "(1) The rights and position of the wife are equal to and the position of the husband in household life and social life together in society. (2) Each party is entitled to perform legal acts. (3) The husband is the head of the household and the wife is the housewife.

The rights and obligations attached to the relationship between husband and wife have an impact on home life. Both must exercise rights and obligations in a balanced, equal manner, and carried out according to propriety. (Nurani, 2021) In the construction of the relationship between husband and wife, each develops obligations that are proportional to their position. Here the good faith of each husband and wife to carry out their duties and responsibilities. The obligation to carry out duties and responsibilities is only canceled if there are factual

circumstances that allow or justify it, for example, one of them has a physical disability that causes him to be unable to move as usual.

It can be concluded then that the implementation of duties and responsibilities in the family in good faith has implications for the legal rights of those concerned, especially for the share of joint property in the event of divorce. In this normal situation, each is entitled to a normative share of the joint property, $\frac{1}{2}$: $\frac{1}{2}$. Conversely, if one person without justifiable reasons according to the law neglects his obligations and harms his partner, this can result in a reduction in the share of joint property to which he is entitled post-divorce. (Nurdin, 2020) In this situation, it is the spouse who carries out obligations, such as earning a living so that the wife bears double obligations in the family. (Sutini & Eka Trisna Dewi, 2021)

This is the meaning of fair distribution of rights and obligations as in John Rawls' conception of justice "justice as fairness". Rights and obligations should be fairly distributed. (Jaedin et al., 2020) This conception will be able to accommodate various situations or dynamics of the relationship between husband and wife during marriage and its legal implications for joint property in the event of divorce. With this concept, it is hoped that an awareness and legal culture will be formed in every family so that each husband and wife realize the importance of their duties and responsibilities in the family and good faith in their implementation.

The formulation of the division of joint property in equitable dispute resolution can be described as follows:

- a. Divide the joint property into two equal parts, half for the ex-wife and half for the ex-husband, in accordance with the general norms that form the basis of legal considerations, such as Article 97 of the Compilation of Islamic Law.
- b. Dividing the joint property into two parts, but not equally. The amount of the husband and wife's share depends on their respective contributions in producing assets or special circumstances, such as the basis for applying jurimetry in determining the share of joint property.
- c. Dividing the joint property to children if the former husband and wife have offspring

To determine whether or not there are special circumstances that can affect the determination of the share of joint property that is different from the general norm, it can be seen again the consideration of the Supreme Court in Decision Number 266 K/AG/2010 dated July 12, 2010: "Based on the evidence and facts in the trial, it turns out that the husband does not provide maintenance from his work and all of the joint property is obtained by the wife from her work, so for the sake of justice, it is certain that the plaintiff obtains joint property as stipulated in the verdict".

At least, there are two facts identified from these considerations which then become the basis for the Supreme Court to determine the share of joint property of the plaintiff (former wife) $\frac{3}{4}$ share and the defendant (former husband) $\frac{1}{4}$ share. These facts can be qualified as follows:

1. First Factor: Neglect of Responsibility

A husband has responsibilities / obligations as stipulated in the legislation. The husband's obligation as the head of the household is to provide physical and mental support to his wife in particular and all family members in general.

The obligations of a husband are emphasized in Article 34 paragraph (1) of the Marriage Law, namely "The husband is obliged to protect his wife and provide all the necessities of household life in accordance with his ability". Meanwhile, the husband's obligations are emphasized in more detail and include matters as stated in KHI Article 80, namely:

- a. The husband is the guide, towards his wife and household, but regarding important household matters decided by husband and wife together;
- b. The husband is obliged to protect his wife and provide all the necessities of household life according to his ability;
- c. The husband is obliged to provide religious education to his wife and provide opportunities to learn knowledge that is useful and beneficial for religion, country and nation;
- d. In accordance with his income, the husband shall bear:
 - 1) Nafkah, kiswah, and shelter for the wife;
 - 2) Household expenses, care and medical expenses for the wife and children;
 - 3) c) Education expenses for the children;
- c. The husband's obligations towards his wife as mentioned in paragraph (4) letters a and b above come into effect after the wife's full tamkin;
- d. The wife may release her husband from the obligations towards her as mentioned in paragraph (4) letters a and b:
- e. The husband's obligation as referred to in paragraph (5) shall be waived if the wife is nusyuz.

Meanwhile, the wife as the person in charge of household affairs has a number of obligations / responsibilities that are regulated, both in shara' and in legislation. In the provisions of shara' the wife's obligations include at least three things (things), namely:

1. To be physically and mentally devoted to her husband in a manner justified by Islamic law;
2. Able to take care of himself and his husband's property, namely maintaining his personal household harmony, being able to keep the goods in the house and keeping household secrets. The wife's obligation to be perfect is emphasized in the word of Allah swt., QS. Al-Nisa (4): 34 which means "..... therefore the virtuous woman is obedient to Allah again maintain themselves when her husband is absent because Allah has taken care of them". The wife's obligation to protect herself and her husband's property is also emphasized in one of the Prophetic traditions narrated from Abu Hurairah, who said that the Messenger of Allah, peace be upon him, had said: "The best of women (wives) is that if you look at her, she will please you. If you order her, she will obey you. And if you are not beside him (traveling) then he will take care of himself and your property".
3. Not leaving the house without her husband's permission and not fasting without his permission. This is based on the words of the Messenger of Allah, narrated from Ibn Umar, who said that a woman came to the Messenger of Allah, and asked him "O Messenger of Allah, what is the wife's duty to her husband?" The Prophet replied: "She should not give away anything from her house except with his permission. If she does so, it is a sin for her and a sin for

her". He repeated his question: "O Rasululla, what is the wife's duty to her husband?" The Prophet replied: "She should not leave her house except with his permission and she should not fast except with his permission."

Meanwhile, Article 34 paragraph (2) of Law Number 1 of 1974 concerning Marriage emphasizes the wife's obligations: "The wife shall manage the affairs of the household as well as possible". Then Article 83 KHI stipulates two general obligations of a wife, namely: (1) The main obligation for a wife is to be devoted physically and mentally to her husband in what is justified by Islamic law and (2) The wife organizes and manages the daily household needs as well as possible.

If the husband (as in the jurisprudence) neglects one of his main obligations, namely to provide for or provide a decent livelihood for his wife and children, without valid and legally acceptable reasons or circumstances, then this can have implications for reducing the husband's share of joint property in the event of divorce.

2. The second fact: Dual Responsibility of One Party

The neglect of the husband's obligations as evident in the jurisprudence mentioned above, causes a wife who should focus on organizing household affairs which is her obligation, then has to bear the double burden of earning a living for her and her children. Here then there is an anomalous situation and therefore the application of the law to it also needs to be adjusted to the facts and the quality of the resulting legal consequences.

Furthermore, with the dual responsibility of the wife, the assets obtained entirely from the wife's exploitation should be the responsibility of the husband (with the support of his wife) (Amin & Jaya, 2020), the transfer of responsibility due to a situation that is not justified by law has implications for the transfer or reduction of a number of legal rights concerned to other parties who assume and carry out these obligations. This is what we call distributive justice or the distribution of justice (rights and obligations) in a fair and proportional manner.

If you look at the consideration of the Supreme Court in the decision above, the Supreme Court determined the basis for reducing the share of joint property on the part of the former husband based on two cumulative facts, namely the existence of obligations neglected by the husband during the marriage and the double burden of the wife who must earn her own living and as a result the assets obtained come entirely from the wife's own efforts.

The two special circumstances are important variables in the application of jurimetry to analyze the determination of the share of joint property for each former husband and wife. Based on the facts found in the trial, the judge can start the jurimetric analysis by identifying the important and decisive facts as mentioned above and then compile a study that considers various aspects and affects the final value of each party husband and wife.

So that in the mechanism of applying jurimetric analysis in the division of joint property certain circumstances (special circumstances) can be stated as follows:

1. Determine the determinants of entitlement
2. Quantification of each obligation into specific value weights
3. Measuring the share of joint property with a balance sheet

In the process of being able to provide fair legal services to the parties, the elements in the case of joint property must be proven, namely:

1. The existence of a marital bond between the parties as husband and wife;
2. The existence of cooperation between husband and wife in building a household so as to produce joint property;
3. The existence of joint property acquired during the marriage which is the main element in the case;
4. The existence of a balance of each party's contribution in upholding the household to determine a fair division between the contribution in upholding the household and the distribution of joint property;
5. It is known how the management of joint property determines who is responsible if there is a loss incurred due to negligence / error;
6. Whether there is any maintenance owed by the wife that must be paid from the joint property before the division is carried out;

The facts that exist in society in viewing and responding to all judges' decisions, always bring up two opposing groups, there are those who are pro and those who are contra. The pro side always praises the judge's decision as fair because it is in accordance with their interests, while the contra side criticizes and even blasphemes because the judge has trampled and harassed the sense of justice of the community.

If the judge has tried hard to exert all his abilities (ijtihad) to provide a decision that fulfills a sense of justice for the parties seeking justice (justicia bellen), because the duties and functions of judges are to enforce the truth and justice. There is actually no satisfactory definition of the meaning of justice itself. Justice is not something that we can see. Justice is eternal and not temporal. How does one know what justice is, when justice is not the result of reasoning but the product of conscience. Therefore, according to Prof. Baqir Manan, on one occasion stated that "justice in a case is justice for the parties to the case, not for others. There is never a single case in court that is the same. Therefore, justice will differ from one case to another".

Meanwhile, Rifyal Ka'bah once mentioned that there are three forms of justice that must be realized, namely Legal Justice, Moral Justice and Social Justice. Juscite translates to the Indonesian word justice from the Arabic word adil ('adl) meaning straight, consistent, balanced, equal and appropriate.(Ka'bah, 1999)

Legal justice is justice based on the law that can be seen from the applicable laws and regulations and from the decisions of court judges that reflect state legal justice in a formal form. Whether or not a law or a judge's decision is fair is determined by the representation of moral justice and social justice in it.(Ka'bah, 2008)

Meanwhile, moral justice is nothing but justice based on morality.(Wulandari, 2020) Morality is the standard of good and bad. Morality comes from various sources, the most important of which is religion. While social justice as one of the foundations of the state (the fifth principle of Pancasila) is described in three forms of social justice which include economic justice, people's welfare and justice that is realized by the majority of people who can develop.

Ideally, court decisions should reflect these three forms of justice. State legal justice that represents moral justice and social justice in society. But the problem does not stop there, harmonizing the three forms of justice in a judge's decision is

not impossible, but in practice it may not be easy to realize. Court decisions, which are the product of judges' thinking, have a great opportunity to make decisions, even actually exercising discretion in deciding cases according to the legal 'illat and the background that accompanies it. In such circumstances, sensitivity is required to provide fair treatment, through decisions that play a role in making legal reforms and breakthroughs to provide legal protection and justice. So that the judge's decision becomes a parameter to measure the quality, expertise and ability of judges in upholding justice, where the judge's decision produces an impartial, argumentative and rational decision.

The verdict handed down by the judge may only be limited to the formal truth, according to the facts revealed in the trial. However, the formal truth has gone through a good examination with maximum *ijtihad*, so it is no longer possible to find more substantive legal facts. Seeking and finding substantial truth and then enforcing civil law on that substantial truth is certainly very ideal and desirable, not only by justice seekers, but all communities and mankind, because substantial truth is a universal truth that can be accepted by all common sense.

D. Conclusion

The application of jurimetry in the division of joint property can provide more justice for the parties. Parties who do not carry out their obligations in full will have their rights to joint property reduced in accordance with their actions. Conversely, parties who carry out their obligations in full will get rights in accordance with their actions. If both parties carry out their obligations in full, then both are entitled to the same amount of joint property. The application of jurimetry can be a new option and perspective for religious court judges in adjudicating joint property *sengekta*. Judges can calculate exactly how much is feasible and appropriate to be given to one of the parties in accordance with their responsibilities. The division of joint property has a stronger argumentative basis than just dividing $\frac{1}{2}$ for each without seeing the contribution and responsibility of each party.

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