

Challenging Legal Certainty: Analyzing Contra Legem Judgments in Marital Property Disputes Across Court Systems in Indonesia

Dani Armanda Putra^{1*}, Deri Rizal¹, Sri Yunarti¹, Nailur Rahmi¹, Farida Arianti¹

¹ Universitas Islam Negeri Mahmud Yunus Batusangkar

Correspondence:

daniarmanda0@gmail.com

Received: 18-02-2025

Revised: 25-03-2025

Accepted: 30-04-2025



Abstract: This study examines the application of the *contra legem* principle in the adjudication of joint property disputes within both Religious and General Courts in Indonesia, focusing on three landmark decisions: No. 283/Pdt.G/2017/PA Mtr, No. 42/Pdt.G/2015/PTA Jk, and No. 1710 K/Pdt/2020. Employing a qualitative library research method, the analysis draws upon primary legal sources—court decisions and statutory regulations—as well as secondary literature including legal texts and academic journals. Data collection was conducted through document analysis, and data validation employed source triangulation. The findings reveal that judges in Religious Courts tend to apply the *contra legem* principle through a combination of legal reasoning, judicial prudence, jurisprudence, and *ijtihad* to achieve substantive justice, particularly in cases 283/Pdt.G/2017/PA Mtr and 42/Pdt.G/2015/PTA Jk. Similarly, in General Court case 1710 K/Pdt/2020, judges refer to the Compilation of Islamic Law while still incorporating *ijtihad*-based considerations. Across both jurisdictions, judges rely on established jurisprudence, the *Qur'an* and *Sunnah*, and contextual interpretation to ensure fairness in joint property disputes—even in cases involving non-Muslim parties. This study highlights the dynamic interplay between statutory law and judicial interpretation in resolving family law conflicts.

Keywords: *Contra Legem Principle, Joint Marital Property, Ijtihad*

Introduction

Marriage is fundamentally aimed at forming a harmonious and prosperous family, both spiritually and materially. Ideally, couples enter into marriage with the hope of lifelong companionship. (Pramadanti & Elimartati, 2021) However, not all marriages endure; many end due to death, divorce, or court decisions, as stipulated in Article 38 of the Indonesian Marriage Law. The dissolution of marriage brings legal consequences, particularly concerning the rights and obligations of spouses, children, and marital property. One recurring legal issue post-divorce is the division of joint marital property.

Despite statutory provisions regulating such matters, disputes over joint property often lead to intense conflicts between former spouses. While written laws are expected to ensure fairness, in practice, they may fall short in addressing the complexities and evolving values within society. In these instances, judges play a crucial role in delivering just outcomes. Empowered by law, judges are expected to adjudicate cases with integrity, professionalism, and deep legal understanding. (Afriyani, 2021)

When written laws are inadequate, judges may resort to other legal sources—such as jurisprudence, doctrine, or customary law. In certain cases, to uphold substantive justice, judges may even

act *contra legem*, as permitted under Article 5(1) of Law No. 48/2009, by interpreting the law in light of prevailing social values. This principle is frequently invoked in marital property cases, as reflected in several landmark decisions—including case No. 283/Pdt.G/2017/PA Mtr (Religious Court of Mataram), No. 42/Pdt.G/2015/PTA Jk (Jakarta Religious High Court), and No. 1710 K/Pdt/2020 (Supreme Court of Indonesia). In these cases, judges departed from the rigid 50:50 formula found in the Compilation of Islamic Law and opted instead for more equitable, context-sensitive rulings that reflect objective and proportional justice. (Rizal et al., 2023)

Previous studies on the distribution of joint marital property in Indonesia have primarily focused on normative interpretations of statutory provisions (Susylawati, 2020), particularly the Compilation of Islamic Law (KHI), which mandates an equal 50:50 division. (Maula et al., 2024) However, such a rigid formula has been criticized for lacking flexibility and failing to account for unequal economic contributions, gender dynamics, or specific contextual factors in individual cases. (D. Putri et al., 2024)

The principle of *contra legem*, though relatively underexplored in Indonesian legal scholarship, has emerged as a critical tool for judges seeking to deliver substantive justice when statutory law proves inadequate. (Elimartati & Elfia, 2020; Nabilah et al., 2025; Warman & Hayati, 2022) In this context, *ijtihad*—the process of independent legal reasoning—becomes essential in bridging the gap between positive law and moral-ethical considerations derived from social realities and Islamic legal tradition. (Ifandy & Hasanah, 2024; Mustofa et al., 2024) Nevertheless, empirical analyses of judicial decisions that apply *contra legem* in marital property disputes remain limited. Most available literature lacks a comprehensive comparison of how religious and general courts implement this principle in practice. This study aims to fill that gap by examining landmark court decisions that reflect the practical application of *contra legem* reasoning in resolving joint property disputes in Indonesia's pluralistic legal system.

Literature Review

Joint Marital Property

The concept of joint marital property in Indonesian legal context is principally derived from the Compilation of Islamic Law (KHI), which aligns with Article 35 of Law No. 16 of 1974 on Marriage. Both legal instruments define joint property as assets acquired by the husband and wife during the course of their marriage. Article 85 of the KHI clarifies that the existence of joint property does not exclude the possibility of individually owned assets by either spouse. Furthermore, Article 86(1) emphasizes that, in principle, no automatic merging occurs between the personal assets and joint assets of spouses merely due to the marital bond.

From a classical Islamic jurisprudence (*fiqh*) perspective, joint property is understood as wealth generated collectively by the spouses while bound in marriage. (Pelu & Dakhoir, 2021) This property is considered to result from a form of *syirkah* (partnership), whereby contributions from both spouses create a shared pool of assets that are no longer distinguishable individually. The Encyclopedia of Islamic Law describes this concept—commonly known in Indonesian legal terminology as *harta gono-gini*—as property acquired jointly during the marital relationship. (Marlina & Mubarak, 2022)

In practice, joint property encompasses several categories, including assets obtained prior to marriage by either party, assets given to both spouses at the time of marriage (such as household goods or capital), inherited or gifted property received during marriage, and income or acquisitions resulting from mutual or individual efforts after marriage. (S. E. Putri et al., 2025) Last category is typically recognized as the core of joint property, especially in cases of divorce or property disputes.

Contra Legem Principle

The principle of *contra legem*, derived from Latin, is commonly understood in legal dictionaries as “contrary to the letter of the law.” In judicial practice, it refers to court rulings that either disregard or deviate from statutory provisions when those provisions are no longer aligned with evolving social justice and legal consciousness. (Beneduzi, 2021) Watjik Saleh (1981) further elaborates that *contra legem* grants judges the authority to deviate from outdated written laws when such laws fail to meet the demands of

justice in contemporary society. Within the framework of Islamic judicial authority in Indonesia, religious court judges are mandated to adjudicate cases based on Islamic law and prevailing national legislation, affirming the principle that all judges—regardless of jurisdiction—share equal standing in legal authority and responsibility. (Ahmad, 2020; Nurbaedah, 2021)

In the theory of legal discovery, legislation remains the primary legal source, followed by custom, jurisprudence, international agreements, and doctrinal writings. According to Sudikno Mertokusumo (1983), statutes carry authoritative legal weight due to their written and formal nature, ensuring legal certainty. (Laela Fakhriah, 2020; Suparno & Jalil, 2022) However, interpreting legislation demands more than a literal reading; understanding requires contextual analysis of its provisions, explanatory memoranda, and legal principles. Statutory interpretation should ideally not contradict the law itself, especially if the legislative text is already clear. (Badrudin & Supriyadi, 2022) Nevertheless, contra legem interpretation may be permissible when no clear legal norms govern a particular case. Judges, under Article 5(1) of Law No. 48 of 2009 on Judicial Power, are obligated to explore and embody the values of law and justice that prevail in society. Similarly, Article 229 of the Compilation of Islamic Law requires judges to pay close attention to the living law and societal sense of justice in delivering decisions. In such cases, judicial discretion serves as a form of *ijtihad*—an effort in legal reasoning and interpretation. Judicial practice reveals frequent challenges, including ambiguous or incomplete statutory language. (Zaidah et al., 2023) Article 10(1) of Law No. 48 of 2009 emphasizes that judges must not only apply the law but also actively engage in its discovery and development.

Method

This study adopts a qualitative library research method with a descriptive-analytical approach, focusing on the application of the contra legem principle in resolving joint marital property disputes in Religious and General Courts in Indonesia. Primary sources include statutory laws, judicial decisions, and the Compilation of Islamic Law (KHI), while secondary sources consist of legal doctrines and academic literature. By analyzing selected court rulings, this research explores how judges exercise discretion through *ijtihad* and interpret legal norms beyond their literal meaning to achieve substantive justice. The study aims to highlight the interplay between written law, judicial reasoning, and evolving societal values within Indonesia's pluralistic legal system.

Results and Discussion

The Application Of The Contra Legem Principle In Indonesian Courts

The application of the contra legem principle in Indonesian courts, particularly in joint marital property disputes, reflects a dynamic interaction between normative legal texts and judicial interpretation. A critical review of case decisions such as No. 283/Pdt.G/2017/PA Mtr, No. 42/Pdt.G/2015/PTA Jk, and No. 1710 K/Pdt/2020 reveals that judges often move beyond the literal provisions of Article 97 of the Compilation of Islamic Law (KHI) to ensure a more just outcome. In these cases, the courts considered the unequal contribution of each spouse during the marriage, leading to a non-50:50 distribution of assets—a decision that departs from the written law yet aligns with the principle of substantive justice. Judges emphasized that normative-legalistic standards were insufficient to address the complexity of individual cases, thereby invoking contra legem as a form of legal discovery.

This judicial approach is grounded in the idea that law must evolve with time, space, and social context. Scholars argue that law must not be interpreted rigidly, but rather be responsive to societal needs and values. (Amelia, 2023) This flexibility is essential in pluralistic legal systems, where written laws cannot possibly cover the infinite range of human experiences. Legal theorists such as Mertokusumo (2007) emphasize that legal discovery through contra legem constitutes a valid source of law, particularly when rooted in ethical reasoning and judicial integrity. The process by which judges arrive at such decisions often involves three stages: *konstatir* (establishing facts based on evidence), *kualifisir* (qualifying the legal status of the claim), and *konstituir* (formulating a decision that delivers justice). These procedural stages

ensure that judges do not act arbitrarily, but rather base their judgments on careful assessment, doctrinal knowledge, and the broader legal and social context of the dispute (Rifa'i, 2014).

Ultimately, the use of *contra legem* in religious and general court rulings demonstrates the judiciary's role in bridging the gap between rigid statutory interpretation and living law. This method of legal reasoning, particularly when informed by *ijtihad*, enables judges to formulate equitable rulings in the absence of precise legal norms. It also reaffirms the principle that justice is not solely a product of legal formalism, but also of moral reasoning and societal values that evolve over time.

Analyzing Contra Legem Judgments in Marital Property Disputes Across Court Systems in Indonesia

Joint marital property is defined as any assets acquired during the course of a marriage, beginning from the solemnization of the marriage contract (*ijab qabul*) until its dissolution, either by death or divorce. The legal framework governing joint property, as stipulated in Law No. 1 of 1974 on Marriage (as amended by Law No. 16 of 2019), applies regardless of who acquired or registered the property. Article 35 specifies that wealth accumulated during marriage constitutes joint property, whereas individually inherited or gifted property remains under each spouse's control unless otherwise agreed upon. Furthermore, Articles 36 and 37 regulate the rights over such property and provide room for reference to religious or customary law when disputes arise.

The Compilation of Islamic Law (*Kompilasi Hukum Islam*, or KHI) provides further clarification on the distribution of marital property. It explicitly affirms in Articles 85–97 that each spouse retains individual ownership of their pre-marital and gifted/inherited property and that, in the event of divorce, both parties are entitled to an equal share of the joint property, regardless of whether the divorce results from death or mutual separation. Article 97 becomes the central normative basis in settling such disputes in Islamic courts. Additionally, Law No. 14 of 1970 on Judicial Powers (amended by Law No. 35 of 1999) and Law No. 7 of 1989 on Religious Courts (later amended by Law No. 3 of 2006) provide that judges are not merely enforcers of written law but are mandated to seek, interpret, and apply the living values of justice within society. This understanding designates judges as legal discoverers (*rechtvindiers*), tasked with normatively applying abstract legal rules to concrete cases (judge-made law). The judge's decision becomes part of the living law when it reflects prevailing moral and social values, as emphasized in Article 229 of the KHI and Article 28(1) of Law No. 4 of 2004, which obligates judges to consider the sense of justice alive within society.

When interpreting joint property distribution, the case of Decision No. 283/Pdt.G/2017/PA.Mtr deviated from the normative 50:50 division stated in the KHI. In this case, the division was ruled as one-third for the husband and two-thirds for the wife, based on her disproportionately greater economic contribution. This ruling is grounded in a deeper understanding of the principle of justice, where fairness is measured not by formal equality but by actual contribution and burden-sharing in the household. The wife's consistent financial support and initiative in family sustenance, especially in the absence of any significant income or support from the husband, justified such judicial reasoning. Moreover, judges are encouraged to refer to Quranic guidance, such as in Surah al-Nisa (4:3 and 4:34), which emphasizes the responsibility of men as providers and leaders within a household. When these roles are reversed in practice, as evidenced by case facts and presented proofs, a reinterpretation of the normative framework is warranted to meet the demands of substantive justice.

The fundamental purpose of law enforcement is to realize justice in society. Consequently, the panel of judges in Decision No. 283/Pdt.G/2017/PA.Mtr exercised its discretion to apportion the marital property based on actual contribution rather than formal provisions. The wife's dual role as breadwinner and homemaker placed her under a double burden, while the husband failed to fulfill his expected role. Hence, the wife was granted two-thirds of the property, while the husband received one-third. Though the KHI establishes an equal division as the baseline, such deviation was necessary to uphold material justice, especially when assessed objectively and proportionally.

This scenario highlights the limitations of normative legal provisions in addressing complex marital realities. While the KHI remains the main reference, especially in the absence of specific statutory

regulations, the evolving sense of justice among litigants and judges alike increasingly calls for flexible interpretation. This dynamic underscores the tension between legal certainty and justice. Excessive adherence to legal certainty may lead to rigidity and, at times, injustice—a phenomenon known as *lex dura sed tamen scripta* (the law is harsh, but it is the law).

In resolving joint property disputes, religious court judges primarily rely on the KHI and national marriage law. However, given the evolving socio-economic roles of spouses and the insufficiency of detailed legislative provisions, judges are compelled to engage in *ijtihad* (independent legal reasoning). The Quran and Sunnah, while being the ultimate sources of Islamic law, are limited in addressing every emerging case. Thus, *ijtihad* becomes essential in discovering and applying the law in line with current contexts. The concept of *ijtihad* in the judiciary relates to a judge's capacity to infer applicable law where textual provisions are absent or inadequate. This is achieved through various methodologies, including *istihsan* (juridical preference), a form of *ijtihad* that allows deviation from general analogical reasoning (*qiyas jali*) in favor of more subtle analogies (*qiyas khafi*) when necessary to uphold public interest or *maslahah*. In practice, *istihsan* enables judges to prioritize justice and societal benefit over rigid legalism.

This method aligns with the normative obligations imposed by Law No. 48 of 2009 on Judicial Powers and earlier constitutional mandates emphasizing legal reform and moral responsibility in judicial decision-making. The judge thus acts not only as a law enforcer but also as a moral interpreter, ensuring that religious principles, legal texts, and community values are synthesized in producing rulings that are both legally sound and socially acceptable. Ultimately, judicial interpretation through *ijtihad* in family law—particularly in the distribution of joint property—reflects the ongoing evolution of Islamic jurisprudence in Indonesia. It affirms that the principle of *contra legem* can be applied constructively, not to disregard written law, but to ensure that the spirit of justice prevails in contexts where the letter of the law falls short.

Conclusion

In light of the analysis presented in this study, it is evident that the application of the *contra legem* principle by judges in several decisions within the Religious Courts, particularly concerning the division of joint marital property, represents a dynamic form of judicial *ijtihad*. This method has been employed not to contradict positive law, but rather to refine and reinterpret it in order to better reflect the values of substantive justice. Through the lens of Islamic legal theory, particularly the method of *istihsan* (juridical preference), judges have exercised discretionary reasoning that prioritizes the reality of each party's contribution over rigid textual interpretation. This approach demonstrates a growing awareness of gender equity and economic fairness, particularly in cases where wives bear a double burden as both breadwinners and caregivers. While the Compilation of Islamic Law (KHI) remains the primary positive legal source in resolving such cases, judges are increasingly called upon to bridge the gap between legal certainty and lived experience by engaging with the normative demands of justice that evolve within society. Thus, judicial reasoning that employs the *contra legem* principle serves not only as an instrument of legal adaptation but also as a reflection of *maqāṣid al-sharī'ah*—the higher objectives of Islamic law—which seek to protect individual rights, promote fairness, and ensure social harmony within the legal framework of Indonesia.

Acknowledgement

Thanks are due to all those who have helped in the process of researching and writing this article.

Conflict of Interest

This article has no conflicts of interest.

References

- Afriyani, S. (2021). Interdisciplinary Approach In The Study Of Marital Law (Study Of The Determination Of Child Costody). *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat*, 21(2), 219–230.

<https://doi.org/10.19109/nurani.v21i2.9738>

- Ahmad, K. W. (2020). *Penerapan Asas Contra Legem dalam Pembagian Harta Bersama pada Perkara No. 283/pdt. g/2017/PA. MTR. di Pengadilan Agama Mataram*. UIN Mataram.
- Amelia, S. (2023). Progressive Legal Approach to Modern Community Law Enforcement in Indonesia. *Pancasila and Law Review*, 4(1), 1–14. <https://doi.org/10.25041/plr.v4i1.2729>
- Badruddin, B., & Supriyadi, A. P. (2022). Dinamika Hukum Islam Indonesia : Reaktualisasi Norma Islam dalam Menalar Hukum Positif Merespon Sosio-Kultural Era Kontemporer. *De Jure: Jurnal Hukum Dan Syar'iah*, 14(1), 38–57. <https://doi.org/10.18860/j-fsh.v14i1.15512>
- Beneduzi, R. (2021). Equity in the Middle Ages. In *Equity in the Civil Law Tradition* (pp. 61–95). Springer International Publishing. https://doi.org/10.1007/978-3-030-78067-8_4
- Elimartati, E., & Elfia, E. (2020). Kritik Terhadap Kompilasi Hukum Islam Tentang Ketentuan Harta Bersama Dalam Perkawinan. *JURIS (Jurnal Ilmiah Syariah)*, 19(2), 231. <https://doi.org/10.31958/juris.v19i2.2283>
- Ifandy, T., & Hasanah, I. (2024). Maslahat (Benefits) in Fiqh Awlāwiyāt: A Comparison between Yūsuf al-Qarādhawī's View and Abdus Salam Alī al-Karbulī's. *Al-'Adalah*, 21(1), 1. <https://doi.org/10.24042/adalah.v21i1.21316>
- Laela Fakhriah, E. (2020). Penemuan Hukum Oleh Hakim Melalui Pembuktian Dengan Menggunakan Bukti Elektronik Dalam Mengadili Dan Memutus Sengketa Perdata. *Jurnal Bina Mulia Hukum*, 5(1), 89–102. <https://doi.org/10.23920/jbmh.v5i1.50>
- Marlina, S., & Mubarak, H. (2022). Joint Property after Divorce in the Polygamous Marriage: Comparative Research in Indonesia and Malaysia. *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, 22(2), 273–287. <https://doi.org/10.30631/alrisalah.v22i2.1289>
- Maula, B. S., Zain, M. F., & Nada, S. (2024). Marital Property in Marriages of Different Nationalities in Indonesia According to National Law and Islamic Law. *El-Aqwal : Journal of Sharia and Comparative Law*, 3(1), 1–16. <https://doi.org/10.24090/el-aqwal.v3i1.10508>
- Mustofa, I., Setiawan, W., Maliki, I. A., & Chamdan, U. (2024). The Authority of Texts in the Dynamics of Ijtihad on Fiqh Mu'amalah Among Santri in Indonesia. *El-Mashlahah*, 14(2), 381–408. <https://doi.org/10.23971/el-mashlahah.v14i2.8074>
- Nabilah, W., Putra, R., Afroo, F. A., Nurjanah, N., & Wahyuni, E. (2025). Between Protection and Permissiveness: A Fiqh Siyasah Reexamination of Marriage Dispensation in Indonesia. *JURIS (Jurnal Ilmiah Syariah)*, 24(1), 137. <https://doi.org/10.31958/juris.v24i1.11882>
- Nurbaedah, N. (2021). *Implementasi Pasal 97 Kompilasi Hukum Islam Dalam Pembagian Harta Bersama Perkawinan Di Pengadilan Agama Kota Kediri*. IAIN Kediri.
- Pelu, I. E. A., & Dakhoir, A. (2021). Marital Property within the Marriage Law: A Debate on Legal Position and Actual Applications. *Al-Jami'ah: Journal of Islamic Studies*, 59(2), 287–316. <https://doi.org/10.14421/ajis.2021.592.287-316>
- Pramadanti, W., & Elimartati, E. (2021). Implementasi Aturan Adat Tentang Harta Suarang Setelah Terjadinya Perceraian Menurut Hukum Islam (Studi Kasus Di Nagari Batu Balang). *JISRAH: Jurnal Integrasi Ilmu Syariah*, 2(1), 171–181.
- Putri, D., Warman, A. B., Nabilah, W., Putri, S. E., & Nofrianti, M. (2024). Reinterpretasi Relasi Suami Istri dalam Membangun Keharmonisan Rumah Tangga (Sebuah Pendekatan Kontekstual terhadap QS. an-Nisaa' (4): 34). *Islamika : Jurnal Ilmu-Ilmu Keislaman*, 24(2 SE-Articles), 164–176. <https://doi.org/10.32939/islamika.v24i2.4499>
- Putri, S. E., Islami, M. H., Nengsih, S. W., & Nofrianti, M. (2025). Women and Inequality: An Analysis

of Social Structures in The Lives of Female Agricultural Laborers in Batipuah Baruah Village. *Alfuad: Jurnal Sosial Keagamaan*, 9(1), 31–47.

- Rizal, D., Yustiloviani, Y., Arianti, F., Renie, E., & Putri, D. (2023). Model of Prevention if Loan Sharking Practises Through Pentahelix-Based Sharia Financing Regulation Literacy in Tanah Datar Regency Community. *EKONOMIKA SYARIAH : Journal of Economic Studies*, 7(1), 36. <https://doi.org/10.30983/es.v7i1.6264>
- Suparno, S., & Jalil, A. (2022). Penemuan Hukum oleh Hakim di Indonesia. *Law, Development and Justice Review*, 5(1), 47–59. <https://doi.org/10.14710/ldjr.v5i1.15043>
- Susylawati, E. (2020). The Judge Principle Is Active In Case of Divorce In Madura District Religious Court. *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 14(2), 267–282. <https://doi.org/10.19105/al-lhkam.v14i2.2435>
- Warman, A. B., & Hayati, R. F. (2022). Tahkim dalam Standar Syariah dan Urgensinya terhadap Penyelesaian Sengketa Ekonomi Syariah di Indonesia. *Islamika : Jurnal Ilmu-Ilmu Keislaman*, 22(01), 37–58. <https://doi.org/10.32939/islamika.v22i01.1246>
- Zaidah, Y., Al-Amruzi, M. F., & Sarmadi, A. S. (2023). Unveiling the Role of Local Cultural Considerations in Judicial Discretion: An Analysis of Inheritance Decisions in the Religious Courts of South Kalimantan. *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, 23(1), 47–58. <https://doi.org/10.30631/alrisalah.v23i1.1351>