

Distribution of Inheritance of Joint Property in Indonesian Legal Pluralism: Inter-Legal System Dialogue Toward a Fair Regulatory Framework

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Abstract

The distribution of inheritance of joint property in the context of succession is one of the issues requiring special attention in Indonesia's pluralistic legal system, which recognizes and applies state law, Islamic law, and customary law. This legal pluralism often results in differing interpretations regarding the status of marital joint property, the rights of the surviving spouse, and the rights of heirs, leading to legal uncertainty and social conflict. This study analyses the distribution of joint property from the perspective of Indonesian legal pluralism. It proposes a fairer regulatory framework, based on the analysis of the Kendal Religious Court Decision No. 838/Pdt.G/2023/PA.Kdl. Employing doctrinal (normative juridical)



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research, this study qualitatively analyzes primary and secondary legal materials grounded in legal pluralism and interlegality theory, Gustav Radbruch's theory of the purpose of law, John Rawls's theory of justice, and the principle of *maqāsid al-sharī'ah*. The findings show that the Kendal Religious Court has applied the Compilation of Islamic Law and the Marriage Law to fulfill legal certainty; however, its legal considerations remain normatively oriented and have not optimally integrated substantive justice and the realities of life in a pluralistic legal context. This study proposes an integrative regulatory framework that harmonizes state law, Islamic law, and customary law, as well as harmonizes Islamic law with other legal systems, not as rivalrous competition but as a dialogue that safeguards the rights of all heirs. Thus, it is expected that court decisions will create legal certainty, justice, and benefits in Indonesia's multicultural and multi-religious society.

KEYWORDS: *Inheritance Distribution, Joint Property, Legal Pluralism, Inter-Legal System, Regulatory Reform.*

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Introduction

The distribution of inheritance is a controversial legal issue and often triggers conflict within Indonesian society.¹ The complexity of inheritance distribution becomes more convoluted when involving joint property, which includes both the individual and shared rights of the heirs.² Furthermore, the complexity of inheritance distribution in Indonesia is also due to the pluralistic nature of its inheritance systems,³ with three different regimes: Islamic inheritance law, Western inheritance law as set out in the Indonesian Civil Code, and customary inheritance law. These three legal systems have their own philosophical foundations, concepts of ownership, and inheritance distribution mechanisms, which are not always aligned with one another.⁴

In the Islamic inheritance law system, monotheism and Divine (transcendental) justice form its philosophical foundation.⁵ Philosophically, in the Islamic inheritance system, property is regarded as a trust from Allah SWT, with humans merely managing what has been entrusted.⁶ In the Islamic inheritance system, justice is measured based on

¹ Muhammad Amrullah and Syafwendi Nasrul, Manaf, Zati Ilham Abdi, Syafril, "An Overview of the Inheritance Legal System in Malaysia and Indonesia: Issues Faced by Both Countries," *Journal of Shariah Law Research* 6, no. 2 (2021): 181–200.

² Azmi Ansyari et al., "Analyzing Subjective Defects in a Civil Tortious Lawsuit: Inconsistencies between Posita and Petitum in the Control Assumption of the Testator's Estate (Case No. 415/Pdt.G/2022/PN.Jkt.Brt)," *Unnes Law Journal* 9, no. 2 (2023): 333–56, <https://doi.org/10.15294/ulj.v9i2.75576>.

³ Maimanah et al., "Delay in the Division of Inheritance: A Theoretical Review Within Legal System Framework in Indonesia," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024): 241–57, <https://doi.org/10.18592/sjhp.v24i1.12916>.

⁴ Rr Dewi Anggraeni, "Islamic Law and Customary Law in Contemporary Legal Pluralism in Indonesia: Tension and Constraints," *Abkam: Jurnal Ilmu Syariah* 23, no. 1 (2023): 25–48, <https://doi.org/10.15408/ajis.v23i1.32549>.

⁵ Ya' Rakha Muyassar, "The Concept of Divine Justice In Islamic Inheritance Law (A Transcendental Comparative Analysis of Indonesia and Brunei Darussalam)," *MASLAHAH (Jurnal Hukum Islam Dan Perbankan Syariah)* 16, no. 1 (2025): 49–60, <https://doi.org/10.33558/maslahah.v16i1.10917>.

⁶ Juliana Nurillah, Muh. Yunan Putra, and Jainuddin Jainuddin, "Analysis of the Application of the Principle of Proportionality Article 31 of Law Number 1 of 1974

the principle of proportionality a balance of rights, obligations, and the responsibility to provide for one's family.⁷ In this system, property ownership adheres relatively to individuals. Both men and women have the right to own property, which may be inherited only after funeral expenses, debt settlement, and bequests are deducted. Under Islamic inheritance law, distribution is conducted strictly and definitively (*faraid*), using an individual bilateral system.⁸

Much like Islamic inheritance law, the Western system, as codified in the *Burgerlijk Wetboek*, also has its distinct philosophical foundation. The Western inheritance system is based on individualism, gender equality, and absolute freedom.⁹ In Western inheritance law, property ownership is individual and recognizes marital joint property resulting from marriage. If a decedent passes away, marital joint property is first split, with half belonging to the surviving spouse and the remaining half constituting the legitimate inheritance bundle. It is the model also adopted by the Marriage Law (Law No. 1 of 1974). The Western inheritance system uses a bilateral equality mechanism based on heir class groups (categories I, II, III, and IV). The share of inheritance between men and women is equal, and it

Concerning Marriage in the Division of Rights and Obligations of Husband and Wife," *International Journal of Nusantara Islam* 13, no. 1 (2025): 25–38, <https://doi.org/10.15575/ijni.v13i1.45381>.

⁷ Mohamad Sar'an et al., "Implementation of Harmonious Family in the Concept of Proportionality of Obligations and Rights of Husband and Wife Relations: A Perspective on the Compilation of Islamic Law," *El-Usrah* 7, no. 2 (2024): 695–712, <https://doi.org/10.22373/ujhk.v7i2.24662>.

⁸ Ahmad Redi and Hartini Antasari, "Comparative Analysis on the Regulation of Substitute Heir's Position in the Civil and Islamic Inheritance Law Perspective," *Proceedings of the 3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021)* 655, no. Ticash 2021 (2022): 850–56, <https://doi.org/10.2991/assehr.k.220404.135>.

⁹ Imam Sujono, "Application of John Stuart Mill's Formal Equality Theory to Distribution of Inheritance for Adopted Children: A Comparative Study of Burgerlijk Wetboek and Compilation of Islamic Law," *Journal of Modern Islamic Studies and Civilization* 3, no. 03 (2025): 401–18, <https://doi.org/10.59653/jmisc.v3i03.2006>.

recognizes the concept of *Legitieme Portie* (the absolute share of heirs that a will may not infringe).¹⁰

Apart from these two systems, Indonesia also recognizes a system of customary inheritance law, whose philosophical foundation is based on communalism, magico-religious balance, and familial harmony.¹¹ In the customary inheritance law system, inheritance is seen as a process to preserve the continuity, honor, and magico-religious balance of traditional kinship structures.¹² Distribution under customary law heavily depends on the kinship system observed by the local community. In customary communities that adhere to patrilineal systems, the main heirs are male children, while female children receive only enjoyment rights or marriage provisions. In parental or bilateral communities, the status of sons and daughters tends to be equal.¹³ Distribution of property often no longer follows a system whereby inheritance is divided after the decedent's death but is conducted as gifts (*hibah*). At the same time, the testator is still alive to avoid conflict.¹⁴

The differences among Indonesia's inheritance law systems, when implemented, often lead to disharmony, especially for communities that strictly uphold customary law while also applying state and religious laws.

¹⁰ Maria Ibella Vianka, "Legal Consequences of Violation of the Distribution of Absolute Rights or Legitime Portie Which Result In," *Awang Long Law Review* 7, no. 2 (2025): 427–37.

¹¹ Sonny Judiasih and Efa Laela Fakhriah, "Inheritance Law System: Considering the Pluralism of Customary Law in Indonesia," *PADJADJARAN Jurnal Ilmu Hukum* 5, no. 2 (2018): 315–30.

¹² Arbanur Rasyid, Rayendriani Fahmei Lubis, and Idris Saleh, "Contestation of Customary Law and Islamic Law in Inheritance Distribution: A Sociology of Islamic Law Perspective," *Al-Ahkam* 34, no. 2 (2024): 419–48, <https://doi.org/10.21580/ahkam.2024.34.2.20843>.

¹³ Ellyne Dwi Poespasari, Sri Hajati, and S Soelistyowati, "The Application of the Development of Customary Inheritance Law According To the Jurisprudence of the Supreme Court," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 29, no. 1 (2017): 108, <https://doi.org/10.22146/jmh.17652>.

¹⁴ Khairuddin et al., "Resolving Customary Inheritance Disputes within Indonesia's National Legal System: The Case of Harta Pusaka Tinggi in Minangkabau Society, West Sumatra," *El-Usrah* 9, no. 1 (2026): 562–90, <https://doi.org/10.22373/ujhk.v9i1.32765>.

Disputes frequently arise over differences in perceptions regarding when joint property ceases, the mechanism of its division, and which legal system will determine each party's rights. Disputes over the distribution of inheritance of joint property not only fuel family conflict but also result in legal uncertainty and increase the number of inheritance cases in court.¹⁵

This legal pluralism gives rise to disputes over the status of joint property—whether all assets acquired during marriage automatically become part of the surviving spouse's estate or must first be separated into the surviving spouse's share and the decedent's estate. Such disagreements often result in injustice, particularly for widows or other heirs who occupy weaker social and economic positions.¹⁶ Even though, normatively, the regulation of joint property already has clear legal foundations in Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019, which affirms the existence of joint property acquired during marriage.

One of the disputes related to the inheritance of joint property occurred at the Kendal Religious Court, which examined and adjudicated cases at the first instance and rendered decisions in inheritance cases, as in the Decision of the Kendal Religious Court, namely Decision No. 838/Pdt.G/2023/PA.Kdl. In that decision, it was stated that in the division of inheritance of joint marital property, the widow, as the plaintiff, received half (1/2) of the joint assets. Furthermore, the deceased's inheritance and 1/2 of the joint assets became the property of the deceased as *tirkah* (inheritance), which must be distributed to the other heirs.

In fact, the distribution of joint property after the dissolution of marriage is regulated in Article 96 paragraph (1) of the Compilation of Islamic Law (KHI), which stipulates that in the event of death or divorce,

¹⁵ Tarmizi Tarmizi et al., "Inheritance Distribution and Conflict Resolution in Bone Regency: Upholding Women's Rights and Islamic Law Objectives," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 2 (2024): 255–77, <https://doi.org/10.18860/J-FSH.V16I2.29477>.

¹⁶ Hilman Syahril Haq, "Legal Pluralism and Inheritance Rights: Resolving Conflicts Between Local Customs and National Law in Indonesia," *Kosmik Hukum* 25, no. 1 (2025): 148, <https://doi.org/10.30595/kosmikhukum.v25i1.23727>.

half of the joint property becomes the possession of the surviving spouse.¹⁷ This provision is consistent with Article 97 of the KHI, which states that, in the case of divorce while both parties are alive, the widow and the widower each have the right to half of the joint property, unless another agreement governs it. Subsequently, the joint property must be divided equally between the husband and wife or their respective heirs, regardless of the origin of ownership of said property. Therefore, based on Article 37 of the Marriage Law together with Articles 96 and 97 KHI, divorce legally results in the dissolution of joint property, so the property must be divided equally between the spouses or the entitled heirs.

From the perspective of legal pluralism theory, the existence of various living law systems without a harmonization mechanism poses a significant potential for conflict if not accompanied by a regulatory framework capable of integrating the different legal systems.¹⁸ As a result, the law's aims to create legal certainty, substantive justice, and legal benefit are often hard to achieve simultaneously. In a state based on law, regulations must serve as a bridge between various legal systems without eliminating their unique characteristics. To this end, a more just, integrative, and adaptive regulatory framework is needed for Indonesia's pluralistic legal system. Such a regulatory framework is not intended to abolish religious or customary law, but rather to establish normative meeting points that guarantee legal certainty, the protection of the rights of surviving spouses, respect for religious and customary values, and the realization of substantive justice for all heirs.

Method

This research uses a normative juridical approach, focusing on legal studies by examining prevailing legal norms and their application in

¹⁷ Zainurohmah, Marcelia Puspa Andini, and Anisa Vira Dayanti, "Discourse on Post-Divorce Distribution of Joint Assets in the Perspective of Islamic Law in Indonesia," *Contemporary Issues on Interfaith Law and Society* 2, no. 1 (2023): 61–74, <https://doi.org/10.15294/ciils.v2i1.31375>.

¹⁸ Achmad Hariri and Basuki Babussalam, "Legal Pluralism: Concept, Theoretical Dialectics, and Its Existence in Indonesia," *Walisongo Law Review (Walrev)* 6, no. 2 (2024): 146–70, <https://doi.org/10.21580/walrev.2024.6.2.25566>.

concrete cases.¹⁹ This research is descriptive-analytical, aiming to explain in depth the application of principles of justice in the distribution of inheritance of joint property. The specific case of Decision Number 838/Pdt.G/2023/PA.Kdl is highly important because it provides a concrete example of the application of legal norms in inheritance disputes. This study focuses on positive legal norms, legal principles, and legal doctrines related to inheritance law, marriage law, and asset law, and is based entirely on legal materials analysis.

With a statutory approach and a case approach, this research begins with a review of several regulations governing joint property and inheritance, including Law Number 1 of 1974 on Marriage as amended by Law Number 16 of 2019, the Compilation of Islamic Law (KHI), the Civil Code (KUHPerdata), and other related legislation. Meanwhile, the case approach is conducted through analysis of the Decision of the Kendal Religious Court Number 838/Pdt.G/2023/PA.Kdl is a representation of the application of legal norms concerning the separation of joint assets and inheritance division in judicial practice.

In this study, data sources are derived from secondary data consisting of primary, secondary, and tertiary legal materials.²⁰ Primary legal materials are in the form of legislation, ranging from statutory regulations to court decisions that are the object of study. Secondary legal materials include scholarly books, journal articles, research findings, and expert opinions on inheritance law, marriage law, legal pluralism, and justice theory. In addition to these legal materials, the research also uses tertiary sources, such as legal dictionaries, encyclopedias, and other reference works, to support the interpretation of primary and secondary legal materials. Technically, the collection of legal materials is carried out through a literature review examining documentation techniques for all legislation, court decisions, and relevant scientific literature.

¹⁹ Tatang Sudrajat, "The Combination of Normative Juridical Methods and Literature in Educational Administration Research," no. ICoSPOLHUM (2022).

²⁰ Achmad Irwan Hamzani et al., "Legal Research Method: Theoretical and Implementative Review," *International Journal of Membrane Science and Technology* 10, no. 2 (2023): 3610–19, <https://doi.org/10.15379/ijmst.v10i2.3191>.

The data collected is analyzed qualitatively using legal interpretation methods and deductive reasoning.²¹ The analysis begins by identifying the legal norms governing the status of joint property inheritance, then reviewing their consistency of application in the Decision of the Kendal Religious Court Number 838/Pdt.G/2023/PA.Kdl. The analysis is compared with the principles of justice, legal certainty, and harmonization in Indonesia's pluralistic legal system to identify weaknesses in current regulations and formulate recommendations for a fairer regulatory framework.

Result & Discussion

The distribution of joint property inheritance is one area of law that is prone to normative conflicts as well as conflicts of application.²² This is because the distribution of joint property inheritance is a pluralistic legal field due to the coexistence of three legal systems: state law, Islamic law, and customary law. All three influence the process of resolving inheritance disputes over joint property in Indonesia. Although the concept of joint property is recognized through Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019. For Muslims, these provisions are further emphasized in the Compilation of Islamic Law (KHI), especially Article 96, which stipulates that if a marriage ends due to death, half of the joint property belongs to the surviving spouse. In contrast, the other half becomes the estate (*tirkah*) to be distributed to the heirs

²¹ Dede Indraswara, "Rekonstruksi Metodologis Hukum: Diversifikasi dan Integrasi Penelitian Hukum Normatif (Doktrinal), Empiris (Non-Doktrinal), dan Studi Sosio-Legal (Legal Methodological Reconstruction: Diversification and Integration of Normative (Doctrinal), Empirical (Non-Doctrinal), and Socio-Legal Research)," *IPMHI Law Journal* 5, no. 2 (2025): 205–246, <https://doi.org/10.15294/ipmhi.v5i2.41599>.

²² Suwarti, Decha Khunmay, and Stepan Abannokovya, "Conflicts Occurring Due to the Application of Different Legal Inheritance Systems in Indonesia," *Legality: Jurnal Ilmiah Hukum* 30, no. 2 (2022): 214–27, <https://doi.org/10.22219/ljih.v30i2.21020>.

according to the *faraidh* provisions; this normative construction does not always operate consistently in practice.

In communities that uphold customary inheritance law, the distribution of inheritance still follows kinship patterns that have developed in each region.²³ Patrilineal societies place men in a more dominant position. Meanwhile, in matrilineal societies, there is a distribution pattern that differs from both Islamic law and civil law. On the other hand, some families choose to use a deliberation and consensus mechanism without referring to the provisions of positive law. These practices demonstrate that legal pluralism not only reflects a diversity of norms but also gives rise to various mechanisms for distributing inheritance.²⁴

From the perspective of legal pluralism theory, the capacity of regulation to accommodate the diversity of norms that exist in society without sacrificing the protection of the basic rights of parties is a measure of the success of regulation.²⁵ In the context of the distribution of joint property inheritance, it should not be understood solely as a matter of asset distribution, but rather as a mechanism for the legal protection of the surviving spouse, respect for the rights of the heirs, and efforts to build harmonization between the various legal systems that apply in Indonesia. Thus, the direction of legal reform should not merely clarify existing norms, but should form a regulatory framework that is fair, integrative, and responsive to the plural character of Indonesian society.

The application of legal pluralism in Indonesia is not singular. However, it accommodates both weak and strong legal pluralism as put

²³ Tyara Maharani Permadi, Djanuadi Djanuadi, and Hazar Kusmayanti, "The Practice of Parental Inheritance Distribution in West Java in Relation to Islamic Law," *Jurnal Poros Hukum Padjadjaran* 6, no. 1 (2024): 90–107, <https://doi.org/10.23920/jphp.v6i1.1711>.

²⁴ Yusmita et al., "Legal Pluralism and the Transformation of Islamic Inheritance Law: A Study of Sasak Customary Practices in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 2 (2025): 831–52, <https://doi.org/10.29240/jhi.v10i2.12500>.

²⁵ Nicolò P. Alessi and Martina Trettel, "Federalism and the Law of Diversity," *Federalism and the Law of Diversity* 1 (2024), <https://doi.org/10.1163/9789004707764>.

forward by John Griffiths.²⁶ According to Griffiths, weak legal pluralism is the state's recognition of the operation of several legal systems within one jurisdiction.²⁷ Strong legal pluralism, on the other hand, refers to a sociological condition in which various normative orders are alive and observed by society without dependence on state legitimacy.²⁸ The recognition of Islamic law as formulated in the KHI and customary law in court decisions represents the implementation or embodiment of weak legal pluralism. Meanwhile, the practice of distributing inheritance through deliberation based on kinship values reflects strong legal pluralism.

A.Regulation and Position of Joint Property as an Object of Inheritance in Indonesia's Pluralistic Legal System

In general, property acquired by a man and a woman united in marriage, other than gifts and inheritance, is referred to as joint property unless there is a prenuptial agreement separating the property between them.²⁹ In everyday language, joint property consists of two words: property and joint. According to the Big Indonesian Dictionary, 'property can mean goods (such as money) that constitute wealth and can mean tangible and intangible assets of value'. Joint property means assets that are used (utilized) together.

Article 35 of Law No. 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, states that property acquired during the marriage becomes joint property. Each party's inherited or gifted property remains

²⁶ Syaif Al Haq et al., "Institutionalizing the Concept of Legal Pluralism As an Effort To Realize Substantive Justice," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 14, no. 1 (2024): 272–308.

²⁷ Hanisah Binte Abdullah Sani, "State Law and Legal Pluralism: Towards an Appraisal," *Journal of Legal Pluralism and Unofficial Law* 52, no. 1 (2020): 82–109, <https://doi.org/10.1080/07329113.2020.1727726>.

²⁸ Adnan Mahmutovic and Mohammed Alsudais, "Legal Pluralism and Governance: Redefining Power and Accountability in a Globalized World," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 10, no. 2 (2025): 568–93, <https://doi.org/10.22373/petita.v10i2.791>.

²⁹ Ibnu Elmi As Pelu and Ahmad Dakhoir, "Marital Property Within the Marriage Law A Debate on Legal Position and Actual Applications," *Al-Jami'ah* 59, no. 2 (2021): 287–316, <https://doi.org/10.14421/ajis.2021.592.287-316>.

under the control of its respective recipient unless otherwise stipulated by the parties. On this matter, the KHI provides a clear explanation on joint property, as detailed in Article 1 letter f, that marital property or *syirkah* is property acquired individually or jointly by husband and wife during the marriage, and is subsequently referred to as joint property without regard to in whose name the property is registered.

The criteria for joint property in marriage—which are crucial for determining the division of assets between husband and wife—are defined by certain conditions. Property acquired during the marriage period may be classified as joint property if these conditions are met. These conditions include assets acquired through joint effort or the result of both parties' work during married life.³⁰ Conversely, property acquired individually before marriage or received through inheritance or gifts from a third party does not fall into the category of joint property.³¹

Therefore, assets outside the criteria for joint property, as mentioned, cannot be used as objects for division at the time of divorce. It ensures a fair and equitable distribution of assets. In other words, at the time of divorce, only assets that meet the criteria for joint property will be divided, while personal property obtained prior to marriage or through inheritance or gifts remains the personal property of each party. It is in line with the provisions of Articles 85 and 86 of the KHI, which emphasize that marriage does not eliminate the possibility of each party retaining their own property. The wife's property remains entirely her own, and the husband's property remains his own and remains under his full control.

Normatively, the concept of joint property obtains its legal basis through Article 35 of Law Number 1 of 1974 on Marriage as amended by Law Number 16 of 2019, which states that property acquired during the marriage constitutes joint property, while property obtained before the marriage or originating from gifts and inheritance remains the property of

³⁰ H Lutska et al., "Marriage Contract and Agreement on Division of Joint Property of Spouses: Comparative Legal Analysis," *International Journal ...* 11, no. 6 (2020): 123–31, <https://doi.org/10.34218/IJM.11.6.2020.011>.

³¹ Eko Rial Nugroho, Bagya Agung Prabowo, and Rohidin, "Granting of Property During Marriage as an Inherited Property in Indonesia," *El-Usrah* 7, no. 1 (2024): 310–27, <https://doi.org/10.22373/ujhk.v7i1.22875>.

each party, unless otherwise specified in a prenuptial agreement. For Muslims, this provision is emphasized in Article 1, letter (f), of the KHI, which defines marital property (*syirkah*) as all property acquired by the husband and wife, whether individually or together during the marriage, regardless of whose name the property is registered in.

Article 91 of the KHI provides a detailed explanation of the categories and forms of marital property. This article states that joint property may take the form of tangible and intangible assets.³² Tangible assets are further divided into two categories, namely movable and immovable objects, and include securities that have economic and legal value. Intangible assets, on the other hand, include rights and obligations held by husband and wife during the marriage. Therefore, it is important to understand that joint property encompasses all assets that have economic value and are governed by law, whether tangible or intangible, including rights and obligations within a marital relationship.

These provisions show that Islamic law in Indonesia prioritizes the substance of ownership over administrative formalities. Thus, recording the name of one party on a certificate of ownership or other ownership document does not remove the property's character as joint property if it was acquired during the marriage. Nevertheless, in Indonesia's pluralistic legal system, the concept of joint property has various meanings. In some customary law communities, regulation of matrimonial property ownership is influenced by the prevailing system of kinship.³³ In patrilineal societies, control of family assets is often oriented towards the male lineage. In contrast, in matrilineal societies, control of assets is determined by the female lineage. It differs from bilateral societies, which tend to provide relatively equal positions for husband and wife.³⁴ This diversity indicates

³² Abd Rouf, Mufidah Ch, and Zaenul Mahmudi, "Joint Property Division in Indonesia: A Gender Equality Viewpoint," *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 2 (2023): 230–50, <https://doi.org/10.18860/j-fsh.v15i2.23050>.

³³ Rajnaara C. Akhtar and Faizal Ahmad Manjoo, "Matrimonial Property in Islamic Law," *Research Handbook on Family Property and the Law*, no. Routledge 2016 (2024): 77–91, <https://doi.org/10.4337/9781802204681.00012>.

³⁴ Akhmad Jalaludin, "From Patrilineal to Bilateral: A New Balance of Islamic Inheritance Law in Indonesia's Religious Court," *The Indonesian Journal of Islamic*

that the concept of joint property is not merely a construct of positive law but is also influenced by the social and cultural values that live within the community (living law).

This condition shows that the main issue does not lie in the absence of norms. However, in the lack of harmonization of regulations capable of integrating the various legal systems existing in Indonesian society.³⁵ Therefore, regulation concerning the status of joint property in inheritance is not sufficient if it only regulates the definition or criteria of ownership but must also provide clear mechanisms regarding the process of identification, separation, and distribution of marital property before it becomes an inheritance object.³⁶ Such harmonization is an important prerequisite for establishing a fair regulatory framework that can provide legal certainty, protect the rights of surviving spouses, respect the diversity of legal systems, and ensure that the rights of all heirs are fulfilled proportionally.

B. Analysis of the Kendal Religious Court Decision in the Perspective of Indonesia's Pluralistic Legal System

The Kendal Religious Court is one of the judicial bodies authorized to examine, decide, and resolve certain cases involving persons of the Islamic faith. One of the cases it handles is inheritance disputes, particularly those concerning the distribution of joint property. Juridically, this authority is the absolute jurisdiction of the Religious Court as regulated in Article 49 paragraph (1) letter (a) of Law Number 7 of 1989 on Religious Courts, as amended by Law Number 3 of 2006 and Law Number 50 of 2009. According to Article 49 paragraph (2) of the law, the scope of authority of the Religious Court includes, among others, determining heirs and each

Family Law 14, no. 2 (2024): 201–31, <https://doi.org/10.15642/alhukama.2024.14.2.201-231>.

³⁵ Muhammad Hafis and Jumni Nelli, "Pluralism and Justice in Islamic Inheritance Law: Contextualization and Harmonization of Sharia Principles with Indonesian Social Realities," *Jurnal Hukum Dan Peradilan* 15, no. 1 (2026): 31–58.

³⁶ Esti Royani et al., "Understanding the Mechanism of Joint Property Division: Rights of Husband and Wife According To Marriage Law in Indonesia," *Awang Long Law Review* 7, no. 2 (2025): 315–22, <https://doi.org/10.56301/awl.v7i2.1519>.

share, as well as resolving disputes over marital property that is the object of inheritance division.

One case related to joint property distribution disputes is the Kendal Religious Court Decision Number 838/Pdt.G/2023/PA Kdl., which addresses marital property between ES and the late TH. The selection of Kendal Religious Court Decision Number 838/Pdt.G/2023/PA.Kdl is the subject of study is because this judgment raises issues that frequently arise in the division of joint property inheritance in Indonesia, which combines aspects of marriage law, inheritance law, and legal pluralism. Unlike ordinary inheritance disputes that focus on determining the heirs' shares, this case demonstrates that before distributing an inheritance, the status of marital property must first be determined as to the portion belonging to the surviving spouse and the portion becoming the estate (*tirkah*) of the decedent. Thus, this case is relevant for analysis as it reflects both normative issues and highlights the challenges of harmonizing various prevailing legal regimes in Indonesia. In the case of Kendal Religious Court Decision Number 838/Pdt.G/2023/PA.Kdl, the disputed objects include several assets acquired during the marriage.

1. A plot of land with Certificate of Ownership (SHM) Number 3100/Wonolopo, registered in the name of TH, purchased on 04-06-2016 according to Deed of Sale and Purchase No. 64/2016 made by Notary RAT, SH, MKn, as Land Deed Official (PPAT); with an area of +196 m² (One Hundred and Ninety-Six square meters), located in the City of Semarang, Central Java Province.
2. A plot of land with Certificate of Ownership (SHM) Number 3099/Wonolopo, registered in the name of TH, purchased on 14-06-2017 according to Deed of Sale and Purchase No. 35/2017 made by S, SH, as PPAT; with an area of +196 m², located in the City of Semarang, Central Java Province.
3. A plot of land and house situated on it as stated in Certificate of Ownership No. 2099/Boja, registered in the name of TH, obtained by sale and purchase as stated in Deed of Sale and Purchase No. 25/2014 dated 07-02-2014, made by Notary YSAH, SH, MKn. with an area of +199 m² (One Hundred and Ninety-

Nine square meters), located in the Regency of Kendal, Central Java Province.

4. A plot of land and a residential building situated on it as stated in the Certificate of Land Ownership (SHM) Number 2100/Boja, registered in the name of TH, acquired through sale and purchase as stated indeed of sale and purchase No. 269/2016 dated 16-05-2016, drawn up by Notary YSAH, SH, MKn. as PPAT of Kendal Regency; with an area of + 212 m² (Two Hundred Twelve square meters), located in Kendal Regency, Central Java Province.
5. A plot of land with Certificate of Land Ownership (SHM) No. 2800/Boja, acquired based on sale and purchase No. 536/2016 dated 06-10-2016, drawn up by Notary YSAHSH, MKn., with an area of + 100 m² (One Hundred square meters), located in Kendal Regency, Central Java Province.
6. A plot of land with Certificate of Land Ownership (SHM) Number 1970/Boja, acquired based on deed of sale and purchase No. 051/2017 dated 08-02-2017, drawn up by Notary YSAH, SH., MKn., with an area of + 210 m² (Two Hundred Ten square meters), located in Kendal Regency, Central Java Province.
7. The heirs' debt to SF amounts to IDR 1,000,000,000, - (one billion rupiah).
8. The Panel of Judges determines that items (1)-(6) above, after deduction of IDR 1,000,000,000, - (one billion rupiah), constitute the joint property of the Heirs of TH and Plaintiff ES, while ensuring both parties are fully aware of their rights and responsibilities.
9. Furthermore, half (1/2) of point number 8 above is the right or property of Plaintiff ES as Wife, and the remaining half (1/2) is the right or property of the late TH as Husband.
10. That the property of the late TH and half (1/2) of the joint property, which is the right or property of the late TH, as stated in point (9) above, is the *tirkah* (inheritance) of the late TH, which must be distributed to his heirs.

These assets have become the object of dispute between the Plaintiff (wife) and Defendant (heirs). They are disputing the inheritance, including

joint property, but the prolonged legal process has raised concerns. Frustration stems from recurring court proceedings, and on occasion, the judge has had to travel to the location to inspect their assets on-site.

Reviewing the legal considerations of the Panel of Judges at the Kendal Religious Court in Case Number 838/Pdt.G/2023/PA.Kdl, the ruling on the determination of joint property distribution is inaccurate and lacks a foundation in justice because, in this decision, the Panel of Judges, in their legal considerations and case ruling, did not differentiate between a husband/wife who made greater contributions in providing for the family. Moreover, the ruling did not consider that aside from a legal wife from the third marriage who has no children, the decedent also left as heirs his biological children from the first lawful marriage and his biological children from the second marriage conducted by *Siri*.

Referring to the decision of the Kendal Religious Court mentioned above, from the perspective of legal certainty, the court has established a juridical framework based on the Marriage Law and the KHI. However, in the context of Indonesia's legal pluralism, the decision of the Kendal Religious Court has not fully considered the existence of the customary inheritance law system and Islamic inheritance law. Although the disputing parties are Muslim—thus the inheritance dispute is resolved under Islamic law—the dispute over joint property inheritance is also influenced by ownership concepts that have developed in society, namely customary law and national law.

Analysis of the panel's ratio decidendi shows that the panel was more inclined to apply the norm in Article 96 of the KHI than to comprehensively elaborate on the philosophical and sociological reasons underlying the division. In its decision, the Panel of Judges affirmed that the wife is entitled to half of the joint property, while the remainder constitutes *tirkah* to be distributed to the heirs. These considerations have not explained how the economic and non-economic contributions of each spouse during the marriage form the basis for protecting rights over joint property. In fact, in modern family law, women's domestic contributions, such as household management, childcare, and support for the spouse's economic activities, are recognized as legally valuable.

Thus, from the perspective of the aim of law, as articulated by Gustav Radbruch, in principle this decision fulfills the element of legal certainty, as it consistently applies norms established in prevailing laws and regulations.³⁷ However, it has not considered the aspects of justice and utility, because justice is not only about textual application of rules, but also concerns the ability of the decision to provide proportional protection to all interested parties. Meanwhile, the legal utility concerns the decision's ability to resolve family conflict sustainably and to minimize the potential for further disputes among heirs.

From the perspective of John Rawls's theory of justice, the legal institution in this case, the Kendal Religious Court, ought not only to guarantee equal treatment before the law but also to protect parties in more vulnerable positions.³⁸ Similarly, from the perspective of *maqāṣid al-sharī'ah*, the division of joint property should be oriented towards the protection of property (*ḥifẓ al-māl*), the protection of family, and realization of benefit for all heirs.³⁹ Thus, ideally, judicial considerations should not be limited to the application of normative provisions contained in regulations. However, they should also pay attention to the realization of substantive justice in a plural society.

C. Interfaith Dimension in the Division of Joint Property Inheritance

Although the decision of the Kendal Religious Court as mentioned above involves parties who are Muslim, in general, in the life of the nation and state, the issue of the distribution of joint property inheritance is

³⁷ Gustav Radbruch, "Law's Image of the Human," *Oxford Journal of Legal Studies* 40, no. 4 (2020): 667–81, <https://doi.org/10.1093/ojls/gqaa026>.

³⁸ John Rawls, *A Theory of Justice* (Cambridge: The Belknap Press of Harvard University Press, 1999).

³⁹ Muhammad Zidni, Syaikh, Fahmi Hamdi, Sabarudin Ahmad, Ihsan, Reza Noor, Husein, "The Maqashid Sharia Construction on Inheritance in Dayak Ngaju Customs within the Tumbang Anoi Agreement," *El-Mashlahah* 13, no. 2 (2023): 182–202, <https://doi.org/10.23971/el-mashlahah.v13i2.7375>.

inseparable from the multireligious character of the Indonesian people.⁴⁰ Each customary community has its own legal construction regarding inheritance and property ownership during marriage, making the issue of joint marital property one that requires special attention in interfaith law. The existence of mixed marriages or certain family configurations in which members convert, resulting in more than one legal system for inheritance, necessitates dialogue.

Differences in the faiths of the heirs—Muslims, who are, of course, subject to Islamic law with their disputes resolved at the Religious Court, and non-Muslims at the District Court—pose distinct challenges that must be addressed to avoid disparity in the resolution of disputes over joint property. Substantively, according to *fiqh faraidh*, religious difference can be an obstacle to mutual inheritance. This fact has prompted the Supreme Court, as the highest judicial institution, to take a middle path by establishing the granting of mandatory bequests (*wasiat wajibah*) to non-Muslim heirs. Granting this *wasiat wajibah* allows the heirs of different religions of the deceased to still receive a portion of the inheritance without disregarding Islamic inheritance principles.

From the perspective of interlegality theory as developed by Boaventura de Sousa Santos, the actions of the Supreme Court constitute a form of legal negotiation.⁴¹ Although individuals and families do not live under a single legal order, they simultaneously move among various interconnected legal networks or systems. From the perspective of interlegality, the differences between religious norms, state norms, and customary norms can be negotiated within a single event and do not negate one another; rather, they offer dialogue as the basis for dispute resolution.⁴²

⁴⁰ Iim Fahimah et al., “Interfaith Inheritance within Muslim Families in Indonesia: Practices, Philosophical Foundations, and Prospects for the Development of National Inheritance Law,” *Abkam: Jurnal Ilmu Syariah* 24, no. 2 (2024): 379–96, <https://doi.org/10.15408/ajis.v24i2.40907>.

⁴¹ Ralf Seinecke, “Law and Diversity : European and Latin American,” 2021.

⁴² Dedy Sumardi, Ratno Lukito, and Moch Nur Ichwan, “Legal Pluralism within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia,” *Samarah* 5, no. 1 (2021): 426–49, <https://doi.org/10.22373/sjhk.v5i1.9303>.

From the perspective of *maqāṣid al-sharī'ah*, particularly regarding the principles of protecting wealth and descendants or family, these are not seen as norms exclusive to Muslims alone, but rather as ethical values that can engage in dialogue with John Rawls' distributive justice and coexist with the principle of balance that underpins customary law. Religious differences in the inheritance of joint property do not prevent any heir from exercising their rights; instead, they highlight the need for a regulatory framework that protects the rights of all parties in matters of succession.

D. Towards a Fair Regulatory Framework in the Distribution of Joint Inheritance

The term 'fair' is synonymous with 'right' or at least closely related in English. 'Right' indicates justice or moral correctness.⁴³ According to the Indonesian Dictionary, justice is an adjective that describes a noun or pronoun, signifying impartiality, fairness, adherence to truth, and the absence of arbitrariness. From a philosophical perspective, justice is the goal and essence of law. The concept of justice is closely intertwined with law, as any discourse about law, whether explicit or implicit, always involves a discussion of justice. Nevertheless, to gain an understanding of justice, there are four distinct meanings:

- a. Justice is the key to maintaining balance in society.⁴⁴ This balance is crucial for the survival and growth of any community. It is not about everyone being on the same level, but about each element functioning at the appropriate level. Achieving such a balance requires a relative view of needs, considering the relevance and application of appropriate potential.
- b. Justice is the force that eradicates all forms of unwarranted differences. Justice demands equality in the rights possessed by

⁴³ Shantaraj Debbarma et al., "The Justice: A Moral Virtue," *International Journal of Research and Review (Ijrrjournal.Com)* 7, no. 1 (2020): 1.

⁴⁴ Parid, Sandya Mahendra, and Nur Milla, "An Analysis of The Perspectives of Aristotle And Imam Al Shatibi on Legal Justice," *Journal of Transcendental Law* 6, no. 2 (2024): 132–49, <https://doi.org/10.23917/jtl.v6i2.8446>.

individuals or groups. In this context, justice requires proportional equality, where the same rights must be recognized and protected.

- c. Justice is more than mere equality. It is about the preservation of individual rights and the allocation of rights to those who are entitled to them. It is the essence of social justice, which demands that every individual respect human law and ensure its application.
- d. Justice, as understood in the Islamic tradition, is more than equality. It is about ensuring the right to continue living. It means putting everything in its rightful place, giving everything to whom it is due, assigning responsibilities according to individual capacity, and distributing rights equitably.

To achieve justice in the distribution of joint inheritance, judges must engage in legal discovery and undertake *ijtihad*, a term in Islamic law referring to independent legal reasoning. Legal discovery must be conducted through case-by-case approach and *a contrario* reasoning. The case-based approach examines cases related to legal issues that have become court decisions with permanent legal force.

According to Gustav Radbruch, as cited by Yuherawan et al., the ideal judicial decision contains the elements of justice, utility, and legal certainty proportionally.⁴⁵ Judicial decisions must be just and beneficial, not only for the parties concerned but also for society, and they must guarantee legal certainty. Judges must strive to balance these three elements of the *Idee des Rechts*. In conflicts between justice and legal certainty, judges, based on their *Freies Ermessen* (discretion), may choose justice over legal certainty as long as this does not conflict with the public interest or the state.⁴⁶ Judicial decisions should reflect a proportional balance between legal certainty, practicality, and justice.

⁴⁵ Deni Setya Bagus Yuherawan et al., *Building a New Concept of the Purpose of Law: A Preliminary Effort* (Atlantis Press SARL, 2023), https://doi.org/10.2991/978-2-38476-164-7_112.

⁴⁶ Agustina Indah Intan Sari and Mardian Putra Frans, "The Conflict of Justice and Legal Certainty in the National Criminal Code: A Middle Way," *Jurnal Ius Constituendum* 9, no. 3 (2024): 446–60, <https://doi.org/10.26623/jic.v9i3.9057>.

In the context of inheritance and joint property, the important provision is Article 96 paragraph (1) of the KHI. These articles provide that after the death of a spouse, the joint property is divided into two parts: (i) half becomes the right of the surviving spouse, and (ii) the other half becomes the right of the heirs. Article 91 KHI states, "When the dissolution of joint property occurs, the joint property is divided between the husband and wife, or between their heirs, regardless of which party owns the property." Meanwhile, Article 96, paragraph (1) of the KHI states, "In the event of dissolution due to death, half of the joint property becomes the right of the surviving spouse."

Philosophically and normatively, the distribution of joint inheritance already has a strong foundation. However, the main problem lies in the absence of a regulatory framework capable of integrating the various legal systems present in society. Regulations concerning inheritance and joint property are scattered across the Marriage Law, the KHI, the Civil Code (KUHPerdata), and customary legal norms that have developed in various regions. Each regulation has a different orientation and scope, so in practice, this often gives rise to differences in interpretation regarding the status of joint property, its separation mechanism, or the relationship between the rights of the surviving spouse and those of the heirs. This fragmentation creates legal uncertainty and leads to societal disputes.

Thus, regulatory harmonization is needed amid Indonesia's multireligious and multicultural society; the coexistence of Islamic law, civil law, and customary law is a consequence of the state's recognition of the diversity of the people's legal identities. Therefore, the institutionalization of regulations governing the distribution of joint inheritance cannot be carried out through a unification approach that sidelines other legal systems; instead, it must develop an integrative model that recognizes the validity of each legal system while guaranteeing the protection of every citizen's constitutional rights.

From John Rawls' distributive justice perspective, a fair regulation not only provides equal treatment to all parties but also ensures that the legal

mechanism can protect those in the most vulnerable position.⁴⁷ In disputes over the distribution of joint inheritance, the surviving spouse is generally the most vulnerable party. Consequently, regulations on the distribution of joint inheritance should not only emphasize formal distribution but must reflect substantive justice.⁴⁸ To realize this, this study proposes four main pillars.

First, harmonization of the norms related to the distribution of jointly acquired assets as outlined the Marriage Law, KHI, Civil Code, and customary law principles through guidelines that explicitly regulate the stages of identification, separation, and distribution of joint property before the distribution of inheritance. Second, strengthening the principle of protection for the surviving spouse by recognizing both economic and non-economic contributions in the accumulation of joint assets as part of legal considerations. Third, there is a need to develop a mediation-based dispute-resolution mechanism that considers society's social values and cultural diversity, so that case settlement does not always culminate in litigation. Fourth, drafting guidelines for judges to proportionally integrate the dimensions of legal certainty, justice, and usefulness in every legal consideration concerning the division of jointly acquired inheritance. In addition, within Indonesia's multiethnic and multi religious legal pluralism, it is necessary to accommodate the distribution of joint inheritance among parties with diverse beliefs. There must be coordination of jurisdiction between religious courts and general courts to avoid disparities in the settlement of disputes over joint inheritance.

This framework is not intended to replace the existing legal system, but rather to build common ground between state law, religious law, and customary law within a more coherent framework. This approach reflects the concept of responsive law that views law as an instrument capable of adapting to social dynamics without losing its normative certainty. Thus,

⁴⁷ John Rawls, "Distributive Justice: Some Addenda," *Natural Law Forum*, 1968, http://scholarship.law.nd.edu/nd_naturallaw_forum.

⁴⁸ Safiatu Zahro, "Distortion of Substantive Justice in Inheritance Distribution : An Islamic Legal Analysis of Unilateral Control over Undivided Estates," *SAKINA: JOURNAL OF FAMILY STUDIES* 10, no. 2 (2026): 174–97.

the regulations established not only resolve normative issues regarding the division of joint assets but also strengthen the function of law as a means of social integration within Indonesia's plural society, based on the responsive law typology put forth by Philippe Nonet and Philip Selznick.⁴⁹

Conclusion

A normative approach from any single legal system cannot resolve the distribution of joint inheritance in Indonesia's pluralistic legal system. The resolution of joint inheritance disputes requires dialogue among the national legal system, as codified in legislation, Islamic law, and customary law. To date, the resolution of joint property disputes remains sectoral and has not formed an integrated regulatory framework. This condition results in differences in interpretation, legal uncertainty, and an increased potential for conflict among heirs, especially in Indonesia's multicultural and multireligious society. The analysis conducted of Religious Court Decision Number 838/Pdt.G/2023/PA.Kdl shows that although the judge considered Article 96 of the Compilation of Islamic Law and the Marriage Law, the approach used remains largely formalistic. The decision has not fully integrated substantive justice dimensions that consider the parties' contributions to the formation of joint property, family relationship dynamics, and the evolving social realities within a plural society. As a result, while the verdict may fulfill the principle of legal certainty, it does not yet fully reflect distributive justice or provide proportional protection to all interested parties. Therefore, it is necessary to reform the regulatory framework for joint inheritance to harmonize the norms of Islamic law, customary law, civil law, and constitutional values regarding equality before the law and the protection of human rights. Moreover, in a plural, multiethnic, and multireligious society, the principles of justice in Islamic law, such as *'adl* (justice), *maslahah* (public benefit), and *muwāzanah* (balance), are positioned not as exclusive norms for the Muslim community, but as universal ethical values that can engage in dialogue with principles of justice in the national legal system or other legal traditions.

⁴⁹ Philippe Nonet and Philip Selznick, *Toward Responsive Law Law & Society in Transition* (London: Routledge, 2017).

This regulatory framework must also continue to provide judges with room to engage in contextual interpretation, prioritizing a balance among legal certainty, utility, and justice while remaining attentive to living values in society (living law). The results of this study imply the need to develop normative guidelines that harmonize the regulation of joint assets within a plural legal system and serve as a reference for judges in interpreting and applying the law to joint inheritance disputes. Through this approach, it is expected not only to reinforce the consistency of court decisions but also to reduce the potential for family conflict and to strengthen the role of law as an instrument of social integration in Indonesia's pluralistic society.

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