

Recontextualizing Article 97 of the Indonesian Compilation of Islamic Law: A Maqasid-Based Analysis of Judicial Practices in Joint Property Disputes

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Abstract

Article 97 of the Compilation of Islamic Law (KHI) stipulates that if a marriage ends due to divorce, each surviving widow or widower is entitled to half (50%) of the joint property, unless otherwise stipulated in the marriage agreement. This study aims to review (recontextualize) the application of Article 97 of the KHI from a justice perspective, particularly in cases where the husband and wife's contributions to the acquisition of property are unequal, or where one party (particularly the wife) bears a double burden. The research method used is normative legal research with a conceptual approach and a case-based approach (judgment decisions). The results indicate that the rigid application of Article 97 of the KHI (equal division) often results in substantive injustice, particularly when the wife acts as the primary breadwinner or a housewife who works hard beyond basic obligations while the husband is negligent. Recontextualization of this article is necessary by shifting the paradigm from "equal distribution" (equality of portion) to "division based on real contribution" (proportional justice) and the principle of Maqasid Sharia (benefit). Supreme Court Judge Decision No. 266 K/AG/2010 provides the basis for the division of joint assets not necessarily being 50:50, but rather taking into account the extent of each party's contribution to the acquisition of the joint assets.

Keywords: Recontextualization, Article 97 of the Compilation of Islamic Law, Joint Assets, Proportional Justice, Maqasid Sharia.

Abstrak

Pasal 97 Kompilasi Hukum Islam (KHI) menetapkan bahwa jika perkawinan putus karena perceraian, janda atau duda cerai hidup masing-masing berhak seperdua (50%) dari harta bersama, sepanjang tidak ditentukan lain dalam perjanjian perkawinan. Penelitian ini bertujuan untuk meninjau kembali (rekontekstualisasi) penerapan Pasal 97 KHI dalam perspektif keadilan, khususnya pada kasus di mana kontribusi suami dan istri dalam perolehan harta tidak seimbang atau salah satu pihak (khususnya istri) memiliki beban ganda. Metode penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan konseptual dan pendekatan kasus (putusan hakim). Hasil penelitian menunjukkan bahwa penerapan Pasal 97 KHI secara kaku (bagi rata) sering kali menimbulkan ketidakadilan substantif, terutama jika istri berperan sebagai pencari

nafkah utama atau istri rumah tangga yang bekerja keras melampaui kewajiban dasar sementara suami lalai. Rekontekstualisasi pasal ini diperlukan dengan menggeser paradigma dari "pembagian sama rata" (kesamaan porsi) menjadi "pembagian berdasarkan kontribusi riil" (keadilan proporsional) dan prinsip *Maqashid Syariah* (kemaslahatan). Putusan hakim Mahkamah Agung No. 266 K/AG/2010 menjadi landasan bahwa pembagian harta bersama tidak harus 50:50, melainkan mempertimbangkan besaran kontribusi masing-masing pihak dalam perolehan harta bersama.

Kata Kunci: Rekontekstualisasi, Pasal 97 KHI, Harta Bersama, Keadilan Proporsional, Maqashid Syariah.

INTRODUCTION

Since the beginning of its existence, humans have been social creatures that cannot live independently without interaction with others. This need for social relations encourages the formation of the smallest social unit called the family. In the classical perspective, Aristotle referred to human beings as *zoon politikon*, which affirmed that coexistence is a necessity. In the modern context, the family functions not only as a biological institution, but also as a social, economic, and cultural entity that plays an important role in shaping the structure of society. Data from the Central Statistics Agency (BPS) shows that more than 60% of the social structure of Indonesian society rests on the family unit as the main basis of social and economic interaction, so that family stability is an important indicator in national development.¹

From the perspective of Islamic law, the formation of a family through marriage has a strong theological and normative dimension. Islamic Shari'a was revealed to protect the welfare of human beings (*jalb al-maṣāliḥ*) and prevent damage (*dar' al-mafāsid*), including in aspects of family life. Marriage is seen not only as a social contract, but also as a sacred bond (*mitsāqan ghalīẓan*) that contains the values of justice, responsibility, and compassion.² These principles are in harmony with the purpose of Islamic law (*maqāṣid al-sharī'ah*), especially in safeguarding offspring (*ḥifẓ al-nasl*) and property (*ḥifẓ al-māl*), which are important foundations in the regulation of marital relations.³

In the context of positive Indonesian law, the definition and

¹ Aristoteles, *Politics*, terj. Benjamin Jowett (New York: Dover Publications, 2000), hlm. 5.

² Wahbah al-Zuhailī, *Uṣūl al-Fiqh al-Islāmī*, Juz I (Damascus: Dār al-Fikr, 1986), hlm. 38–40

³ Muhammad Abu Zahrah, *Uṣūl al-Fiqh* (Cairo: Dār al-Fikr al-'Arabī, 1958), p. 29.

purpose of marriage are affirmed in Law Number 1 of 1974 concerning Marriage. Article 1 states that marriage is a birth and mind bond between a man and a woman to form a happy and eternal family based on the One Godhead. This provision shows that marriage is not solely understood as a contractual relationship, but also as a moral and spiritual institution.⁴ Thus, marriage law in Indonesia integrates legal, religious, and social dimensions in one complete normative framework.⁵

Nevertheless, empirical reality shows that not all marriages can achieve such ideal goals. Data from the Directorate General of the Religious Justice Agency of the Supreme Court of the Republic of Indonesia notes that the divorce rate in Indonesia has continued to increase in the past decade, with more than 500,000 divorce cases decided every year.⁶ Economic factors, household conflicts, and imbalances in roles and responsibilities are the dominant causes. This phenomenon shows that there is a gap between the ideal norms of marriage and the social practices that occur in society.⁷

In Islamic law, divorce (ṭalāq) is a permissible mechanism when the purpose of marriage can no longer be maintained.⁸ Although normatively divorce is a lawful act, it is categorized as something to be hated (abghad al-ḥalāl), so its use should be limited and based on consideration of benefits.⁹ In the context of national law, divorce is strictly regulated through judicial mechanisms to ensure the protection of the rights of the parties, including women and children. This confirms that divorce is not just the termination of a personal relationship, but also has broad legal implications, especially related to joint property.¹⁰

One of the crucial issues after divorce is the division of marital property. In the Indonesian legal system, the regulation regarding joint property is contained in Law Number 1 of 1974 and the Compilation of

⁴ Hilman Hadikusuma, *Indonesian Marriage Law According to: Legislation, Customary Law, Religious Law* (Bandung: Mandar Maju, 2007), p. 58

⁵ Amir Syarifuddin, *Islamic Marriage Law in Indonesia: Between Munakahat Fiqh and Marriage Law* (Jakarta: Kencana, 2006), p. 23.

⁶ Amir Syarifuddin, *Islamic Marriage Law in Indonesia: Between Fiqh Munakahat and Marriage Law* (Jakarta: Kencana, 2006), p. 45

⁷ Sayyid Sabiq, *Fiqh al-Sunnah*, Juz II (Cairo: Dār al-Fath, 1990), p. 9.

⁸ Amir Syarifuddin, *Islamic Marriage Law in Indonesia: Between Munakahat Fiqh and Marriage Law* (Jakarta: Kencana, 2006), p. 176.

⁹ Ahmad Rofiq, *Islamic Law in Indonesia* (Jakarta: Rajawali Pers, 2013), p. 211.

¹⁰ Compilation of Islamic Law, Presidential Instruction No. 1 of 1991, Articles 45–46.

Islamic Law (KHI). Article 35 of the Marriage Law states that property acquired during marriage becomes joint property, while Article 97 of the KHI affirms that in the event of divorce, each party is entitled to half of the property. Normatively, this provision reflects the principle of formal justice through equal distribution (50:50).

However, such an equal sharing approach in practice often does not reflect substantive justice. Social structures that are still influenced by patriarchal culture cause inequality in economic and domestic contributions between husbands and wives. Data from BPS and the Ministry of Women's Empowerment and Child Protection show that women's participation in the labor force continues to increase, reaching more than 50% in some sectors, while at the same time women continue to bear a significant domestic workload (double burden). This condition shows that women's contribution in the household is not always proportionally accommodated in the distribution of common property.

This phenomenon is reflected in a number of decisions of Religious Courts in Indonesia, especially in the West Java region, which show a shift from the principle of formal division to a substantive justice approach. Some rulings suggest that judges are no longer fixated on a 50:50 split, but consider the actual contributions of the parties, both in the form of economic and domestic contributions. This approach reflects the development of *ijtihād qaḍā'ī* (judicial *ijtihād*) which seeks to integrate legal norms with social realities, resulting in more contextual and fair decisions.

Conceptually, this development is in line with contemporary Islamic legal thinking that emphasizes the importance of reinterpreting norms within the framework of justice and gender equality. Thinkers such as Nasaruddin Umar and Amina Wadud emphasized that injustice in family law often does not originate from religious texts, but from patriarchal biased interpretations. Therefore, a contextual hermeneutic approach is needed that is able to re-read legal norms by taking into account the values of *maqāṣid al-sharī'ah*, such as justice ('*adl*), equality (*musāwah*), and benefit (*maṣlaḥah*).

Based on this description, this study aims to analyze the dynamics of the distribution of common property in the practice of religious justice, especially related to the shift from the principle of equal distribution to contribution-based distribution. This study also seeks to examine how judges construct substantive justice in their rulings and its implications for the reform of Islamic family law in Indonesia. Thus, this study is expected to make a theoretical and practical contribution to the

development of family law that is more responsive to social realities and oriented towards substantive justice.

RESEARCH METHODS

This research is a normative legal research that uses a case approach as the main method. This approach was chosen because it provides space for researchers to analyze in depth court decisions as a concrete representation of the application of legal norms in practice. Through this approach, the research not only focuses on the construction of abstract norms in laws and regulations, but also examines how these norms are interpreted and applied by judges in resolving disputes. Thus, the analysis of the case of joint property disputes in the Religious Court is the basis for assessing the extent to which the judge's legal considerations reflect the principle of substantive justice.

The data sources in this study consist of primary and secondary legal materials. Primary legal materials include court decisions related to joint property disputes, relevant laws and regulations, and jurisprudence related to the object of research. Meanwhile, secondary legal materials include scientific literature such as books, journal articles, previous research results, and other documents that support conceptual and theoretical analysis. Data collection is carried out through library research by systematically tracing and reviewing relevant legal documents and literature, in order to obtain comprehensive and academically accountable data.

Data analysis was carried out using qualitative analysis methods through descriptive-analytical and interpretive techniques. The data that has been collected is then classified and linked to each other to find patterns, conformities, and possible inconsistencies between legal norms and judicial practices. Furthermore, a legal interpretation of the judge's considerations in the analyzed verdict is carried out, with reference to the principles of justice, legal certainty, and utility. The results of this analysis are expected to be able to provide a comprehensive argument regarding the construction of law in the settlement of common property disputes and offer critical reflection on the evolving judicial practice.

RESULTS AND DISCUSSION

Recontextualization of Article 97 of the KHI in the Perspective of Substantive Justice

The recontextualization of Article 97 of the Compilation of Islamic Law (KHI) is a methodological as well as a practical necessity in responding to the increasingly complex dynamics of contemporary Muslim family economic relations. Article 97 of the KHI, which

normatively regulates the partial division of joint property for each party after divorce, is drafted in a certain social context that relatively assumes equal contributions between husband and wife during the marriage. This assumption departs from the view that the wealth obtained during marriage is the result of cooperation and partnership between husband and wife, both through direct economic contributions and domestic roles that support domestic life.¹¹

However, the social and economic development of society shows that the assumption of equal contribution is not always in line with the empirical reality faced by Muslim families today. Economic relations in marriage are often asymmetrical, either due to differences in access to economic resources, division of roles based on certain social structures, or changes in economic conditions during marriage. In this context, the textual and uniform application of Article 97 of the KHI has the potential to produce a normatively valid decision, but it does not reflect substantive justice for the parties.¹²

In today's religious justice practice, especially in the West Java region, the incompatibility between the normative assumptions of Article 97 of the KHI and the empirical reality is increasingly evident in cases of division of common property. The judge was faced with the facts of the trial that showed the variation in economic contribution, the structural dependence of one of the parties, and the significant socio-economic impact after the divorce. This condition requires judges not to stop at the textual reading of norms, but to conduct contextual assessments so that the verdicts handed down do not cause new injustices.¹³

Therefore, the recontextualization of Article 97 of the KHI is an inevitable necessity. Recontextualization is interpreted as an attempt to reinterpret legal norms by taking into account changes in the social, economic, and justice contexts that live in society, without removing the normative legitimacy of these norms. In this framework, Article 97 of the KHI is not positioned as a rule that must be abandoned, but rather as

¹¹ Abdurrahman, *Compilation of Islamic Law in Indonesia* (Jakarta: Akademika Pressindo, 1992), 73–75.

¹² Satria Effendi M. Zein, *Problematics of Contemporary Islamic Family Law* (Jakarta: Kencana, 2005), 108–112.

¹³ A. Mukti Arto, *The Practice of Civil Cases in Religious Courts* (Yogyakarta: Pustaka Siswa, 2017), 248–252.

a basic norm whose operationalization requires a more adaptive and objective-oriented approach to interpretation of the law.¹⁴

This contextual interpretive approach allows the judge to associate Article 97 of the KHI with the principles of substantive justice, protection of the more vulnerable parties, and the purpose of benefit as desired by *maqāṣid al-sharī'ah*. Thus, the recontextualization of Article 97 of the KHI is not a form of deviation from positive law, but rather a methodological strategy to ensure that Islamic family law norms remain relevant, fair, and responsive to contemporary social realities. This approach is the basis for further analysis of the limitations of textual interpretation and the need for the integration of *maqāṣid al-sharī'ah* and contextual hermeneutics in the practice of religious justice.

The textual interpretation of Article 97 of the Compilation of Islamic Law (KHI) generally understands the phrase "*each is entitled to one-half*" as a normative command that is final, imperative, and mathematically binding. In this approach, justice is positioned as *formal equality*, which is the same legal treatment of each legal subject without considering the differences in factual conditions behind each case. This kind of interpretation is commonly used in the positivistic tradition that places legal certainty as the primary goal of the application of law.¹⁵

In the framework of legal *certainty*, textual interpretation does have an important function. It provides clear, simple, and easy-to-apply division standards for judges, thereby reducing potential disparities in verdicts and strengthening legal predictability. From a judicial administrative point of view, this approach also facilitates the process of examining cases because judges are not required to conduct complex contextual assessments of the economic and social relations of the parties. However, this excess is also a weak point of textual interpretation when faced with the complexity of the socio-economic reality of modern households.¹⁶

The economic relationship between husband and wife in contemporary marriage is not always built on the basis of symmetrical contribution. In many cases, there is significant inequality in economic

¹⁴ Sudikno Mertokusumo, *The Discovery of Law: An Introduction* (Yogyakarta: Liberty, 2009), 121–124; Satjipto Rahardjo, *Progressive Law* (Yogyakarta: Genta Publishing, 2009), 44–47.

¹⁵ Achmad Ali, *Uncovering Legal Theory and Judicial Theory* (Jakarta: Kencana, 2010), 230–234.

¹⁶ Sudikno Mertokusumo, *The Discovery of Law: An Introduction* (Yogyakarta: Liberty, 2009), 119–122.

contributions, unequal division of roles, and structural dependence of one party on the other. The rigidly applied textual interpretation of Article 97 of the KHI tends to ignore these facts and treat all cases as if they were in a uniform state. As a result, justice is reduced to the equality of numbers, while the substance of real economic relations does not receive adequate attention.¹⁷

In judicial practice, this limitation is increasingly apparent when textual interpretation is used to resolve cases involving post-divorce economic vulnerability. The application of mechanical half-division can produce a verdict that is normatively valid, but problematic substantively because it has the potential to worsen the economic condition of one of the parties. In this context, the law loses its protective function and instead contributes to the reproduction of structural injustices. This shows that the legal certainty achieved through textual interpretation is not always directly proportional to the justice felt by the parties.¹⁸

Furthermore, the textual interpretation of Article 97 of the KHI also contains epistemological weaknesses because it treats legal norms as texts that are independent of the social context and the purpose of its formation. In fact, historically and methodologically, Islamic legal norms, including KHI, were compiled to realize benefits and justice, not just to be enforced literally. When norms are understood ahistorically and ahistorically-conceptually, law risks losing its social relevance and being alienated from the reality it seeks to regulate.¹⁹

From the perspective of legal theory, this condition reflects the limitations of the legalistic-positivistic approach that overemphasizes the text and ignores the context. This kind of approach places the judge as a passive implementer of norms (*la bouche de la loi*), rather than as an active interpreter responsible for bridging the law with social reality. As a result, the law tends to be stagnant and not adaptive to changes in the socio-economic structure of society.²⁰

Practical experience in various Religious Courts in the West Java region shows that the limitations of textual interpretation are slowly

¹⁷ Satria Effendi M. Zein, *Problematics of Contemporary Islamic Family Law* (Jakarta: Kencana, 2005), 108–113.

¹⁸ Satjipto Rahardjo, *Progressive Law: A Synthesis of Indonesian Law* (Yogyakarta: Genta Publishing, 2009), 44–48.

¹⁹ Abū Ishāq al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī‘ah* (Beirut: Dār al-Kutub al-‘Ilmiyyah, 2004), 2: 8–12.

²⁰ Satjipto Rahardjo, *Legal Studies* (Bandung: Citra Aditya Bakti, 2006), 181–184.

realized by the judges. In dealing with complex cases of division of common property, the judge began to feel that Article 97 of the KHI could not be treated as a *closed norm*, but as an open *norm* that required contextual interpretation. This awareness encourages judges to relate the norms of Article 97 of the KHI to the facts of the trial, the economic relationship between husband and wife, and the socio-economic impact of the verdict on the lives of the parties.²¹

This methodological awareness is the entrance to efforts to recontextualize Article 97 of the KHI in the practice of religious justice. Recontextualization is not intended as a rejection of positive law, but rather as an interpretive strategy to restore legal norms to their basic goal, which is to realize justice and benefits. Thus, criticism of the textual interpretation of Article 97 of the KHI must be understood as part of an effort to reform legal reasoning so that Islamic family law remains relevant, responsive, and fair in the face of the socio-economic dynamics of contemporary society.

Article 97 of the KHI normatively states that the widow or widower who is divorced is each entitled to half of the joint property, as long as it is not otherwise specified in the marriage agreement. This formulation reflects the textual and general character of the positive Islamic family law norms in Indonesia, which are designed to provide legal certainty and uniformity of application. Historically, these provisions were born in the context of the codification of Islamic law which aims to simplify and standardize the practice of family law in religious courts.²²

The textual character of Article 97 of the KHI is evident in the use of a numerical and symmetrical distribution formula (50:50), which implicitly assumes an equal contribution between husband and wife during marriage. This assumption, while relevant in certain contexts, does not necessarily reflect the reality of diverse and dynamic family economic relations. Thus, the norm is abstract and ahistorical, because it does not explicitly consider the variation in contributions, domestic roles, or socio-economic conditions of the parties.²³

²¹ A. Mukti Arto, *The Practice of Civil Cases in Religious Courts* (Yogyakarta: Pustaka Siswa, 2017), 248–252.

²² Abdurrahman, *Compilation of Islamic Law in Indonesia* (Jakarta: Akademika Pressindo, 1992), 73–75.

²³ Satria Effendi M. Zein, *Problematics of Contemporary Islamic Family Law* (Jakarta: Kencana, 2005), 108–113.

Within the framework of Islamic family law, this kind of textual approach shows a tendency to positivize Islamic law, in which fundamentally flexible and contextual norms of fiqh are translated into the form of more rigid written rules. As a result, the judge's *ijtihad* space in interpreting and developing norms becomes relatively limited if the norm is treated as a literal order that must be applied as it is.

The textual approach to Article 97 of the KHI has the potential to reduce the meaning of justice, because justice is narrowed to mathematical similarities in the distribution of common property. In the perspective of formal justice, the division of halves is considered fair because it gives equal treatment to the parties. However, equal treatment is not always directly proportional to substantive justice, especially when the factual conditions of the parties show the existence of inequality of contribution and structural vulnerability.²⁴

This reduction in justice occurs when norms are applied without considering the concrete socio-economic context. Domestic work that has no financial value, childcare roles, and other non-economic contributions tend to be overlooked in textual approaches. As a result, parties who actually contribute greatly to the sustainability of the household and the accumulation of common property can be disadvantaged by the application of rigid norms. In this context, justice is reduced to formal equality, while substantive justice oriented towards balance and benefit is ignored.²⁵

Furthermore, textual approaches also risk reinforcing structural injustices, especially against wives who are socially and economically more vulnerable after divorce. When the division of joint property is carried out without considering the future economic impact, a normatively valid judgment can lead to economic marginalization and dependence, which is contrary to the purpose of protection in Islamic family law.

Maqāṣid al-Sharī'ah as a Teleological Basis in the Discovery of the Law of Common Property

In the practice of religious justice, the textual interpretation of Article 97 of the KHI has a direct impact on the pattern of decisions on the distribution of common property. Judges who adhere strictly to the sound of the text tend to issue a 50:50 equal division verdict without an

²⁴ Achmad Ali, *Revealing Legal Theory and Judicial Theory* (Jakarta: Kencana, 2010), 230–236.

²⁵ Satjipto Rahardjo, *Progressive Law: A Synthesis of Indonesian Law* (Yogyakarta: Genta Publishing, 2009), 44–48.

in-depth analysis of the economic relations and socio-economic conditions of the parties. This pattern results in judgments that are normatively consistent, but often less responsive to substantive justice.²⁶

Another impact is the limited discretion of judges in correcting injustices that arise from the rigid application of norms. When Article 97 of the KHI is treated as a closed norm, the judge has the potential to ignore the relevant facts that should be the basis for the assessment of justice. This not only affects the quality of the verdicts, but also the social legitimacy of religious justice in the eyes of justice seekers. Decisions that are perceived to be unfair substantively tend to be difficult to accept by the parties, even though they are legally valid.²⁷

In the context of West Java as analyzed in Chapter III, the tendency of textual interpretation began to be abandoned by some judges, along with the increasing awareness of the limitations of this approach. This shift shows that the textual interpretation of Article 97 of the KHI is no longer adequate to answer the complexity of contemporary common property cases. Therefore, a more contextual and goal-oriented approach to interpretation is needed, as will be discussed in the next subchapter on *the maqāṣid al-sharī'ah* approach and contextual hermeneutics.

The limitations of textual interpretation of Article 97 of the Compilation of Islamic Law (KHI), as described in Subchapter 3.1, require the use of a more adaptive, reflective, and objective-oriented interpretation approach. Textual approaches that place norms as literal commands have proven to be incapable of answering the complexity of husband-wife economic relations and post-divorce socio-economic dynamics. In this context, the application of law that only adheres to the sound of the text risks giving birth to a verdict that is normatively valid, but problematic from the perspective of substantive justice and benefits.²⁸

Therefore, in the practice of religious justice, an interpretive framework is needed that not only explains *what* the norm contains, but also *why* the norm is applied and *for what purpose* the law is enforced. It is at this point that the approach of *maqāṣid al-sharī'ah* and contextual hermeneutics gains its relevance. Both approaches offer a perspective

²⁶ Sudikno Mertokusumo, *The Discovery of Law: An Introduction* (Yogyakarta: Liberty, 2009), 118–121.

²⁷ A. Mukti Arto, *The Practice of Civil Cases in Religious Courts* (Yogyakarta: Pustaka Siswa, 2017), 248–252.

²⁸ Achmad Ali, *Revealing Legal Theory and Judicial Theory* (Jakarta: Kencana, 2010), 230–236.

that places law as a normative instrument aimed at realizing justice, balance, and protection of human interests, rather than simply as a mechanically applied set of rules.²⁹

The maqāṣid al-sharī'ah approach serves as a teleological framework, directing the interpretation of law to the basic objectives of the Shari'ah, such as the benefit and prevention of harm. Meanwhile, contextual hermeneutics acts as an operational method that allows judges to read legal norms in relation to the social, economic, and historical context surrounding the concrete case. By combining the two, the judge obtained a normative as well as a methodological basis to interpret Article 97 of the KHI in a more substantive and contextual manner.³⁰

This integrative approach allows religious court judges not to stop at the literal meaning of the norm of the distribution of common property, but to explore the values, goals, and rationality of the law behind it. Thus, legal interpretation is not only oriented to normative certainty, but also to justice that lives and is felt in the social reality of the parties. It is in this context that maqāṣid al-sharī'ah and contextual hermeneutics become important instruments in supporting the paradigm shift of religious justice towards a practice of legal reasoning that is more responsive, substantive justice, and relevant to the development of contemporary Muslim society.³¹

Maqāṣid al-sharī'ah is understood as the fundamental goals that Islamic sharia wants to realize in regulating human life as a whole. In the classical construction of ushul fiqh, maqāṣid is formulated into five main purposes (*al-ḍarūriyyāt al-khams*), namely the protection of religion (ḥifẓ al-dīn), the soul (ḥifẓ al-nafs), intellect (ḥifẓ al-'aql), posterity (ḥifẓ al-nasl), and property (ḥifẓ al-māl). These five goals are seen as normative foundations that maintain the order of human life and become the main orientation for the formation and application of Islamic law.³²

In the development of contemporary Islamic legal thought, maqāṣid al-sharī'ah is no longer understood statically as a closed list of goals, but rather as a dynamic and contextual normative framework.

²⁹ Sudikno Mertokusumo, *The Discovery of Law: An Introduction* (Yogyakarta: Liberty, 2009), 118–121.

³⁰ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008), 25–30.

³¹ Muḥammad al-Tāhir Ibn 'Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah* (Amman: Dār al-Nafā'is, 2001), 178–181.

³² Abū Ishāq al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2004), 8–10.

Modern maqāṣid thinkers emphasize that the goals of the Shari'ah must be read in relation to social, economic, and cultural changes in society. Thus, maqāṣid serves not only as a normative legitimacy, but also as a methodological tool for developing Islamic law to remain relevant and responsive to the challenges of the times.³³

As a teleological approach, maqāṣid al-sharī'ah places the purpose of law at the center of juridical reasoning. Law is not understood solely as a collection of written norms that must be applied mechanically, but rather as a normative instrument to realize benefits and prevent harm. In this perspective, the correctness of the law is not only measured by the conformity of the decision with the sound of the text, but also by the extent to which the decision is in harmony with the goals of the Shari'a.³⁴

In the context of legal discovery (*rechtvinding*), maqāṣid al-sharī'ah provides normative legitimacy for judges to assess whether the application of a norm literally actually leads to justice or actually gives birth to substantive injustice. When there is tension between the sound of norms and the purpose of the law, the maqāṣid approach allows judges to prioritize the substance of justice without having to go outside the normative framework of Islamic law. Thus, maqāṣid serves as a corrective tool against positivistic tendencies that place text as the sole source of legal truth.³⁵

In the case of the division of common property, the maqāṣid approach specifically emphasizes the goal of property protection (*ḥifẓ al-māl*) and justice in family relations. The judge not only assessed the conformity of the decision with Article 97 of the Compilation of Islamic Law (KHI), but also considered whether the results of the decision contributed to economic balance, protection of vulnerable parties, and the survival of the parties after divorce. With this orientation, the division of common property is not understood as a purely mathematical division, but as a mechanism for the distribution of justice that must be in harmony with the goal of benefit.³⁶

³³ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008), 25–30.

³⁴ Muḥammad al-Ṭāhir Ibn 'Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah* (Amman: Dār al-Nafā'is, 2001), 178–181.

³⁵ Achmad Ali, *Revealing Legal Theory and Judicial Theory* (Jakarta: Kencana, 2010), 230–236.

³⁶ Satria Effendi M. Zein, *Problematics of Contemporary Islamic Family Law* (Jakarta: Kencana, 2005), 108–113.

Thus, maqāṣid al-sharī'ah functions as an evaluative parameter for the application of positive law as well as a normative basis for adjusting the distribution of common property for the achievement of substantive justice. This approach affirms that Islamic family law is not rigid and ahistorical, but rather has an internal capacity to develop through purpose-oriented teleological reasoning and the value of justice. It is at this point that maqāṣid al-sharī'ah becomes the main conceptual foundation for the recontextualization of Article 97 of the KHI in the practice of religious justice.

Contextual Hermeneutics as a Method of Interpreting Islamic Law

Contextual hermeneutics is a method of interpretation that emphasizes the importance of understanding the legal text in relation to the social, historical, and situational context in which the law is applied. In this perspective, legal texts are not understood as an independent entity that has a single final meaning, but rather as a normative construction whose meaning is constantly interacting with social reality. In Islamic law, contextual hermeneutics develops as a critical response to textual and literalistic approaches that tend to ignore changes in the social structure, economic relations, and dynamics of contemporary Muslim family life.³⁷

The contextual hermeneutic approach departs from the assumption that the meaning of law is not fully contained in the text, but is formed through an interpretive process involving the subject of the interpreter and the context of the application of the law. Therefore, legal interpretation is understood as a dynamic dialogical process between normative texts, empirical contexts, and legal objectives. In this framework, law is not treated as a closed system, but rather as an open system that allows the adjustment of meaning according to the development of society.³⁸

In the practice of interpretation, contextual hermeneutics encourages judges not to stop at the question of "what does the norm sound like", but to go further by asking the question "in what context is the norm applied" and "what purpose is to be realized through the application of the norm". This approach is in line with the idea of modern hermeneutics in legal science, which places judges as active subjects in the process of legal interpretation, rather than merely passive

³⁷ Abdullah Saeed, *Interpreting the Qur'an: Towards a Contemporary Approach* (London: Routledge, 2006), 3–6.

³⁸ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008), 37–40.

implementers of the will of lawmakers. This view acquires a strong epistemological legitimacy in the thought of Prof. Wasman, who asserts that Islamic legal texts including legal hadiths are not static and closed, but rather are normative constructions whose meaning is always open to re-reading through dialogue between texts, interpreters, and social realities. According to Wasman, a textual-literal approach that ignores context risks reducing the ethical and social goals of Islamic law, so the interpretation of law must be directed at the exploration of normative values and goals that underlie the birth of a legal provision.³⁹ Thus, the interpretation of law always contains a creative and reflective dimension that demands intellectual and ethical responsibility from judges. Thus, legal interpretation always contains a creative and reflective dimension that demands intellectual and ethical responsibility from judges.⁴⁰

In the context of Islamic law, contextual hermeneutics has strong relevance because the classical fiqh tradition itself recognizes contextualizing principles, such as the consideration of *'urf* (custom), *maṣlahah*, and changes in law as time and place change. However, in the process of codifying Islamic law into positive legal forms such as the Compilation of Islamic Law, this flexibility tends to be reduced. Therefore, contextual hermeneutics serves as a methodological means to restore the contextual and dynamic dimensions of Islamic law in judicial practice.⁴¹

In the practice of religious justice, contextual hermeneutics allows judges to read Article 97 of the KHI in a more elastic and adaptive manner. The norm of division of joint property is not understood as a rigid mathematical command, but as an open norm that must be interpreted by considering the facts of the trial, the economic relationship between husband and wife, the division of domestic roles, and the socio-economic conditions of the parties after divorce. With this approach, judges can avoid applying norms that are ahistorical and unresponsive to the concrete reality of the case.⁴²

³⁹ Wasman, "Hermeneutics of Legal Hadith: A Critical Study of the Textual Understanding of Hadith," *Jurnal al-Ahkam: Journal of Sharia and Legal Science* 17, no. 2 (2017): 245–247

⁴⁰ Sudikno Mertokusumo, *The Discovery of Law: An Introduction* (Yogyakarta: Liberty, 2009), 118–121.

⁴¹ Wahbah al-Zuhaylī, *Uṣūl al-Fiqh al-Islāmī* (Damascus: Dār al-Fikr, 1986), 1015–1018.

⁴² Achmad Ali, *Revealing Legal Theory and Judicial Theory* (Jakarta: Kencana, 2010), 233–236.

Furthermore, contextual hermeneutics serves as a methodological tool that bridges positive legal norms with the demands of substantive justice. Through this approach, the judge obtains an argumentative basis to adjust the application of Article 97 of the KHI responsibly, without having to negate the applicability of the norm. Thus, contextual hermeneutics strengthens the capacity of religious courts in realizing Islamic family law that is not only normatively valid, but also relevant, fair, and meaningful in the social life of contemporary Muslim society.

The *maqāṣid al-sharī'ah* approach and contextual hermeneutics basically have a complementary and inseparable epistemological orientation in contemporary legal reasoning practice. *Maqāṣid al-sharī'ah* provides a framework of objectives (teleology) and normative values that become the final orientation of the application of law, while contextual hermeneutics provides operational interpretive methods that allow legal norms to be read and applied contextually according to the social realities at hand. The integration of the two results in a pattern of legal reasoning that is not only normatively valid, but also socially relevant and substantively just.⁴³

In the context of religious justice, this integration serves as a bridge between the general and abstract legal texts and the concrete conditions of the parties that are specific and dynamic. Contextual hermeneutics allows judges to interpret the wording of Article 97 of the Compilation of Islamic Law (KHI) by considering the facts of the trial, the economic relationship between husband and wife, the division of domestic roles, and the socio-economic conditions after divorce. Furthermore, the results of the interpretation are evaluated through the parameters of *maqāṣid al-sharī'ah*, especially the benefits (*maṣlaḥah*) and the protection of property (*ḥifẓ al-māl*), to ensure that the verdict handed down is truly in line with the purpose of sharia justice.⁴⁴

Through this integrative process, the judge no longer positions Article 97 of the KHI as a mathematical command that must be applied automatically, but as an open norm that requires contextual and teleological reasoning. Deviations from the 50:50 equal division are not understood as a violation of positive law, but as the result of argumentative and responsible legal discoveries (*rechtvinding*), when formal equal distribution is contrary to the goal of substantive justice.

⁴³ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008), 37–40.

⁴⁴ Muḥammad al-Ṭāhir Ibn ‘Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah* (Amman: Dār al-Nafā'is, 2001), 178–181.

Thus, the integration of maqāṣid and hermeneutics provides methodological legitimacy for judges to make rational and accountable adjustments to the verdict.⁴⁵

Furthermore, the integration of these two approaches emphasizes the role of judges as reflective and responsive interpreting subjects, not just mechanical implementers of norms. Judges are seen as judicial actors who are tasked with exploring the values of justice that live in society while actualizing the goals of sharia in the current context. In this perspective, judge's legal reasoning is dialogical, which brings together legal texts, social contexts, and normative goals in one complete argumentative construction.⁴⁶

Thus, the integration of maqāṣid al-sharī'ah and contextual hermeneutics becomes the main conceptual foundation for the recontextualization of Article 97 of the KHI in the practice of religious justice. This integrative approach allows Islamic family law to function in an adaptive and progressive manner, without losing its normative legitimacy. It is at this point that the recontextualization of Article 97 of the KHI is not understood as a release from positive law, but as an effort to enrich the meaning of the law in order to remain faithful to the goals of justice, benefit, and protection of human dignity. This subchapter also ushers in the discussion on the formulation of the recontextualization model of Article 97 of the KHI and its implications for religious court decisions, which will be examined in the next subchapter.

Based on judicial practices in the West Java region, especially in the Garut, Sukabumi, Depok, and Bandung Religious Courts, a model of recontextualization of Article 97 of the Compilation of Islamic Law (KHI) can be formulated that is integrative and contextual. This model does not negate the principle of equal distribution as formulated in Article 97 of the KHI, but rather positions it as a presumptive starting point. This means that the division of halves is seen as the starting point of legal reasoning that can be adjusted if the concrete facts of the case show that there are conditions that demand a more proportionate and substantive assessment of justice.⁴⁷

⁴⁵ Sudikno Mertokusumo, *The Discovery of Law: An Introduction* (Yogyakarta: Liberty, 2009), 118–121.

⁴⁶ Satjipto Rahardjo, *Progressive Law: A Synthesis of Indonesian Law* (Yogyakarta: Genta Publishing, 2009), 44–48.

⁴⁷ Abdurrahman, *Compilation of Islamic Law in Indonesia* (Jakarta: Akademika Pressindo, 1992), 73–75.

In this recontextualization model, Article 97 of the KHI is understood as an open norm whose operationalization depends on the judge's contextual assessment of the legal facts and socio-economic reality of the parties. Adjustments to the distribution of common property are carried out through the integration of three parameters of justice, namely proportionality, benefit, and propriety. Proportionality is used to assess the balance of the economic and non-economic contributions of husband and wife during marriage; benefits function to assess the impact of the judgment on the survival of the parties after divorce; Meanwhile, propriety ensures that the results of the distribution of common property are in line with the sense of social justice that lives in society.⁴⁸

The implications of the application of this recontextualization model are evident in the decisions of the Religious Courts in the West Java region. In the Garut Religious Court, the adjustment of the distribution of joint property is based on the dominance of the wife's economic and non-economic contributions; at the Sukabumi Religious Court, emphasis is placed on the protection of post-divorce economic vulnerability; at the Depok Religious Court, propriety and social fairness are a tool for correction against excessive demands; while in the Bandung Religious Court, the three parameters are integrated simultaneously in one construction of legal reasoning. This pattern shows that judges no longer position the division of halves as the only form of justice, but rather as flexible guidelines that can be adjusted to the context of the case.⁴⁹

This recontextual approach results in decisions that are more responsive, proportionate, and have stronger social legitimacy. The decision is not only seen as normatively valid, but also felt fair by the parties because it reflects the reality of the contributions, needs, and socio-economic conditions faced. From a legal sociological perspective, this social legitimacy contributes to increasing compliance with judgments and strengthens public trust in religious justice as an institution for substantive justice.⁵⁰

⁴⁸ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008), 37–40.

⁴⁹ Garut Religious Court, Decision Number 3844/Pdt.G/2020/PA. Grt; Sukabumi Religious Court, decisions of common property as analyzed in CHAPTER III; Depok Religious Court and Bandung Religious Court, relevant decisions as analyzed in this study.

⁵⁰ Achmad Ali, *Revealing Legal Theory and Judicial Theory* (Jakarta: Kencana, 2010), 233–236.

Normatively, this recontextualization model emphasizes that Article 97 of the KHI remains relevant and operational in the Indonesian Islamic family law system, as long as it is interpreted contextually and oriented towards the purpose of sharia. These norms do not lose their binding power, but instead acquire richer meanings through interpretations that consider substantive benefits and justice. Thus, recontextualization is not interpreted as a deviation from positive law, but as an enrichment of normative meaning so that the law remains alive and responsive.⁵¹

Practically, this model strengthens the role of judges as judicial actors who are active in the discovery of law (*rechtvinding*) and the reform of religious justice practices. Judges are no longer positioned as mechanical implementers of norms, but as subjects of legal reasoning who are responsible for actualizing the values of justice in a dynamic social context. Thus, the recontextualization of Article 97 of the KHI not only has implications for changing the pattern of decisions on the distribution of common property, but also contributes to the development of Islamic family law that is more just, dynamic, and responsive to contemporary socio-economic realities.

Normative, Judicial, and Theoretical Implications of Recontextualization of Article 97 of the KHI

The recontextualization model of Article 97 of the KHI formulated in this study is based on the principle that the norm of the distribution of common property is not closed and final, but open and contextual. The principle of equal distribution as formulated in Article 97 of the KHI is positioned as a presumptive norm or *starting point* of legal reasoning, not as a mathematical command that must be applied absolutely in every case.⁵²

The main characters of this model are integrative and adaptive. Integrative means that the interpretation of Article 97 of the KHI is not carried out partially, but through the incorporation of normative (positive law and KHI), teleological (*maqāṣid al-sharī'ah*), and contextual (concrete socio-economic facts) dimensions. Adaptive means that the application of norms is adjusted to the diversity of the conditions of the

⁵¹ Satjipto Rahardjo, *Progressive Law: A Synthesis of Indonesian Law* (Yogyakarta: Genta Publishing, 2009), 44–48.

⁵² Abdurrahman, *Compilation of Islamic Law in Indonesia* (Jakarta: Akademika Pressindo, 1992), 73–75.

economic relationship between husband and wife, without losing legal certainty as a basic principle of the judicial system.⁵³

In terms of operational framework, this recontextualization model works through three stages of legal reasoning. First, the determination of Article 97 of the KHI as the normative basis for the division of common property. Second, a contextual reading of the facts of the case through contextual hermeneutics, including economic and non-economic contributions, the division of domestic roles, and post-divorce conditions. Third, evaluate the results of the interpretation with the parameters of *maqāṣid al-sharī'ah*, especially the benefits and protection of property to determine whether the equal distribution still reflects substantive justice or needs to be adjusted.⁵⁴

The application of the recontextualization model of Article 97 of the KHI is clearly reflected in the practice of religious justice in the West Java region, as analyzed in the decisions of the Religious Courts of Garut, Sukabumi, Depok, and Bandung. Although not always explicitly formulated as a "model", the judge's pattern of consideration suggests the use of a reasoning framework that is in line with the principle of recontextualization.⁵⁵

In the Garut Religious Court, this model appears through an emphasis on proportionality of contributions, where the division of joint property is adjusted to the dominance of the wife's economic and non-economic contributions. In PA Sukabumi, the recontextual approach emphasizes post-divorce benefits, taking into account economic vulnerability and child dependents. Meanwhile, the Depok Religious Court uses propriety and social reasonableness as a corrective instrument against unbalanced claims. The Bandung PA shows the most comprehensive application of the model by integrating proportionality, benefit, and propriety simultaneously.⁵⁶

These patterns show that Article 97 of the KHI is no longer practiced as a uniform distribution norm, but as a flexible guideline that

⁵³ Achmad Ali, *Revealing Legal Theory and Judicial Theory* (Jakarta: Kencana, 2010), 230–236.

⁵⁴ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008), 37–40.

⁵⁵ Sudikno Mertokusumo, *The Discovery of Law: An Introduction* (Yogyakarta: Liberty, 2009), 118–121.

⁵⁶ Decision of the Garut Religious Court Number 3844/Pdt.G/2020/PA. GRT and the decisions of the Sukabumi, Depok, and Bandung Religious Courts as analyzed in Chapter III of this study.

allows judges to adjust the verdict to the concrete context of the case. Thus, this model of recontextualization is not a theoretical construction detached from practice, but a reflection of the development of judicial reasoning that has taken place in religious courts.

Normatively, this recontextualization model emphasizes that Article 97 of the KHI still has legitimacy and binding power in the Indonesian Islamic family law system. However, such legitimacy is dynamic, depending on an interpretation that is in line with the goals of the sharia and the principle of substantive justice. Recontextualization does not negate norms, but enriches their meaning to remain relevant in changing social contexts.⁵⁷

Judicially, this model strengthens the position of judges as active and responsible inventors of the law (*rechtvinder*). Judges are no longer positioned as mechanical implementers of norms, but as judicial actors who have measurable discretion space to integrate legal norms, concrete facts, and justice values. This implication encourages the development of religious justice practices that are more reflective, argumentative, and responsive to the needs of community justice.⁵⁸

Theoretically, the recontextualization model of Article 97 of the KHI contributes to the development of contemporary Islamic family law theory, particularly in bridging normative Islamic law with substantive justice approaches and progressive legal theory. This model shows that Islamic family law has an internal capacity to transform without losing its normative identity. Thus, the recontextualization of Article 97 of the KHI not only has an impact on judicial practice, but also enriches academic discourse on the dynamics and renewal of Islamic law in Indonesia.⁵⁹

CONCLUSION

This study confirms the important implications for the development of Islamic family law in Indonesia, especially in the application of Article 97 of the KHI. Integrative and contextual recontextualization models place equal division (50:50) as a starting point, not as a rigid mathematical provision. Its normative implications show that Article 97 of the KHI remains relevant and operational as long

⁵⁷ Muḥammad al-Ṭāhir Ibn ‘Āshūr, *Maqāṣid al-Sharī‘ah al-Islāmiyyah* (Amman: Dār al-Nafā’is, 2001), 178–181.

⁵⁸ Satjipto Rahardjo, *Progressive Law: A Synthesis of Indonesian Law* (Yogyakarta: Genta Publishing, 2009), 44–48.

⁵⁹ Satria Effendi M. Zein, *Problematics of Contemporary Islamic Family Law* (Jakarta: Kencana, 2005), 108–113.

as it is interpreted contextually with an orientation to *maqāṣid al-sharī'ah*. Judicially, this model reinforces the role of judges as *rechtvinder* who not only applies the law textually, but also considers the dimension of substantive justice. Meanwhile, theoretically, this approach encourages the transformation of Islamic family law in a direction that is more adaptive, responsive, and in harmony with contemporary social dynamics.

The main findings of this study show that the operationalization of Article 97 of the KHI through a contextual approach by combining the perspective of *maqāṣid al-sharī'ah* and contextual hermeneutics allows judges to make a more comprehensive assessment of concrete facts in the case of division of common property. This model proves that the distribution does not always have to be formally equitable, but can be adjusted argumentatively when empirical conditions indicate a contribution inequality or substantive injustice. Thus, the concept of justice in the division of common property shifts from mere formal justice to substantive justice that considers aspects of the contribution, needs, and conditions of the parties.

Based on these findings, this study recommends that judicial officials, especially judges in the religious justice environment, internalize a contextual approach in interpreting and applying Article 97 of the KHI in order to achieve substantive justice. In addition, it is necessary to strengthen judicial or interpretive guidelines that accommodate the approach of *maqāṣid al-sharī'ah* as a framework of analysis in matters of common property. For legal developers and policymakers, this research also encourages regulatory updates or interpretive affirmations of Article 97 of the KHI to be more adaptive to the complexity of social realities. Thus, the application of the law not only guarantees certainty, but also presents contextual and civilized justice.

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