

Beyond 50:50 of Matrimonial Asset: Applying the *Contra Legem* Principle in Marital Property Division in Indonesia

Afriansyah Tanjung

Departemen Hukum Perdata, Universitas Siber Muhammadiyah
tanjung.afriansyah@sibermu.ac.id

Moh. Lubsi Tuqo Romadhan

Departemen Hukum Pidana, Universitas Siber Muhammadiyah
lubsi.dosen@sibermu.ac.id

Maela Khoirul Ummah

Departemen Hukum Bisnis dan Ekonomi, Universitas Siber Muhammadiyah
maela.ummah@sibermu.ac.id

Abstract

This paper investigates the legal and ethical implications of deviating from the equal (50:50) distribution of marital property in Indonesian divorce cases, particularly when one spouse acts in bad faith. While Indonesian law, namely Article 35 of the Marriage Law and Article 97 of the Compilation of Islamic Law, generally upholds equal division of joint property, this study highlights how courts may apply the contra legem principle to achieve substantive justice. Using a normative legal method, the research examines regulations and judicial discretion in reallocating marital assets when faced with evidence of misconduct, unequal contributions, or financial manipulation. The study draws from comparative legal systems and landmark court decisions to illustrate how contra legem serves not as a defiance of law, but as a mechanism to protect vulnerable spouses and promote fairness. It concludes that flexible, contribution-based distribution, supported by judicial transparency and evidentiary standards, better reflects the realities of modern marriages and ensures just outcomes within Indonesia's dual legal framework.

Keywords: *Bad faith, Contra legem principle, Divorce, Marital property, Substantive justice*

Abstrak

Tulisan ini mengkaji implikasi hukum dan etis dari penyimpangan terhadap prinsip pembagian harta bersama secara setara (50:50) dalam kasus perceraian di Indonesia, khususnya ketika salah satu pihak bertindak dengan itikad buruk. Meskipun hukum positif Indonesia—yakni Pasal 35 Undang-Undang Perkawinan dan Pasal 97 Kompilasi Hukum Islam—pada dasarnya menjamin pembagian yang sama atas harta bersama, studi ini menunjukkan bagaimana pengadilan dapat menerapkan prinsip *contra legem* untuk mencapai keadilan substantif. Melalui metode penelitian hukum normatif, penelitian ini menganalisis diskresi hakim dalam mendistribusikan kembali harta bersama ketika terdapat bukti adanya penyalahgunaan, kontribusi yang tidak seimbang, atau manipulasi keuangan. Studi ini mengambil referensi dari sistem hukum perbandingan dan putusan-putusan penting pengadilan untuk menunjukkan bahwa penerapan *contra legem*

bukanlah bentuk pelanggaran hukum, melainkan sarana untuk melindungi pihak yang rentan dan mewujudkan keadilan. Disimpulkan bahwa pembagian harta berdasarkan kontribusi aktual, dengan didukung transparansi yudisial dan standar pembuktian yang jelas, lebih mencerminkan realitas perkawinan modern dan memastikan hasil yang adil dalam kerangka hukum ganda di Indonesia.

Kata Kunci: Contra legem, Harta bersama, Itikad buruk, Keadilan substantif, Perceraian

INTRODUCTION

The global context of marital property law or matrimonial law is characterized by variances in default legal regimes, cultural customs, and the flexibility afforded by marital agreements, which collectively determine how assets are managed both during marriage and after dissolution. Marital property law reflects social, economic, and gender considerations across different legal systems¹. Matrimonial property, also known as marital property or community property in some jurisdictions, generally refers to the assets and debts that a couple accumulates during their marriage. It is a key concept in family law, particularly when a marriage ends through divorce or death, as it dictates how these shared possessions will be divided.²

Studies highlight that marital property regimes have significant economic impacts on both spouses during marriage and upon divorce. In Germany, for instance, the default regime has provoked research exploring how couples opt out through marital contracts, revealing the complex interplay between individual autonomy and legal constraints.³ This dynamic is reflected in other jurisdictions where marital agreements allowing couples to

¹ Hanoch Dagan en Carolyn J Frantz, *Properties of Marriage, Property: Values and Institutions*, 2011, <https://doi.org/10.1093/acprof:oso/9780199737864.003.0022>.

² Iosif Florin Moldovan, "Matrimonial Regimes", *Journal of Legal Studies* 16, no 30 (01 Desember 2015): 47-54, <https://doi.org/10.1515/jles-2015-0010>.

³ Theresa Nutz, Anika Nelles, en Philipp M. Lersch, "Who Opts Out? The Customisation of Marriage in the German Matrimonial Property Regime", *European Journal of Population* 38, no 3 (23 Augustus 2022): 353-75, <https://doi.org/10.1007/s10680-022-09613-8>.

choose their matrimonial property regime have received extensive scholarly attention.⁴ The customization of these regimes is essential in reconciling traditional legal frameworks with evolving economic realities, especially when considering gendered aspects of property rights.⁵

A comparative analysis indicates that countries such as Nigeria, the United Kingdom, Singapore, and Malaysia have employed different judicial approaches to marital property disputes. In some cases, judicial practices emphasize achieving fairness in asset division despite the absence of clear statutory guidelines, particularly regarding non-monetary contributions.⁶ This situation is compounded by the legacy of legal traditions embedded in common and civil law systems, where distinct rules about marital property govern issues such as community versus separate property regimes. The equal division rule, which encompasses income accruals and asset management rules for marital property, is often defended as a necessary measure to ensure justice and economic stability for both spouses.⁷

The legal regulation of marital property in Indonesia is characterized by a dual legal framework where national and Islamic law intersect to provide a nuanced approach to asset distribution. Indonesian marital property law has evolved through the interaction between the statutory provisions of the national Marriage Law and the religious norms

⁴ Līga Stikāne, “The Right of the Spouses to Choose the Law Applicable to their Matrimonial Property Regime in a Marital Agreement”, in *Legal Science: Functions, Significance and Future in Legal Systems I* (LU Akadēmiskais apgāds, 2019), 286–300, <https://doi.org/10.22364/iscflul.7.25>.

⁵ Mathilde Cohen et al., “When Judges Have Reasons Not to Give Reasons: A Comparative Law Approach”, *Washington and Lee Law Review* 72: 3–4, toegang verkry 28 April 2025, <https://scholarlycommons.law.wlu.edu/wlulr/vol72/iss2/3>.

⁶ Benedeta Mutiso, “Getting to Equal: Resolving the Judicial Impasse on the Weight of Non-Monetary Contribution in Kenya’s Marital Asset Division”, *Michigan Journal of Gender & Law*, no 26.1 (2019): 121, <https://doi.org/10.36641/mjgl.26.1.getting>.

⁷ Mutiso.

embedded in the Compilation of Islamic Law.⁸ Refer to Chapter VII Marital Property on Law Number 1 of 1974 on Marriage Law that Article 35 paragraph (1), stated that: "Property acquired during the marriage becomes joint marital property." This provision means that any assets, income, or property obtained by either the husband or the wife during the marriage — regardless of whose name it is registered under — are considered shared property. Both spouses have equal rights and responsibilities over the use, management, and distribution of such property. It reflects the legal principle that marriage creates a community of property, emphasizing fairness and partnership between the spouses.⁹

A central aspect of Indonesia's legal philosophy in this domain revolves around the recognition of party autonomy through prenuptial agreements, as discussed by Asyatama and Ridwan.¹⁰ The prenuptial agreement, mandated by Indonesian law to be executed as a notarial deed before marriage, represents an institutional mechanism that seeks to protect individual rights while accommodating the unique circumstances of each marital union. This contractual approach is instrumental in reconciling the standardized provisions of the Marriage Law with the diverse socio-economic realities of Indonesian families. In doing so, it allows couples to specifically shape the management and distribution of marital assets, even in the wake of contentious disputes.

⁸ Melia, Muzakkir Abubakar, en Darmawan, "SHARING ASSISTANCE AFTER DIVORCE (STUDY OF SUPREME COURT DECISION NUMBER 597K/Ag/2016; [PEMBAGIAN HARTA BERSAMA SETELAH PERCERAIAN (Studi terhadap Putusan Mahkamah Agung Nomor 597K/Ag/2016)]", *Jurnal IUS Kajian Hukum dan Keadilan* 7, no 3 (2019): 506 – 518, <https://doi.org/10.29303/ius.v7i3.665>.

⁹ Muhamad Beni Kurniawan, "Konsep Pembagian Harta Bersama Berdasarkan Kontribusi Dalam Perkawinan", *AHKAM: Jurnal Ilmu Syariah* 17, no 2 (05 Julie 2017), <https://doi.org/10.15408/ajis.v17i2.4741>.

¹⁰ Faradilla Asyatama en Fully Handayani Ridwan, "Analisis Perjanjian Perkawinan Menurut Undang-Undang Perkawinan Di Indonesia", *Ajudikasi: Jurnal Ilmu Hukum* 5, no 2 (25 Desember 2021): 109–22, <https://doi.org/10.30656/ajudikasi.v5i2.3937>.

The role of marital agreements is especially crucial in a globalized world where couples increasingly seek legal certainty and individualized contractual arrangements.¹¹ Party autonomy—allowing spouses to select the applicable legal framework for their matrimonial property—has been acknowledged for centuries. However, the formal requirements imposed on such agreements and the limitations on choices remain contentious issues, raising questions about the interdependence of cultural values, individual rights, and judicial interpretations of fairness.¹² Moreover, the evolving intersection of legal traditions and socio-economic factors necessitates a reassessment of perspectives that traditionally relegated marital property law to a purely domestic concern.¹³

Furthermore, the judicial handling of marital property disputes in different regulatory environments illuminates the influence of broader societal norms and the status of women within those systems. Studies have found that, particularly in regions with less robust female property rights, marital rules based on common law may undermine women’s bargaining power, consequently affecting their socio-economic well-being.¹⁴ This contrasts with regimes that allow more equitable distribution through statutory reforms or judicial guidance concerning non-monetary contributions and other forms of partnership capital. Such disparities underscore the importance of a global understanding of marital property law as a tool for social justice and economic equality.¹⁵

¹¹ Nutz, Nelles, en Lersch, “Who Opts Out? The Customisation of Marriage in the German Matrimonial Property Regime”.

¹² Stikāne, “The Right of the Spouses to Choose the Law Applicable to their Matrimonial Property Regime in a Marital Agreement”.

¹³ Moldovan, “Matrimonial Regimes”.

¹⁴ Siwan Anderson, “Legal Origins and Female HIV”, *American Economic Review* 108, no 6 (01 Junie 2018): 1407–39, <https://doi.org/10.1257/aer.20151047>.

¹⁵ Mutiso, “Getting to Equal: Resolving the Judicial Impasse on the Weight of Non-Monetary Contribution in Kenya’s Marital Asset Division”.

Marital property law in a global context represents a multifaceted area where legal regimes, marital contracts, and judicial interpretations converge to address evolving social and economic imperatives. Comparative studies reveal that while traditional default regimes continue to exert influence, increased customization through marital agreements and legislative reforms offers a pathway towards more equitable and adaptable approaches.¹⁶ This evolving landscape is critical for ensuring that legal frameworks keep pace with the demands of modern marriage, ultimately contributing to the overall well-being of families across different cultural and legal settings.¹⁷

METHOD

This study employs a normative legal research method with a descriptive-qualitative approach. The primary source of data consists of secondary data obtained through comprehensive library research, utilizing both conventional and digital legal repositories. The secondary data are categorized into three types of legal materials. Primary legal materials include statutory regulations relevant to the field of Marriage Law, Family Law, Prenuptial Agreements, and Divorce, serving as the foundational basis for legal analysis. Secondary legal materials consist of scholarly research findings, academic publications, legal textbooks, and official press releases from courts or the Supreme Court, which are used to interpret and provide context for the applicable legislation on marital property, spousal agreements, and the judicial system in Indonesia. Tertiary legal materials encompass general reference sources, such as the Indonesian

¹⁶ Fikri Fikri et al., "Contextualization of Rights and Justice through Exceptions in the Counterclaim of Marital Property Lawsuit", *Al-Mizan* 19, no 2 (12 Desember 2023): 227-48, <https://doi.org/10.30603/am.v19i2.4144>.

¹⁷ Dagan en Frantz, *Properties of Marriage*.

dictionary, which aid in clarifying specific legal terminologies and nomenclature encountered in the analysis.

The collected legal materials are analyzed using two interpretive frameworks: the statute approach, which involves examining the hierarchical structure of the relevant legislative instruments, and the conceptual approach, which enables an in-depth understanding of the doctrinal foundations underlying the primary legal materials.¹⁸ The analysis culminates in an inductive reasoning process, whereby conclusions are drawn in alignment with the core legal issues identified at the outset of the study. This methodological structure ensures a systematic and comprehensive examination of the legal norms governing the distribution of marital property and judicial discretion in Indonesian divorce law.

RESULT AND DISCUSSION

The Legal Principle of Equal Division and Its Rationale and Manifestations of Bad Faith and Its Legal Effects

The principle of 50:50 division of marital property is a common feature in many legal systems, reflecting an egalitarian approach to marriage and property rights. This principle is rooted in the idea that both spouses contribute equally to the marriage, whether through financial means or other forms of labor, and thus should share equally in the assets acquired during the marriage.¹⁹

¹⁸ Justicia Firdaus Kurniawan, Dominikus Rato, en Moh Ali, "Mixed Marriage Law On Marital Property Due To Divorce", *Mimbar Yustitia: Jurnal Hukum dan Hak Asasi Manusia* 8, no 2 (2024): 111–23, <https://doi.org/10.52166/mimbar.v7i2>.

¹⁹ Dagan en Frantz, *Properties of Marriage*.

The principle of equal division is supported by the vision of marriage as an egalitarian liberal community where spouses share without reference to individual desert. This approach emphasizes nonsubordination and the protection of individual autonomy, allowing for free exit from the marriage while ensuring fair distribution of assets.

In many community property states, the management rules applied during marriage support the equal division of marital property upon dissolution. This includes all assets acquired through remuneration or labor during the marriage, ensuring that both spouses benefit equally from the economic gains made during their union.²⁰

The ethical and philosophical foundations of marital property rights also play a significant role. Different religious and cultural traditions may influence the interpretation and application of marital property laws, advocating for a holistic approach that aligns legal norms with ethical and spiritual principles.²¹

In the context of judicial proceeding, the division of joint property often involves judicial proceedings, which can be complex and require careful determination of the composition and value of the property. These proceedings are non-litigious and operate ex officio, highlighting the legal framework's role in ensuring fair division.²²

The principle of 50:50 division of marital property is widely endorsed in various legal systems, reflecting an egalitarian approach to marriage. However, practical, cultural, and ethical considerations can influence its application, necessitating careful legal and judicial

²⁰ Kurniawan, Rato, en Ali, "Mixed Marriage Law On Marital Property Due To Divorce".

²¹ Jiayu Wei, "RELIGIOUS ETHICS AND THE MORAL FOUNDATIONS OF MARITAL PROPERTY RIGHTS: A PHILOSOPHICAL ANALYSIS OF SPOUSAL OWNERSHIP AND THE MARRIAGE LAW", *European Journal for Philosophy of Religion* 17, no 2 (2025): 210 – 226, <https://doi.org/10.24204/ejpr.2025.4671>.

²² Ewa Jedrzejewska, *Division of joint property of spouses after termination of marital property: Selected practical problems, Family, Law, and Society: from Roman Law to the Present Day*, 2023, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85183758995&partnerID=40&md5=70cea5bbf8837078e7db5301559abde1>.

management to ensure fair and consistent outcomes, here the summary of various legal system that applied the principle of 50:50 division of marital property, namely:

Table 1 - Comparative Analysis of Principle of 50:50 Division of Marital Property

Region/System	Principle	Details
Northern Europe (Late Middle Ages)	Communal Principle	Property aimed at maintaining the household after the death of a spouse. ²³
Southern Europe (Late Middle Ages)	Kin-Based Principle	Property transferred to male or female lines upon death of a spouse. ²⁴
Switzerland	Participation in Acquisitions	Equal settlement of assets acquired during marriage. ²⁵
Community Property States	Equal Division Rule	Includes increases and decreases in earning capacity during marriage. ²⁶
China	Judicial Interpretation (III)	Neutral and universally applicable, consistent with gender equality. ²⁷

In Indonesia, the distribution of marital property during divorce is regulated by a combination of religious and national legal frameworks, most notably the Compilation of Islamic Law (Kompilasi Hukum Islam or KHI) and Law Number 1 of 1974 concerning Marriage.²⁸ These regulations aim to provide legal certainty and fairness to both parties in the event of a marriage dissolution. The principles governing the distribution are

²³ Agnes S Arnórsdóttir, *Death and donation: Different channels of property transfer in late medieval Iceland, The Marital Economy in Scandinavia and Britain 1400-1900*, 2017, <https://doi.org/10.4324/9781315238418-25>.

²⁴ Arnórsdóttir.

²⁵ Alexandra Jungo en Laura von Arb, *Switzerland: participation in acquisitions, Research Handbook on Family Property and the Law*, 2024, <https://doi.org/10.4337/9781802204681.00031>.

²⁶ Dagan en Frantz, *Properties of Marriage*.

²⁷ Liantai Liu, "On the property division rules of the judicial interpretation (III) of the marriage law of China", *Frontiers of Law in China* 7, no 4 (2012): 656 – 667, <https://doi.org/10.3868/s050-001-012-0031-3>.

²⁸ Mesraini, "The Concept of Joint Assets and its Implementation in the Religious Court.; [Konsep Harta Bersama dan Implementasinya di Pengadilan Agama]", *Ahkam: Jurnal Ilmu Syariah* 12, no 1 (2012): 59 – 70, <https://doi.org/10.15408/ajis.v12i1.980>.

rooted in the notion of mutual contribution and equitable treatment, irrespective of each spouse's financial or domestic roles during the marriage.²⁹

One of the core principles established under Indonesian law is the concept of joint property (*harta bersama*). According to this principle, any property acquired during the course of the marriage is considered jointly owned by both spouses, regardless of whose name is registered on the ownership documents or who contributed financially.³⁰ This reflects the understanding that both parties, through their respective roles—whether as breadwinners or homemakers—have contributed equally to the accumulation of assets during the marriage. This argument reflected from the article 35 of Law 1 of 1974 on Marriage Law.³¹

When a divorce occurs, the joint property is subject to equal division between the spouses. This is explicitly mandated under Article 97 of the Compilation of Islamic Law, which states that in the case of divorce, the joint property should be divided equally between husband and wife.³² The purpose of this provision is to uphold fairness and to recognize the often-invisible labor contributed by one spouse, particularly in cases where one partner, typically the wife, has primarily fulfilled domestic responsibilities without direct monetary income. Thus, the legal framework ensures that contributions made

²⁹ Ibnu Elmi As Pelu en 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>.

³⁰ Jomana Mohamed Sabri Awiety en Abdul Kadir Riyadi, "History of Joint Marital Property In Indonesia and Its Legalization", *Malaysian Journal of Syariah and Law* 8, no 2 (2020): 94 - 112, <https://doi.org/10.33102/mjisl.vol8no2.256>.

³¹ Jayusman en Zuhri Imansyah, "The decision on joint properties in Bengkulu high religious court jurisdiction", *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 21, no 1 (2021): 99 - 134, <https://doi.org/10.18326/ijtihad.v21i1.99-134>.

³² Siti Marlina en Haris Mubarak, "Joint Property after Divorce In Polygamous Marriage: Comparative Research in Indonesia and Malaysia", *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 22, no 2 (2022): 273 - 287, <https://doi.org/10.30631/alrisalah.v22i2.1289>.

within the household are accorded the same value as financial contributions, promoting a balanced and just distribution of marital assets.³³

Although Indonesian law generally mandates an equal division of joint property upon divorce, judges retain a degree of judicial discretion in determining the final distribution. This principle may not apply rigidly when evidence of bad faith emerges during the marriage or divorce proceedings. Bad faith actions, including intentional harm, deceit, and manipulation, can significantly alter the equitable distribution of assets.³⁴ For instance, if one spouse engages in harassment, extortion, or deliberately sabotages the other's financial standing—such as filing for bankruptcy during divorce proceedings to complicate and obstruct the fair division of property—these acts of malice may justify a departure from the standard 50:50 split. Furthermore, drawing from Sartre's philosophical concept of bad faith, self-deception—where an individual denies personal responsibility and clings to deterministic excuses—can also be a factor if it materially affects the marital relationship and asset management.³⁵

In such cases, the court may exercise its discretion to award a greater share of the joint property to the aggrieved party, ensuring that justice is served and that wrongful conduct is not rewarded in the dissolution of the marriage.³⁶ This discretion allows judges to adjust the division of assets based on the specific contributions made by each spouse during the marriage. If evidence shows that one spouse has made significantly greater

³³ Sukiati, Nurasiah, en Milhan, "Approaches of the Religious Court Judges in Indonesia to Settle Joint Marital Property Disputes", *Manchester Journal of Transnational Islamic Law and Practice* 19, no 3 (2023): 71 – 81, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85175811302&partnerID=40&md5=2c94706fe183870aa191af8a651d2607>.

³⁴ Deyan Draguiev, "Bad faith conduct of states in violation of the 'fair and equitable treatment' standard in international investment law and arbitration", *Journal of International Dispute Settlement* 5, no 2 (2014): 273 – 305, <https://doi.org/10.1093/jnlids/idu002>.

³⁵ Angel Semerdzhiev, "Bankruptcy in divorce: The litigation tactic of the angry spouse", *Family Court Review* 61, no 1 (2023): 189 – 202, <https://doi.org/10.1111/fcre.12698>.

³⁶ Stalin Joseph Correya, "Not Just Lying to Oneself: An Examination of Bad Faith in Sartre", *Journal of Indian Council of Philosophical Research* 38, no 1 (2021): 103 – 121, <https://doi.org/10.1007/s40961-021-00232-y>.

financial or non-financial contributions to the acquisition or maintenance of the joint property, the court may deviate from the strict 50:50 division to achieve a fairer outcome.³⁷

The principle underlying this flexibility is the pursuit of substantive justice, recognizing that an equal split may not always equitably reflect the realities of each party's involvement in the marriage.³⁸ For instance, if one spouse's contributions—whether in the form of earnings, management, or sacrifices for the household—are demonstrably larger, a judge may allocate a greater share of the joint property to that spouse. Thus, while the general rule is equality, Indonesian courts are empowered to ensure that fairness prevails by tailoring the distribution of marital assets according to the actual circumstances of the case.³⁹

Judicial Application of *Contra Legem* in Marital Property Division and Balancing Legal Certainty and Equitable Justice

The 50:50 rule in marital property distribution, where each spouse is deemed to own a fifty percent interest in assets, is a common principle in many civil law jurisdictions.⁴⁰ However, there are notable variations and exceptions to this rule based on different legal systems and specific circumstances. The distribution of marital property based on individual contributions is a complex area governed by various legal principles,

³⁷ Nahum Brown, "Sartre and the Modality of Bad Faith: The Contingency Debate", *Kritike* 18, no 1 (2024): 31 – 46, <https://doi.org/10.25138/18.1.A1>.

³⁸ Thomas W Merrill en Henry E Smith, "Optimal standardization in the law of property: The numerus clausus principle", *Yale Law Journal* 110, no 1 (2000): 1 – 70, <https://doi.org/10.2307/797586>.

³⁹ Dagan en Frantz, *Properties of Marriage*.

⁴⁰ Kurniawan, "KONSEP PEMBAGIAN HARTA BERSAMA BERDASARKAN KONTRIBUSI DALAM PERKAWINAN".

which can differ significantly depending on the jurisdiction and specific legal frameworks in place.⁴¹

Some jurisdictions adopt a contribution-based approach to marital property distribution. This method assesses the contributions of each spouse during the marriage and allocates property accordingly.⁴² For instance, if one spouse contributed more significantly to the acquisition of marital assets, they might receive a larger share than the other spouse. This approach is considered more equitable in certain cases.⁴³

Courts often handle property division on a case-by-case basis, considering various factors such as contributions, the nature of the assets, and any existing agreements between the spouses. This individualized approach can result in significant variations from the standard 50:50 distribution.⁴⁴

The *contra legem* principle refers to actions or decisions that are contrary to the law. This principle is particularly significant in the context of judicial interpretation and the application of laws, especially within the European Union (EU) legal framework. The *contra legem* principle often comes into play when courts interpret laws in ways that may seem to contradict the explicit wording of the legislation.⁴⁵

⁴¹ Mirosław Nazar, "Gloss to the resolution of the supreme court of 19 october 2018 (iii czp 45/18). substitution of assets in personal (separate) properties of spouses under the joint marital property; [Glosa do uchwały sądu najwyższego z dnia 19 października 2018 r. (iii c", *Studia Iuridica Lublinensia* 29, no 3 (2020): 267 – 276, <https://doi.org/10.17951/sil.2020.29.3.267-276>.

⁴² Haxhi Gashi en Bashkim Preteni, "Marriage and Property Regime of Spouses under Kosovo Current Law and Draft – Civil Code; [Brak I Imovinski Režim Između Bračnih Drugova Prema Aktualnom Zakonu I Prema Nacrtu Građanskog Zakonika Kosova]", *Pravni Vjesnik* 36, no 3–4 (2020): 309 – 323, <https://doi.org/10.25234/pv/10800>.

⁴³ Lucy-Ann Buckley, "Irish matrimonial property division in practice: A case study", *International Journal of Law, Policy and the Family* 21, no 1 (2007): 48 – 83, <https://doi.org/10.1093/lawfam/ebi021>.

⁴⁴ Christiane von Bary, "Distribution of family property in Germany: family law and beyond", in *Research Handbook on Family Property and the Law* (Edward Elgar Publishing, 2024), 278–91, <https://doi.org/10.4337/9781802204681.00026>.

⁴⁵ Anthony Arnull, "European Union Law and the Contra Legem Principle", *European Law Review* 47, no 3 (2022): 291 – 309, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85132590571&partnerID=40&md5=d9c7f20a98da6ae242b2fc3a1281b34a>.

The interpretation of laws can benefit from linguistic and pragmatic analyses to better distinguish between different cases of interpretation. This nuanced approach can help in understanding when a decision is truly *contra legem*. In some instances, in several court in the EU courts may apply the *contra legem* principle to fill legal vacuums or address situations where strict adherence to the law would result in greater harm.⁴⁶ For example, a court may grant a polygamy permit using the *contra legem* principle to mitigate a greater harm, even if the application does not meet all legal requirements.⁴⁷

Table 2 - Judicial deviation from the standard 50/50 division of marital property in several cases in Indonesia⁴⁸

No.	Case Citation	Legal Issue	Court's Holding	Judicial Reasoning
1	Supreme Court Decision No. 329 K/AG/1994	Whether marital property must be divided equally (50:50) upon divorce	Marital property was not divided equally	The Court found unequal contributions between spouses and awarded a greater share to the spouse with more substantial input.
2	Supreme Court Decision No. 597 K/AG/2016	Distribution of joint property acquired during marriage	Equal division was not automatically applied	The Court assessed the origin and contribution toward the acquisition of assets and departed from an equal split in favor of a fairer distribution.
3	Sidoarjo Religious Court Decision No. 1045/Pdt.G/2010/PA.Sda	Whether marital property should be split equally in light of unequal financial contributions	Property was divided in a 60:40 ratio favoring the husband	The Court recognized the husband's dominant financial contribution and adjusted the division to reflect economic realities.

⁴⁶ Leone Niglia, "Conforming Interpretation", *European Review of Private Law* 30, no 4 (2022): 635 – 658, <https://doi.org/10.54648/erpl2022031>.

⁴⁷ Khairil Anwar en Sri Ikamulia, "Perkara Izin Poligami di Pengadilan Agama Bengkalis (Analisis Terhadap Putusan Hakim Nomor: 0307/Pdt.G/2017/PA.Bkls)", *Juris: Jurnal Ilmiah Syariah* 18, no 2 (2019): 163 – 174, <https://doi.org/10.31958/juris.v18i2.1656>.

⁴⁸ Pengadilan Agama Dabo Singkep, "YURISPRUDENSI TENTANG PERKARA PERCERAIAN DI PENGADILAN AGAMA", Sistem Informasi Data Perkara (SIDARA), 2018.

No.	Case Citation	Legal Issue	Court's Holding	Judicial Reasoning
4	Supreme Court Decision No. 1044 K/AG/2005	Entitlement to joint property when one party cannot prove substantial involvement	Equal distribution was denied	The Court emphasized the burden of proof regarding contribution to joint property and declined to award half to the party lacking evidence of participation.
5	Supreme Court Decision No. 1386 K/Pdt/2006	Whether a spouse acting in bad faith retains equal rights to marital property	The spouse engaging in bad faith was not entitled to an equal share	The Court applied the principle of substantive justice, penalizing bad faith actions such as unauthorized disposal of joint assets.

the *contra legem* principle in marital property distribution during divorce cases has legal, ethical, and economic implications. The legal implications involve deviations from statutory provisions, the duty of full and frank disclosure, and the power of courts to make adverse inferences. Ethically, the application of the *contra legem* principle based on contributions aims to ensure fairness in distribution. Economically, the impact of divorce laws on economic well-being and noncontractible investments is evident.⁴⁹

Judicial deviation from the standard 50/50 division of marital property plays a vital role in promoting fairness by recognizing the actual contributions made by each spouse during the course of the marriage. Rather than applying a mechanical or equal split, courts may adopt a contribution-based approach that allocates property proportionally, reflecting the economic and non-economic input of each party.⁵⁰ This method acknowledges the value of domestic labor, caregiving, and emotional support, which are often overlooked in purely financial calculations. Furthermore, in cases where one party

⁴⁹ A S Ghambaryan, "Development of Law Contrary to the Legal Acts (Contra Legem) In The Republic of Armenia", *Gosudarstvo i Pravo* 2023, no 5 (2023): 145 – 157, <https://doi.org/10.31857/S102694520025195-5>.

⁵⁰ Kurniawan, "Konsep Pembagian Harta Bersama Berdasarkan Kontribusi dalam Perkawinan".

acts in bad faith—for instance, by strategically filing for bankruptcy or hiding assets during divorce proceedings—courts have the discretion to reject such tactics and ensure that the equitable distribution of assets is not undermined.⁵¹

Another crucial aspect of judicial deviation is its capacity to protect vulnerable parties, particularly in the context of gender disparities. In many marriages, women may disproportionately bear the burden of unpaid domestic labor while lacking legal ownership over acquired assets⁵². Judicial discretion allows courts to recognize these disparities and adjust distributions accordingly, thereby ensuring that the spouse with fewer financial resources is not unfairly disadvantaged.⁵³ This protection is enhanced by the court's authority to compel full and frank disclosure of all financial matters, including income, debts, and hidden assets. Enforcing transparency in asset reporting is essential in preventing manipulation and guaranteeing that the division of property reflects the true financial landscape of the marital relationship.⁵⁴

Perhaps one of the most important strengths of judicial deviation is its inherent flexibility. Rather than adhering to rigid statutory formulas, courts are empowered to assess each case based on its unique facts and dynamics. This adaptability allows for more nuanced and context-sensitive outcomes that promote justice on a case-by-case basis.⁵⁵ Especially in complex divorces involving large or diverse asset portfolios, the court's

⁵¹ Melia, Muzakkir Abubakar, en Darmawan, "Sharing Assistance after Divorce (Study of Supreme Court Decision Number 597K/Ag/2016; [Pembagian Harta Bersama setelah Perceraian (Studi terhadap Putusan Mahkamah Agung Nomor 597K/Ag/2016)]", *Jurnal IUS Kajian Hukum dan Keadilan* 7, no 3 (2019): 506 – 518, <https://doi.org/10.29303/ius.v7i3.665>.

⁵² David S Rosettenstein, "Big money divorces and unequal distributions: Value, risk, liquidity and other issues on the road to unfairness", *International Journal of Law, Policy and the Family* 19, no 2 (2005): 206 – 217, <https://doi.org/10.1093/lawfam/ebi015>.

⁵³ Mesraini, "The Concept of Joint Assets and its Implementation in the Religious Court.; [Konsep Harta Bersama dan Implementasinya di Pengadilan Agama]".

⁵⁴ Semerdzhiev, "Bankruptcy in divorce: The litigation tactic of the angry spouse".

⁵⁵ Norlia Ibrahim, Nora Abdul Hak, en Roslina Che Soh, "Duty of full and frank disclosure in the division of matrimonial property: The law and practice in Malaysia", *Australian Journal of Basic and Applied Sciences* 6, no 11 (2012): 306 – 311, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-84871804315&partnerID=40&md5=4e719e37b7c3660dddb9b95aac8b14e>.

equitable powers are instrumental in crafting distributions that are both legally sound and morally just. By exercising these discretionary powers, the judiciary ensures that no party is unfairly enriched or disadvantaged, and that the overall result upholds the principle of fairness central to family law.⁵⁶

Balancing Legal Certainty and Equitable Justice

Legal certainty is a fundamental aspect of the rule of law, ensuring that laws are clear, predictable, and consistently applied. The principle of legal certainty is crucial for stabilizing legal relations and systems, providing a clear framework within which individuals and institutions operate. The application of the *contra legem* principle can undermine legal certainty by introducing unpredictability into judicial decisions.⁵⁷ When courts decide cases *contra legem*, it can lead to inconsistent rulings, as similar factual circumstances may yield different outcomes based on judicial interpretation. This inconsistency can erode trust in the legal system and make it difficult for individuals to anticipate the legal consequences of their actions.⁵⁸

On the other hand, the *contra legem* principle can sometimes promote equitable justice by allowing judges to consider the specific contributions and circumstances of each party in a marriage. For instance, in cases where one spouse has contributed significantly more to the marital property, a strict application of the law might result in an unfair division. By applying the *contra legem* principle, judges can adjust the distribution to

⁵⁶ Wei Chen, Xin Zhang, en Lei Shi, “Empirical Research on Protecting Women’s Property Rights in Divorce Proceedings in China”, *International Journal of Law, Policy and the Family* 32, no 1 (2018): 109 – 118, <https://doi.org/10.1093/lawfam/ebx016>.

⁵⁷ Wei, “Religious Ethics And The Moral Foundations Of Marital Property Rights: A Philosophical Analysis Of Spousal Ownership And The Marriage Law”.

⁵⁸ Oksana SHCHERBANYUK, Vitalii GORDIEIEV, en Laura BZOVA, “Legal nature of the principle of legal certainty as a component element of the rule of law”, *Juridical Tribune* 13, no 1 (31 Maart 2023), <https://doi.org/10.24818/TBJ/2023/13/1.02>.

reflect the actual contributions of each spouse, potentially awarding a larger share to the spouse who contributed more.⁵⁹

This approach aligns with the concept of justice based on contributions, which is seen as more equitable than a rigid 50/50 split. For example, if one spouse has been the primary breadwinner while the other has taken on household responsibilities, a *contra legem* decision might allocate a larger portion of the property to the breadwinner, reflecting their greater financial contribution.^{3 4} The core challenge in marital property distribution lies in reconciling two often competing legal ideals: the demand for legal certainty and the aspiration for equitable justice. Legal certainty requires the application of established rules to ensure predictability, uniformity, and public confidence in the legal system. This includes adherence to statutory frameworks that, for example, mandate equal division of marital assets upon divorce. However, strict adherence to such rules may sometimes produce unjust outcomes, particularly when the spouses' actual contributions to the accumulation of joint property are significantly unequal. Equitable justice, by contrast, necessitates judicial flexibility to consider the unique facts of each case—such as economic disparity, non-monetary contributions, and bad faith actions—thereby tailoring decisions to achieve fairness rather than formal equality.

In response to this tension, some legal systems have developed mechanisms to strike a balance between these principles. One such approach is the doctrine of judicial restraint, where courts generally uphold the legal and equitable ownership of property unless there is a compelling justification to depart from it. This allows for the preservation of legal certainty in most cases, while still enabling the judiciary to intervene and adjust outcomes in exceptional circumstances—such as when strict statutory application would

⁵⁹ Kurniawan, "KONSEP PEMBAGIAN HARTA BERSAMA BERDASARKAN KONTRIBUSI DALAM PERKAWINAN".

result in manifest injustice. The application of the contra legem principle becomes particularly relevant in this context. Contra legem, meaning "against the law," permits judges to depart from the letter of the law when its rigid application contradicts the spirit of justice. In the realm of marital property distribution, this principle empowers judges to go beyond statutory mandates and reflect the actual contributions of each spouse, rather than dividing assets equally by default. Through contra legem reasoning, a court may, for instance, award a larger portion of the joint property to the spouse who demonstrably contributed more—whether financially, emotionally, or domestically—thereby upholding substantive fairness while navigating beyond the constraints of rigid legal formalism.⁶⁰

The core challenge in marital property distribution lies in reconciling two often competing legal ideals: the demand for legal certainty and the aspiration for equitable justice. Legal certainty requires the application of established rules to ensure predictability, uniformity, and public confidence in the legal system. This includes adherence to statutory frameworks that, for example, mandate equal division of marital assets upon divorce. However, strict adherence to such rules may sometimes produce unjust outcomes, particularly when the spouses' actual contributions to the accumulation of joint property are significantly unequal. Equitable justice, by contrast, necessitates judicial flexibility to consider the unique facts of each case—such as economic disparity, non-monetary contributions, and bad faith actions—thereby tailoring decisions to achieve fairness rather than formal equality.⁶¹

⁶⁰ Rosettenstein, "Big money divorces and unequal distributions: Value, risk, liquidity and other issues on the road to unfairness".

⁶¹ Patrick Parkinson, "Family Property Division and the Principle of Judicial Restraint", *University of New South Wales Law Journal* 41, no 2 (Mei 2018), <https://doi.org/10.53637/XHPU9987>.

In response to this tension, some legal systems have developed mechanisms to strike a balance between these principles. One such approach is the doctrine of judicial restraint, where courts generally uphold the legal and equitable ownership of property unless there is a compelling justification to depart from it. This allows for the preservation of legal certainty in most cases, while still enabling the judiciary to intervene and adjust outcomes in exceptional circumstances—such as when strict statutory application would result in manifest injustice.⁶²

The application of the *contra legem* principle becomes particularly relevant in this context. *Contra legem*, meaning "against the law," permits judges to depart from the letter of the law when its rigid application contradicts the spirit of justice. In the realm of marital property distribution, this principle empowers judges to go beyond statutory mandates and reflect the actual contributions of each spouse, rather than dividing assets equally by default. Through *contra legem* reasoning, a court may, for instance, award a larger portion of the joint property to the spouse who demonstrably contributed more—whether financially, emotionally, or domestically—thereby upholding substantive fairness while navigating beyond the constraints of rigid legal formalism.⁶³

The consistent application of marital property laws is essential to ensuring legal certainty and public confidence in the justice system. However, strict adherence to statutory rules—such as the equal 50:50 division of joint property—can at times result in outcomes that are substantively unjust. This tension between formal legality and equitable justice has prompted the need for a set of clear, flexible judicial guidelines that can accommodate both certainty and fairness.

⁶² Katherine Shaw Spaht, "Postmodern Marriage as Seen through the Lens of the ALI's 'Compensatory Payments'", in *Reconceiving the Family* (Cambridge University Press, 2006), 249–68, <https://doi.org/10.1017/CBO9780511617706.015>.

⁶³ Jedrzejewska, *Division of joint property of spouses after termination of marital property: Selected practical problems*.

This items that need by outlining standards that courts may apply when deviating from rigid statutory rules, particularly in cases where the contra legem principle is invoked to achieve equity based on the actual contributions of each spouse based on the discussion above such as:

Section	Guideline	Explanation
Presumption of Equal Division	Equal 50:50 division of joint marital property	The court begins with a rebuttable presumption that property acquired during the marriage is to be divided equally, aligning with statutory law and ensuring legal certainty.
Grounds for Judicial Deviation (Equitable Adjustment Criteria)	Unequal Economic Contribution	Significant disparities in income, ownership, or risk-taking during the marriage may justify deviation.
	Non-Monetary Contributions	Includes substantial domestic labor, caregiving, or emotional support that enabled asset accumulation.
	Bad Faith Conduct	Involves actions such as asset concealment, unauthorized disposal of property, or strategic bankruptcy.
	Vulnerability and Disadvantage	Applies when one spouse is economically or socially disadvantaged due to gender roles, disability, or caregiving burdens.
Evidentiary Requirements	Proof and disclosure obligations	Parties seeking deviation must provide credible evidence and courts must enforce full disclosure of financial status from both parties.
Judicial Discretion Within Defined Bounds	Structured discretion	Judges may award proportional shares but must: <ul style="list-style-type: none"> a. Justify the decision in writing; b. Show that the outcome ensures substantive fairness; c. Demonstrate respect for the spirit of the law (contra legem)
Safeguards Against Arbitrary Application	Oversight and transparency mechanisms	Includes internal court reviews, higher court oversight, and the publication of anonymized case summaries to promote consistency in judicial practice.

CONCLUSION

This study reveals that while Indonesian marital property law, grounded in Article 35 of Law No. 1 of 1974 and Article 97 of the Compilation of Islamic Law, adheres to the principle of equal (50:50) distribution of joint marital property, the judiciary retains discretionary power to depart from this rule in pursuit of substantive justice. Through the application of the *contra legem* principle, courts may prioritize fairness over strict legal formalism, particularly in cases involving bad faith, unequal contributions, or economic vulnerability. The paper demonstrates that such judicial deviations are not violations of legal certainty, but essential instruments for protecting the equitable interests of spouses, especially those disadvantaged by systemic or interpersonal inequities. By analyzing comparative practices and Indonesian court decisions, it becomes evident that the rigidity of equal division may fail to reflect the lived realities of marriage, including unpaid domestic labor, emotional investment, and intentional financial misconduct by one spouse. The application of *contra legem* in these contexts serves to reinforce justice, rather than undermine it. Therefore, while the statutory framework provides the foundational standard, flexible judicial interpretation—when guided by clear evidentiary standards and ethical principles—is crucial to uphold both fairness and the integrity of marital property law in Indonesia.

REFERENCE

JOURNALS/ PUBLICATION

- Anderson, Siwan. "Legal Origins and Female HIV". *American Economic Review* 108, no 6 (01 Junie 2018): 1407–39. <https://doi.org/10.1257/aer.20151047>.
- Anwar, Khairil, en Sri Ikamulia. "PERKARA IZIN POLIGAMI DI PENGADILAN AGAMA BENGKALIS (Analisis Terhadap Putusan Hakim Nomor: 0307/Pdt.G/2017/PA.Bkls)". *Juris: Jurnal Ilmiah Syariah* 18, no 2 (2019): 163 – 174. <https://doi.org/10.31958/juris.v18i2.1656>.
- Arnórsdóttir, Agnes S. *Death and donation: Different channels of property transfer in late*

- medieval Iceland. The Marital Economy in Scandinavia and Britain 1400-1900*, 2017. <https://doi.org/10.4324/9781315238418-25>.
- Arnall, Anthony. "European Union Law and the Contra Legem Principle". *European Law Review* 47, no 3 (2022): 291 – 309. <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85132590571&partnerID=40&md5=d9c7f20a98da6ae242b2fc3a1281b34a>.
- Awiety, Jomana Mohamed Sabri, en Abdul Kadir Riyadi. "HISTORY OF JOINT MARITAL PROPERTY IN INDONESIA AND ITS LEGALIZATION". *Malaysian Journal of Syariah and Law* 8, no 2 (2020): 94 – 112. <https://doi.org/10.33102/mjssl.vol8no2.256>.
- Bary, Christiane von. "Distribution of family property in Germany: family law and beyond". In *Research Handbook on Family Property and the Law*, 278–91. Edward Elgar Publishing, 2024. <https://doi.org/10.4337/9781802204681.00026>.
- Brown, Nahum. "Sartre and the Modality of Bad Faith: The Contingency Debate". *Kritike* 18, no 1 (2024): 31 – 46. <https://doi.org/10.25138/18.1.A1>.
- Buckley, Lucy-Ann. "Irish matrimonial property division in practice: A case study". *International Journal of Law, Policy and the Family* 21, no 1 (2007): 48 – 83. <https://doi.org/10.1093/lawfam/eb1021>.
- Chen, Wei, Xin Zhang, en Lei Shi. "Empirical Research on Protecting Women's Property Rights in Divorce Proceedings in China". *International Journal of Law, Policy and the Family* 32, no 1 (2018): 109 – 118. <https://doi.org/10.1093/lawfam/ebx016>.
- Cohen, Mathilde, Hawa Allan, Ittai Bar-Siman-Tov, Lenni Benson, Jessica Clarke, Ashley Deeks, Erin Delaney, et al. "When Judges Have Reasons Not to Give Reasons: A Comparative Law Approach". *Washington and Lee Law Review* 72: 3–4. Toegang verkry 28 April 2025. <https://scholarlycommons.law.wlu.edu/wlulr/vol72/iss2/3>.
- Correya, Stalin Joseph. "Not Just Lying to Oneself: An Examination of Bad Faith in Sartre". *Journal of Indian Council of Philosophical Research* 38, no 1 (2021): 103 – 121. <https://doi.org/10.1007/s40961-021-00232-y>.
- Dagan, Hanoch, en Carolyn J Frantz. *Properties of Marriage. Property: Values and Institutions*, 2011. <https://doi.org/10.1093/acprof:oso/9780199737864.003.0022>.
- Draguiev, Deyan. "Bad faith conduct of states in violation of the 'fair and equitable treatment' standard in international investment law and arbitration". *Journal of International Dispute Settlement* 5, no 2 (2014): 273 – 305. <https://doi.org/10.1093/jnlids/idu002>.
- Faradilla Asyatama, en Fully Handayani Ridwan. "Analisis Perjanjian Perkawinan Menurut Undang-Undang Perkawinan Di Indonesia". *Ajudikasi : Jurnal Ilmu Hukum* 5, no 2 (25 Desember 2021): 109–22. <https://doi.org/10.30656/ajudikasi.v5i2.3937>.
- Fikri, Fikri, Aris Aris, Saidah Saidah, Nurul Fitra Ramadhan, en Rizal Darwis. "Contextualization of Rights and Justice through Exceptions in the Counterclaim of Marital Property Lawsuit". *Al-Mizan* 19, no 2 (12 Desember 2023): 227–48. <https://doi.org/10.30603/am.v19i2.4144>.
- Gashi, Haxhi, en Bashkim Preteni. "MARRIAGE AND PROPERTY REGIME OF SPOUSES UNDER KOSOVO CURRENT LAW AND DRAFT – CIVIL CODE; [BRAK I IMOVINSKI REŽIM IZMEĐU BRAČNIH DRUGOVA PREMA AKTUALNOM ZAKONU I PREMA NACRTU GRAĐANSKOG ZAKONIKA KOSOVA]". *Pravni Vjesnik* 36, no 3–4 (2020): 309 – 323. <https://doi.org/10.25234/pv/10800>.
- Ghambaryan, A S. "DEVELOPMENT OF LAW CONTRARY TO THE LEGAL ACTS (CONTRA LEGEM) IN THE REPUBLIC OF ARMENIA". *Gosudarstvo i Pravo* 2023, no 5 (2023):

- 145 – 157. <https://doi.org/10.31857/S102694520025195-5>.
- Ibrahim, Norlia, Nora Abdul Hak, en Roslina Che Soh. "Duty of full and frank disclosure in the division of matrimonial property: The law and practice in Malaysia". *Australian Journal of Basic and Applied Sciences* 6, no 11 (2012): 306 – 311. <https://www.scopus.com/inward/record.uri?eid=2-s2.0-84871804315&partnerID=40&md5=4e719e37b7c3660dddb9b95aac8b14e>.
- Jayusman, en Zuhri Imansyah. "The decision on joint properties in Bengkulu high religious court jurisdiction". *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 21, no 1 (2021): 99 – 134. <https://doi.org/10.18326/ijtihad.v21i1.99-134>.
- Jedrzejewska, Ewa. *Division of joint property of spouses after termination of marital property: Selected practical problems. Family, Law, and Society: from Roman Law to the Present Day*, 2023. <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85183758995&partnerID=40&md5=70cea5bbf8837078e7db5301559abde1>.
- Jungo, Alexandra, en Laura von Arb. *Switzerland: participation in acquisitions. Research Handbook on Family Property and the Law*, 2024. <https://doi.org/10.4337/9781802204681.00031>.
- Kurniawan, Justicia Firdaus, Dominikus Rato, en Moh Ali. "Mixed Marriage Law On Marital Property Due To Divorce". *Mimbar Yustitia: Jurnal Hukum dan Hak Asasi Manusia* 8, no 2 (2024): 111–23. <https://doi.org/10.52166/mimbar.v7i2>.
- Kurniawan, Muhamad Beni. "KONSEP PEMBAGIAN HARTA BERSAMA BERDASARKAN KONTRIBUSI DALAM PERKAWINAN". *AHKAM : Jurnal Ilmu Syariah* 17, no 2 (05 Julie 2017). <https://doi.org/10.15408/ajis.v17i2.4741>.
- Liu, Liantai. "On the property division rules of the judicial interpretation (III) of the marriage law of China". *Frontiers of Law in China* 7, no 4 (2012): 656 – 667. <https://doi.org/10.3868/s050-001-012-0031-3>.
- Marlina, Siti, en Haris Mubarak. "JOINT PROPERTY AFTER DIVORCE IN POLYGAMOUS MARRIAGE: Comparative Research in Indonesia and Malaysia". *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 22, no 2 (2022): 273 – 287. <https://doi.org/10.30631/alrisalah.v22i2.1289>.
- Melia, Muzakkir Abubakar, en Darmawan. "SHARING ASSISTANCE AFTER DIVORCE (STUDY OF SUPREME COURT DECISION NUMBER 597K/Ag/2016; [PEMBAGIAN HARTA BERSAMA SETELAH PERCERAIAN (Studi terhadap Putusan Mahkamah Agung Nomor 597K/Ag/2016)]". *Jurnal IUS Kajian Hukum dan Keadilan* 7, no 3 (2019): 506 – 518. <https://doi.org/10.29303/ius.v7i3.665>.
- Merrill, Thomas W, en Henry E Smith. "Optimal standardization in the law of property: The numerus clausus principle". *Yale Law Journal* 110, no 1 (2000): 1 – 70. <https://doi.org/10.2307/797586>.
- Mesraini. "The Concept of Joint Assets and its Implementation in the Religious Court; [KONSEP HARTA BERSAMA DAN IMPLEMENTASINYA DI PENGADILAN AGAMA]". *Ahkam: Jurnal Ilmu Syariah* 12, no 1 (2012): 59 – 70. <https://doi.org/10.15408/ajis.v12i1.980>.
- Moldovan, Iosif Florin. "Matrimonial Regimes". *Journal of Legal Studies* 16, no 30 (01 Desember 2015): 47–54. <https://doi.org/10.1515/jles-2015-0010>.
- Mutiso, Benedeta. "Getting to Equal: Resolving the Judicial Impasse on the Weight of Non-Monetary Contribution in Kenya's Marital Asset Division". *Michigan Journal of Gender & Law*, no 26.1 (2019): 121. <https://doi.org/10.36641/mjgl.26.1.getting>.
- Nazar, Mirosław. "Gloss to the resolution of the supreme court of 19 october 2018 (iii czp 45/18). substitution of assets in personal (separate) properties of spouses under the joint marital property; [Glosa do uchwały sądu najwyższego z dnia 19 października

- 2018 r. (iii c". *Studia Iuridica Lublinensia* 29, no 3 (2020): 267 – 276. <https://doi.org/10.17951/sil.2020.29.3.267-276>.
- Niglia, Leone. "Conforming Interpretation". *European Review of Private Law* 30, no 4 (2022): 635 – 658. <https://doi.org/10.54648/erpl2022031>.
- Nutz, Theresa, Anika Nelles, en Philipp M. Lersch. "Who Opts Out? The Customisation of Marriage in the German Matrimonial Property Regime". *European Journal of Population* 38, no 3 (23 Augustus 2022): 353–75. <https://doi.org/10.1007/s10680-022-09613-8>.
- Parkinson, Patrick. "Family Property Division and the Principle of Judicial Restraint". *University of New South Wales Law Journal* 41, no 2 (Mei 2018). <https://doi.org/10.53637/XHPU9987>.
- Pelu, Ibnu Elmi As, en 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>.
- Rosettenstein, David S. "Big money divorces and unequal distributions: Value, risk, liquidity and other issues on the road to unfairness". *International Journal of Law, Policy and the Family* 19, no 2 (2005): 206 – 217. <https://doi.org/10.1093/lawfam/ebi015>.
- Semerdzhiiev, Angel. "Bankruptcy in divorce: The litigation tactic of the angry spouse". *Family Court Review* 61, no 1 (2023): 189 – 202. <https://doi.org/10.1111/fcre.12698>.
- SHCHERBANYUK, Oksana, Vitalii GORDIEIEV, en Laura BZOVA. "Legal nature of the principle of legal certainty as a component element of the rule of law". *Juridical Tribune* 13, no 1 (31 Maart 2023). <https://doi.org/10.24818/TBJ/2023/13/1.02>.
- Singkep, Pengadilan Agama Dabo. "YURISPRUDENSI TENTANG PERKARA PERCERAIAN DI PENGADILAN AGAMA". Sistem Informasi Data Perkara (SIDARA), 2018.
- Spaht, Katherine Shaw. "Postmodern Marriage as Seen through the Lens of the ALI's 'Compensatory Payments'". In *Reconceiving the Family*, 249–68. Cambridge University Press, 2006. <https://doi.org/10.1017/CB09780511617706.015>.
- Stikāne, Līga. "The Right of the Spouses to Choose the Law Applicable to their Matrimonial Property Regime in a Marital Agreement". In *Legal Science: Functions, Significance and Future in Legal Systems I*, 286–300. LU Akadēmiskais apgāds, 2019. <https://doi.org/10.22364/iscflul.7.25>.
- Sukiati, Nurasiah, en Milhan. "Approaches of the Religious Court Judges in Indonesia to Settle Joint Marital Property Disputes". *Manchester Journal of Transnational Islamic Law and Practice* 19, no 3 (2023): 71 – 81. <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85175811302&partnerID=40&md5=2c94706fe183870aa191af8a651d2607>.
- Wei, Jiayu. "RELIGIOUS ETHICS AND THE MORAL FOUNDATIONS OF MARITAL PROPERTY RIGHTS: A PHILOSOPHICAL ANALYSIS OF SPOUSAL OWNERSHIP AND THE MARRIAGE LAW". *European Journal for Philosophy of Religion* 17, no 2 (2025): 210 – 226. <https://doi.org/10.24204/ejpr.2025.4671>.

REGULATION

- Undang-Undang Republik Indoneia Nomor 1 Tahun 1974 tentang Perkawinan (Lembaran Negara Republik Indonesia Tahun 1974 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 3019)
- Undang-Undang Republik Indoneia Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman (Lembaran Negara Republik Indonesia Tahun 2009 Nomor 157,

Tambahan Lembaran Negara Republik Indonesia Nomor 5076)
Peraturan Pemerintah Republik Indonesia Nomor 9 Tahun 1975 tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan (Lembaran Negara Republik Indonesia Tahun 1975 Nomor 12, Tambahan Lembaran Negara Republik Indonesia Nomor 3050)
Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 Tentang Penyebarluasan Kompilasi Hukum Islam (Lembaran Negara Republik Indonesia Tahun 1974 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 3019)