



Analysis of Joint Property Distribution Using The Concept Of Jurimetry: Perspectives From John Rawls And Jeremy Betham's Theories Of Justice

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Abstract: The division of joint property as regulated in Article 97 of the Compilation of Islamic Law (KHI) is set at half ($\frac{1}{2}$), unless otherwise specified in the marriage agreement. This approach is often used as a reference by judges because it provides legal certainty. However, this provision is often considered to not take into account the condition of wives who bear a double burden, namely taking care of domestic affairs while also playing a role in the public sphere. This study aims to examine the division of joint property using the concept of jurimetry in the perspective of the theory of justice proposed by John Rawls and Jeremy Bentham, in order to evaluate the extent to which substantive justice is reflected through the application of jurimetry in joint property cases. The method used is normative legal research with a legislative, conceptual, and case study approach. The findings of the study indicate that the use of jurimetrics in joint property cases must be combined with the principles of justice according to Rawls and Bentham, so that the division is not solely based on a formal legal approach but also considers aspects of social and moral justice.

Keywords: Jurisprudence; Joint Property; Justice; John Rawls; Jeremy Bentham

1. Introduction

Indonesia is known as one of the countries with the largest Muslim population in the world, which indirectly influences the legal system applied within it. This is reflected in the enactment of Law Number 1 of 1974 concerning Marriage, which is the legal basis for the implementation of marriage in accordance with Islamic teachings. Marriage itself is a legal bond between a man and a woman as husband and wife, which creates mutual rights and obligations between them (Asnawi, 2022). This occurs because of an agreement between husband and wife to satisfy each other (Indra dkk., 2023). The emergence of these rights and obligations has legal implications, such as the pooling of assets acquired by the husband and wife during the marriage, which is commonly known as joint property.

In general, joint property can be defined as property acquired by a husband and wife during their marriage. In the event of divorce, the division of such property is carried out proportionally, with each party entitled to half, as stipulated in Article 97 of the Compilation of Islamic Law (KHI) (*Kompilasi Hukum Islam Di Indonesia*, 2018). The enrichment of the division of joint property cannot be separated from the exercise of the rights and obligations of husband and wife that arise during marriage. Especially in the current era of technological disruption, it is not uncommon for many wives to become career women or earn more than their husbands when they start a family.

In this condition, if we look at it comprehensively, if Article 97 of the KHI is implemented universally without considering the wife's contribution, this will certainly cause harm to the wife or her heirs if the wife dies. It cannot be denied that sometimes wives bear a double burden, which is certainly caused by many factors such as customs, violence, or even economic demands (Dalimoenthe, 2021).

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As time goes by and the issues become more complex, when faced with a civil case regarding joint property, a judge must certainly be progressive in their decision, whereby the panel of judges can apply *contra legem* to override Article 97 of the KHI. Such considerations can be found in Supreme Court Decision No. 266/K/AG/2010. Thus, this is in line with Epictetus' view that just as doctors are there to heal the sick, the law is there to protect and restore the rights of those who have suffered losses.

Therefore, the division of joint property must provide a sense of justice for the parties, namely by using the concept of jurimetry. With the massive differences in justice parameters, jurimetry is present to bridge these differences, which can be tested scientifically. Jurimetry can be used in certain legal aspects, such as calculating compensation in cases of default and unlawful acts, as well as determining the division of joint property based on the principle of justice (Asnawi, 2020).

Then, if we look at how justice itself is defined according to John Rawls and Jeremy Bentham, these two philosophers have different views. John Rawls argues that justice is not a matter of the end result but rather about the "original position" and the "veil of ignorance" (Faiz, 2009). Rawls argues that, fundamentally, every individual will tend to choose a system that provides the greatest benefit for themselves. This idea is in line with the tradition of the social contract that was previously developed by great thinkers such as John Locke, Jean Jacques Rousseau, and Immanuel Kant (Rousseau, 2023). This concept strongly emphasizes individual rights and distributive justice. In the context of the distribution of shared assets, consideration must be given to the socio-economic position of those who are vulnerable. Rawls further states that inequality can be justified if it benefits the vulnerable party, in this context, the wife. It should not be overlooked that when wives are more often in the domestic sphere and do not earn an income, the distribution of assets must take into account their contribution, even if it is not directly financial.

Conversely, Bentham argues in his theory of utilitarianism that something can be considered fair if it provides the greatest happiness for the greatest number of people (Priyanto & Arif, 2025). In the context of the distribution of shared assets, distribution is considered fair if it provides greater happiness for the parties involved.

Based on this, there is an urgency to analyze the distribution of joint property using the concept of jurimetry from the perspective of John Rawls and Jeremy Bentham's theory of justice to see the extent to which jurimetry provides a sense of fairness in the distribution of joint property. Previously, there have been several relevant studies, including the following. First, Khairunnisa and Rahmi Hidayat examined court decisions related to the application of the jurimetric approach in the distribution of joint property as an effort to achieve justice (Khoirunnisa & Hidayati, 2023). Second, Heppy Hyma Puspytasari examined the concept of joint property from the perspective of Islamic law and positive law (Puspytasari, 2020). Third, Abd Rouf discussed the distribution of joint property using an approach oriented towards objective and verifiable results, which could serve as a guideline for judges in deciding such cases (Rouf, 2024). Fourth, Jacelyn Liwandi and Endah Hartati examine the impact of divorce on the existence and legal status of joint property (Liwandi & Hartati, 2022).

Considering the above description and relevant previous research, it can be understood that this study offers a novel contribution by combining a quantitative jurimetric approach with Rawls and Bentham's theories of justice in the analysis of the distribution of shared assets. Previous studies have only discussed jurimetry in an applied manner without a framework of justice theory, or examined justice in the distribution of common property without the support of an empirical approach. Thus, there has been no study that simultaneously integrates jurimetric data analysis with these two major theories of justice to construct a model of property distribution that is both objective and substantively just.

2. Methods

The type of research method used in this study falls under the category of normative legal research, which focuses primarily on analyzing written legal norms in legislation. This normative legal research is also known as doctrinal research, which relies on library sources or document studies (Marzuki, 2017). Therefore, the approaches used in this study include a legislative approach, a conceptual approach, and a case approach (Muhaimin, 2020). The data sources analyzed consist of primary legal materials, such as Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), the Qur'an, Hadith, and Qawaid Fiqhiyyah. In addition, secondary legal materials were also used in the form of research results, theses, dissertations, journals, and other scientific literature. Data collection techniques were carried out through a literature study by examining relevant documents. All data obtained were analyzed descriptively and analytically to examine the division of joint property through a jurimetric approach based on the theories of justice from John Rawls and Jeremy Bentham.

3. Results and Discussion

In its journey, the division of joint property in Indonesia has undergone many dynamics, both in terms of regulations, theory, and implementation. This is actively done in order to uphold the principles of justice in joint property cases, so that the spirit of justice will always be maintained. Similarly, in the current reality, a concept of jurimetry has emerged in the division of joint property to take a more measurable approach to the division of joint property. In addition, there are philosophers who discuss justice, including John Rawls and Jeremy Betham. This trend needs to be studied, and this issue will be explained in the following discussion:

3.1. *The Jurimetric Approach in the Division of Joint Property*

The term jurimetrics comes from the combination of two root words, namely jurisprudence, which refers to the science of law, and metrics, which means the science of measurement or calculation. The meaning of the word metrics in jurimetrics is identical to its use in various disciplines such as econometrics, psychometrics, and sociometrics. In this context, mathematics refers to scientific methods for analyzing a problem (Asnawi, 2020). The term jurimetrics was first formulated by Lee Loevinger in a legal study. According to him, the term jurimetrics had been proposed and began to be used as a term for activities involving scientific investigation of legal issues (Loevinger, 1963). Thus, it can be understood that the idea of jurimetrics put forward by Loevinger aims to introduce a scientific and experimental approach to legal studies. The application of jurimetrics is intended to present a more comprehensive legal analysis, with an emphasis on objectivity and measurability in understanding a legal issue. This approach underlines the importance of adequate and consistent empirical data collection as a basis for conducting legal studies on the issues being researched (Asnawi, 2016).

The division of joint property between husband and wife after divorce is often a complex issue, which frequently leads to lawsuits (Tektona, 2023). Provisions regarding this matter are regulated in Article 97 of the Compilation of Islamic Law (KHI), which states that *"A widow or widower is entitled to half of the joint property, unless otherwise specified in the marriage agreement."* In addition, similar provisions are also found in Articles 128 and 129 of the Civil Code (KUHPperdata), which state that *"if the marriage between husband and wife ends, the joint property shall be divided equally between the two."* This principle is in

accordance with the applicable legal provisions for each party, as stated in Article 37 of Law Number 1 of 1974 concerning Marriage (Amalia dkk., 2022).

Given the complexity of the division of joint property, if we only look at the contextual meaning of this article, it will cause losses to the wife or the wife's heirs when the wife dies. This is because sometimes wives have a double burden, namely having to take care of domestic and public affairs (Zulawati & Jatningsih, 2023). Therefore, the jurimetric approach aims to create a more equitable distribution of assets through a quantitative and scientifically testable analysis. As part of legal research, jurimetrics not only uses quantitative methods but also determines the object of the dispute, the sequence of events or circumstances underlying the case, and the main legal issues that are the focus of examination in court.

As a method of legal analysis, jurimetrics involves several stages that aim to realize the values of justice, namely; (Kees van Noortwijk & Richard De Mulder, 2007) (A) Choose domain: The first step is to determine the domain or scope of the issue that is the focus of the analysis. In the context of case handling, the judge first identifies the subject matter (*objectum litis*) that is at the heart of the dispute between the parties. (b) *Retrieve cases*: The next stage is to search for cases by collecting and examining facts that are directly related to the core of the dispute. (c) Read cases: This stage involves an in-depth study of the facts that have been collected previously. The analysis is carried out systematically to compile an initial description of the positions of the parties, their legal relationship, and the legal consequences arising from that relationship. (d) Define legal item: After a thorough reading of the case construction and relevant evidence, the next step is to formulate the legal issues to be examined and decided by the judge. For example, in a dispute over joint property, the legal issue that needs to be answered is whether the disputed property is classified as joint property or is actually the personal property of each party. (e) Build list of factors: At this stage, the analysis is directed at assessing proportionally what is considered fair and appropriate in the division of joint property. This assessment is based on consideration of the obligations of each spouse and their concrete contributions to acquiring wealth during the marriage. (f) Process data: The final step is to process the data obtained earlier by linking it logically and systematically to the factors that have been identified. The goal is to produce a fair and fact-based legal conclusion. Of the six stages, there are two steps that are crucial in the application of jurimetry, namely "*Build list of factors*" and "*Process data*". Both serve as the main foundation in the process of measuring justice presented in a more objective and measurable manner.

Then, in the "*Build list of factors*" stage, law enforcement officials are required to determine fair and appropriate amounts, taking into account various relevant factors in order to achieve substantive justice. Meanwhile, in the "*Process data*" stage, law enforcement officials are obliged to process the data that has been collected by linking it to predetermined factors. This data processing is carried out through statistical analysis methods, the results of which are then analyzed quantitatively and descriptively. Furthermore, in certain contexts, the results of this quantitative analysis are linked back to qualitative concepts such as fairness and reasonableness. Thus, the jurimetrics approach in the division of joint property is highly relevant and necessary, especially in the current

era of technological disruption. Not only to analyze an issue, but also to shape a more just, consistent, and scientifically and morally accountable legal progressiveness.

3.2. Proportion of Marital Property Distribution Based on Obligations

In Islamic and positive law, joint property (*gono-gini*) is property acquired during marriage through the cooperation of husband and wife (Ridwan dkk., 2021). This is the legal basis that everything acquired during marriage, regardless of who directly sought or produced it, is considered joint property.

Consequently, in the event of divorce, the property must be divided fairly between the parties. This cooperation does not always run smoothly and can lead to conflict. The cooperation is not always financial (money) but also includes contributions in the domestic sphere, such as those made by the wife, such as taking care of children, supporting her husband, and other domestic work (Faizah dkk., 2024).

In Islamic law, the concept of joint property is not explicitly mentioned in the Qur'an or hadith. However, contemporary scholars, including those from the *fiqh madhhab* and modern Islamic legal thinkers, recognize the existence of joint property as a form of justice in the household. The division of property acquired during marriage is seen as a consequence of the principles of *ta'awun* (mutual cooperation) and *musyawarah* (consultation) in the life of a husband and wife. Therefore, although explicitly the property of husbands and wives in Islamic law is separate, in contemporary Islamic jurisprudence there is a tendency to accept the concept of joint property in certain contexts (Sholihah dkk., 2025).

The normative rights and obligations attached to each party in a marriage are often understood through a traditional lens, in which the husband is considered the primary breadwinner, while the wife plays the role of homemaker (Adib dkk., 2024). However, with social developments and economic dynamics, these roles have become more flexible and complex. The responsibilities of husbands and wives now extend beyond economic aspects to include emotional support, children's education, and overall management of household life. This emphasizes that the role of wives in managing the household and educating children is no less important in the context of the division of joint property. Unfortunately, in practice, the division of joint property often does not reflect the justice that should be done. For example, there are cases where a wife who has devoted herself to taking care of the home and children for many years does not receive a proportional share when a divorce occurs. This condition underlines the urgency of recognizing non-financial contributions in the mechanism of joint property distribution.

The correlation between obligations and property ownership in marriage is an important aspect in determining the proportion of joint property distribution. From a legal perspective, the fulfillment of obligations by husbands and wives can affect their rights to joint property. For example, if one party does not fulfill their obligations, their rights to joint property may be reduced. For example, if the husband contributes more financially, but the wife contributes in terms of managing the household, then the division of property must reflect both aspects (Faudzan dkk., 2024).

However, in practice, assessing non-financial contributions such as household management and emotional support can be challenging. Therefore, an objective and measurable approach is needed to assess these contributions. One approach that can be used is jurimetry, which allows for a quantitative analysis of each party's contributions to the marriage. Thus, the division of joint property does not always have to be 50:50, but can be adjusted according to the circumstances and contributions of each party.

Theoretical approaches such as John Rawls' distributive justice also reinforce this position. Rawls emphasizes the importance of recognizing reasonable inequalities in distribution if they benefit the less fortunate. In this context, a wife who does not work in the formal sector but plays a major role in supporting her husband's career and maintaining household stability is still entitled to an equal share of the joint property.

The legal implications of unfair distribution of joint property can lead to dissatisfaction and distrust of the legal system. For example, in Indonesian Supreme Court Decision Number 266 K/AG/2010, joint property was divided in a proportion of $\frac{3}{4}$ for the wife and $\frac{1}{4}$ for the husband, because the husband did not fulfill his obligation to provide for his family and take responsibility for his children. This shows that the court can consider the contributions of each party in determining the proportion of the division of joint property (Sawitri & Mansur, 2022).

Furthermore, the social implications of an unfair division of joint property can cause tension and conflict in society. Injustice in the division of joint property can worsen the relationship between former spouses and have a negative impact on their children. Moreover, it can also influence society's perception of institutions and the legal system as a whole.

Therefore, Jurimetrics offers a solution by objectifying the contributions of each party in the household, both financial and non-financial, so that the value of justice is not solely based on symmetrical distribution, but proportional to the roles and burdens of each spouse during the marriage. Thus, the division of joint property can be carried out more fairly and objectively, in accordance with the principle of substantive justice. In this context, the use of jurimetrics can assist judges in determining the proportion of joint property division that is fair and in accordance with the contributions of each party (Sholihah dkk., 2024).

3.3. Analysis of Joint Property Distribution Using the Concept of Jurimetrics from the Perspective of John Rawls and Jeremy Betham's Theory of Justice

John Rawls, in his monumental work *A Theory of Justice*, introduced the concept of "*justice as fairness*" which focuses on two fundamental principles, namely: first, the principle of equal liberty for all individuals; and second, the principle of difference which states that social and economic inequality can only be justified if it provides the greatest benefit to the most disadvantaged groups in society (Rawls, 2009). Rawls views justice as an agreement that is universally acceptable and supported by all groups that have equal fairness rights (Sunaryo, 2022). This support is not based on pressure, intimidation, or the interests of the majority group, but rather because the agreement truly reflects substantive justice (Priyanto dkk., 2025).

In the context of the division of joint property after divorce, wives are often in a weak economic position due to their domestic roles, which have not been calculated proportionally in positive law. Jurimetrics offers a more measurable approach to the division of joint property using scientific methods and quantitative analysis. This needs attention because non-financial contributions such as managing the household, educating children, and supporting the psychological stability of the family are an essential part of the process of accumulating joint property.

These principles demand a legal system that is not only formalistic but also substantive in assessing the contributions of each party. Rawls emphasizes the importance of the veil of ignorance, which is a hypothetical condition in which individuals make decisions without knowing their position in society (Sulaiman dkk., 2025). Thus, decisions regarding the division of joint property should be based on impartial principles of justice, ensuring that economically weaker parties, such as wives who do not work in the formal sector, still receive protection and a fair share.

Rawls' approach opens up corrective justice against structural inequality in marital relationships, especially in cases where women do not work formally but contribute fully to household life (Limbong dkk., 2023). This principle is in line with the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), an international instrument that specifically guarantees and protects women's rights as part of human rights (Fauzi, 2022). Therefore, in Rawlsian logic, the division of joint property should not only consider legal and financial aspects, but must also include distributive justice for those whose contributions have been formally neglected.

Jeremy Bentham assesses justice based on the principle of utility, namely the extent to which an action or policy produces "the greatest happiness for the greatest number of people." In marriage and divorce, Bentham would view the distribution of joint property as a means to maximize the welfare of the parties concerned (Hananto, 2025).

This principle can be interpreted in a legal context as an encouragement for judges to not only consider legality or mathematical proportionality, but also to take into account the psychological, social, and economic consequences of the division. For example, when a wife must bear the burden of child care, a larger share for the wife can be interpreted as a form of long-term utility for the sake of the child's welfare and social stability. The utilitarian approach assesses justice based on the end result that provides maximum benefit. Therefore, in the division of joint property, the main consideration is the extent to which the decision improves the welfare of all parties involved. However, this approach also faces criticism because it tends to ignore individual rights if they are not considered to provide significant collective benefits.

In practice, judges often do not consider the principle of happiness or the utility of the impact of their decisions on the long-term lives of the parties involved, especially children and mothers. Judges are sometimes still trapped in their formalistic logic. The concept of utilitarianism is closely related to the calculation between happiness (pleasure) and suffering (pain). From this perspective, an action, event, phenomenon, legal decision, or government policy is considered beneficial to society if it produces more happiness than the suffering it causes. Conversely, if an action or decision causes more suffering than happiness, it is considered to not provide positive social benefits (Pratiwi

dkk., 2022). Therefore, Bentham's utilitarianism can be an ethical mirror in considering the distribution of assets using jurimetry that is not only formally fair but also provides a sense of justice in the social sphere.

4. Conclusions

The division of joint property is a complex issue that continues to undergo dynamic developments in terms of regulation, theory, and judicial practice. This situation highlights the need for an approach that can bridge the gap between legal certainty and substantive justice. Through a jurimetric approach, the analysis of property division is no longer purely qualitative, but rather based on objective figures to assess the measurable contributions of each party. However, this approach must still be guided by a strong ethical foundation, as offered by John Rawls' theory of justice, which emphasizes the principle of distributive justice for the most vulnerable, and Jeremy Bentham, who prioritizes the greatest benefit for all parties. This integration also provides an important theoretical contribution in the form of a multidimensional justice framework that combines Rawls' principle of fairness, Bentham's utility, and the empirical objectivity of jurimetry, thereby bridging the gap between justice theory and the practice of joint property distribution, as the basis for a more measurable and substantive joint property distribution. In its application, the jurimetrics based approach and justice theory must go hand in hand so that the distribution of shared assets is not trapped in formalistic bias, but still provides moral and social justice, including practical implications for judges in the form of more measurable, transparent decisions that are free from formalistic bias and consistent with the protection of vulnerable parties.

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